

The Title Examiner

A QUARTERLY PUBLICATION OF THE



Spring 2011

For MLTA
Spring
Seminar
information,
please see
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A Midterm Interview with Tim McDonnell

by Constance Curio, Lighthouse Title Group

Halfway thru his term, President Tim McDonnell is still excited about what there is left to accomplish. For example, a Title 101 tool for agents to use in the public education process will become available on the MLTA website for members to use. The data base update project for the website is also nearly complete. This will help the MLTA maintain more efficient and effective communication with the membership. If you haven't checked out the re-designed site please take a few minutes and go to www.mlta.org and see what's new.

In his inaugural address McDonnell listed three major goals that he wanted to pursue.

1) MLTA should become a leader legislatively. SB 825 Re-insurance Bill and SB 791 Electronic Records Bill were passed and signed into law during the legislative session in 2010. The MLTA is currently supporting HB 4227 and HB 4228 that will ban the use of Private Transfer Fees on real estate. Additionally, on March 15 MLTA members participated in a Legislative Day in Lansing. There are a number of new legislators in Lansing and it is vital that MLTA members spend time creating good relationships with those new legislators. This will help the MLTA stay out in front of issues instead of reacting to them.

2) The MLTA-PAC had an average year in 2010 and McDonnell says we are not where we need to be. Currently he is working with Steve Frank, MLTA PAC Chairman, on a sustained giving program for the PAC. Steve has set the PAC goal for this year at \$30,000 and McDonnell believes we can get there. As part of this program, the PAC will be recognizing contributors better than we have in the past. To boost our efforts in Lansing, all MLTA members must make commit to contributing annually.

3) The third goal is increasing active Membership. This includes a new welcome package designed by our Membership Committee. The MLTA will also connect with all licensed agents in Michigan that are not currently members of MLTA. McDonnell urges those that are members not to wait to be asked to be involved. The easiest way is to become a member of a committee. Communication with the Membership has improved and McDonnell give kudos to the Title Examiner for good educational and topical information.

During his term, McDonnell has worked constantly to remain open-minded and flexible and tries hard to listen to all viewpoints when making decisions concerning the Association. As the industry continues to change he recommends that members also be flexible and involved. Employees as well as owners can do this thru committee conference calls as well as attending the Educational Seminars twice a year.



IM JUST A SINGER IN A ROCK 'N ROLL BAND

That is what one of our cohorts will be saying come July 17th, when the winner of a PAC FUNdraising competition will "win" the opportunity to sing with Unreal Property at the MLTA Summer Convention (like it or not) after the opening evening's reception and dinner. The candidates for this potential embarrassment (but maybe not) include a wonderful cross section of our MLTA friends – Connie Curio (Lighthouse Title), Jim Dondero (First American Title), Jennifer Lawrence, soon to be Latch – congratulations (Stewart Title), Phil Savich (Old Republic Title), Cy Tope (Corporate Title) and Meredith Weingarten (Fidelity Group). So, prepare to vote with your donations and pledges to see your favorite at the microphone. Should be fun!

MLTA

Michigan Land Title Association
Board of Directors 2010-2011

Officers:

President: Timothy J. McDonnell

Old Republic National Title Insurance Company
4000 Main St. Suite 150, Bay Harbor, MI 49770
Phone: 810-599-4878 Fax: 734-786-8413
tmcdonnell@oldrepublictitle.com

President-elect: Catharine B. LaMont

LaMont Title Corporation
333 W Fort St., Suite 1750, Detroit, MI 48226
Phone: (313) 963-3100 Fax: (313) 963-5488
clamont@lamonttitle.com

Secretary-Treasurer: Allan G. Dick

Best Homes Title Agency, LLC
23938 Research Drive, Suite 100, Farmington Hills, MI 48335
Phone: 248-286-3800 Fax: 248-286-3801
adick@besthomestitle.com

Directors:

Diana Parker

First American Title Insurance
390 Spaulding Ave. S.E., Ada, MI 49301
Phone: 800-399-3003 Fax: 866-907-5034
dparker@firstam.com

Robert Wuerfel

Lighthouse Title Group
877 E. 16th Street, Holland, MI 49423
Phone: 616-820-7258 Fax: 616-393-9237
bwuerfel@lighthousegroup.net

Lisa Cincinelli

Old Republic National Title Insurance
4000 Main Street, Ste. 150 Bay Harbor, MI 49770
Phone: 231-347-8310 Fax: 231-347-0855
lcincinelli@oldrepublictitle.com

Meredith Weingarden

Fidelity National Title Group
1360 East 9th Street, Suite 500 Cleveland, Ohio 44114
Phone: 800-229-3310 Fax: 216-861-8171
weingardenm@ctt.com

Marcy Welburn

Transnation Title Agency of Michigan
1675 Watertower Place, Ste. 200, East Lansing, MI 48823
Phone: 517-318-4390 Fax: 517-318-4361
mwelburn@transmi.net

Jeff Basil

Safe Title
1830 172nd Avenue, Suite D; Grand Haven, MI 49417
Phone: 616-935-1166 Fax: 616-935-1167
jbasil@safetitle.net

Past President & Ex-Officio Officer:

Douglas D. McFarlane

Corporate Title Agency
209 East Broadway, Mt. Pleasant, MI 48855
Phone: 989-773-3241 Fax: 989-773-6221
dmcfarlane@corporatetitle.com

Executive Director: Marcy Lay

Cusmano Kandler & Reed, Inc.
124 W. Allegan, Suite 1700, Lansing, MI 48933
Phone: 517-374-2728 Fax: 517- 908-0079
ED@milta.org



One of the PAC fundraisers for this year's Summer Convention will be a silent auction. The MLTA-PAC is seeking donated items for the auction - some of the items that have been given in the past have included I-Pods, Sports Memorabilia, Sporting Event Tickets, Spa Certificates and Food or Wine Baskets. We are looking for a good variety of items so that we have something for everyone. If you would like to donate an item, please contact Steve Frank at sfrank@atatitle.com and provide him with the item description and value. We would like to thank everyone in advance for their support and participation in the PAC and helping to make this year's Summer Convention a HUGE Success !!!



2011 Spring Education Seminar

April 13, 2011

Comfort Inn & Suites, Mt. Pleasant, MI

May 4, 2011

Marriott Detroit Livonia – (New Location), Livonia, MI

Member Registration: \$75

Non Member Registration: \$160

Agenda

8:30 – 9:00 Registration

9:00 – 9:15 Opening Remarks and Announcements - MLTA President Tim McDonnell

9:15 – 9:30 Lansing Report - Tim Ward/Cami Pendell, Michigan Legislative Consultants

9:30 – 10:30 Avoiding Claims in Condominium Sales - Laura H. McMahon Lynch, Esq.
Law Offices of Laura McMahon Lynch, PLC

10:30 – 10:45 Break

10:45 – 12:00 Bankruptcy Proceedings and Orders, and their affect on Real Estate Transactions
Rodney M. Glusac, Esq., Bernardi, Ronayne & Glusac

12:00 – 1:00 Lunch

1:00 – 1:15 MLTA Committee Reports and Updates

1:15 – 2:00 Michigan Broker's Lien Act , Gregg A. Nathanson, Esq. - Couzens, Lansky, Fealk,
Ellis, Roeder & Lazar

2:00 – 3:00 Foreclosure FAQs and Update, John C. Bommarito, Esq. - Attorneys Title Agency

Committee Meetings

MLTA Committees will meet at the Mt. Pleasant Education Seminar:

Tuesday, April 12, 2011

Legislative Committee 5:30-6:30 pm
Membership Committee 5:30-6:30 pm

Wednesday, April 13, 2011

Education Committee 7:30 am
Abstractor/Agent Committee 12:00 Noon
Noon Sponsorship Committee 12:00 Noon

Visit www.milta.org to register

THE TITLE EXAMINER STAFF

Editor & Board Representative: Bob Wuerfel - Lighthouse Title Group

Publisher: Jill Smalldon - Lighthouse Title Group

Communications: Darlene Wilsey - Fidelity National Title Group

Allan Dick - Best Homes Title Agency, LLC

Photographer: Bob Wuerfel, Lighthouse Title Group

CONTACT

Jill Smalldon 616-820-7282 - jsmalldon@lighthousegroup.net
or MLTA 517-374-2728

with any questions, comments, or if you would like to contribute.

MLTA Member Spotlight

Name: Colleen Devlin

Position: Agency Services Manager

Company: Stewart Title Guaranty

County & Office I work out of:
Southfield, MI

MLTA Involvement: Member of MLTA since 2005. Over the course of my past six years of membership I have served on a variety of committees and have enjoyed every minute of it. I participate in as many of the MLTA functions, conventions and seminars as I possibly can.



Personal Interests/Hobbies: I am an avid MSU Spartan fan. Football or basketball you can catch me watching the almighty Spartans. In the winter, I love to snow ski. My summer months are spent in my yard or up at our cottage. I also have a 22 year old daughter who I adore and couldn't be more proud of.

Something about you to share with the MLTA Members: I have been in the banking and title business for 25 years. I have worked in almost every aspect of these two industries from approving loans in the banking business to entering orders, doing closings and managing and marketing for an agency. As an ASM for Stewart Title, my days are spent working with a great group of agents servicing their current need. I live in Lansing and commute to Southfield most days. It may sound treacherous but I wouldn't do it any differently. I work with the best group of people and because of them the travel time is worth it.

Welcome New Members

American Title Agency, LLC, *Grosse Pointe Farms*

Branch County Abstract, *Coldwater*

Fausone Bohn, LLP, *Northville*

Huron Shores Abstract & Title, Inc. *Rogers City*

Kerr, Russell and Weber, PLC, *Detroit*

Michigan Mobile Closings and More!, *South Lyon*

Montmorency Abstract Company, *Atlanta*

Nazca Solutions, *Santa Anna, CA*

Taubman, Nadis & Neuman, PC, *Farmington Hills*

Troy Abstract & Title Agency, Inc., *Troy*

Name: Randy Schipper

Position: Shareholder and with the firm for 21 years. I am chair of our firm's real estate practice group and my practice is concentrated in real estate, environmental, and government/school law.



Company: Cunningham Dalman, PC

County & Office I work out of: Holland, MI, Ottawa County

MLTA Involvement: I joined MLTA only recently and have attended a couple of its excellent meetings in Mount Pleasant and contributed, so far, one article to the MLTA Examiner.

Personal Interests/Hobbies: My personal interests revolve around my family--traveling, boating, reading--and serving on the West Ottawa Public School District Board of Education and committees and panels related to that.



Name: Jim Romano

Position: AVP - Regional Manager

Company: Lighthouse Title Group

County and Office I work out of: Grand Blanc, MI



MLTA Involvement: I have been a Member of MLTA since 1985 and in the Title Insurance Industry since 1982. I have attended various functions and Seminars of the MLTA for many years and always find value in what our Association provides its membership.

Personal Interests/Hobbies: I am married (29 years) with 3 children and 1 grandchild. I enjoy golf and attending Michigan State football and basketball games. I also enjoy the outdoors including various types of hunting and canoeing.

On the Move

Best Homes Title Agency, headquartered in Farmington Hills, Michigan, is pleased to announce the opening of its first full-service branch office located in Saginaw, Michigan. The office, which will service Saginaw and Bay City, as well as the surrounding counties, will be managed by industry veteran, Jacquie Brink, whose team includes title veterans Jane Armstrong, and Gail Roethlisberger. Together, they bring over 70 years of combined title and escrow experience.

Best Homes Title President, Neil Sherman, noted that "We are extremely excited about the opening of our first satellite branch. The Saginaw operation is an integral part of our future plans which will allow us to better serve our existing client base, while expanding into new markets. Our Saginaw team brings a tremendous amount of experience, energy and enthusiasm to Best Homes Title."



ABSTRACTIONS

by Allan Dick, Best Homes Title Agency, LLC

Mark your calendars for April 13 (Mt. Pleasant) and May 4 (Livonia) for the next MLTA Education Seminars, and July 17-19 (Crystal Mountain) for the MLTA Summer Convention.

We live in a time of so much information, especially statistics, some of which can be uplifting, but others misleading, and it's often hard to tell which is which. All we can do is hope (and keep on keeping on). Recent optimistic numbers show foreclosure drops to a three year low nationally and in Michigan, 30% from one last February. But, that may be a temporary glitch. On the other hand, Michigan's jobless rate has also reached a three year low in January, falling below 11%. While 10.7% is still a high number, it is a sign of progress. Real estate website Zillow (which has recently formed a partnership with Yahoo! Real Estate), noted that nationally home prices fell for the 53rd consecutive month last November tallying an overall decline of 26% since 2006, exceeding the 25.9% drop experienced during the Great Depression (from 1928 through 1933) – a dubious milestone to say the least.



And foreclosure tracker RealtyTrac Inc. projects that 2011 will be the peak year for foreclosures. This after the banks repossessed over 1 million homes in 2010, accounting for 25% of home sales nationwide. But, the news is not all bleak. More and more, signs point to this being the bottom of the price plunge and the peak foreclosure activity. Housing economists' forecasts at the annual meeting of the National Association of Home Builders in January predicted that the residential market will begin to pick up in 2011, although they admit the recovery is not likely to be robust. But, the signs are pointing upwards.

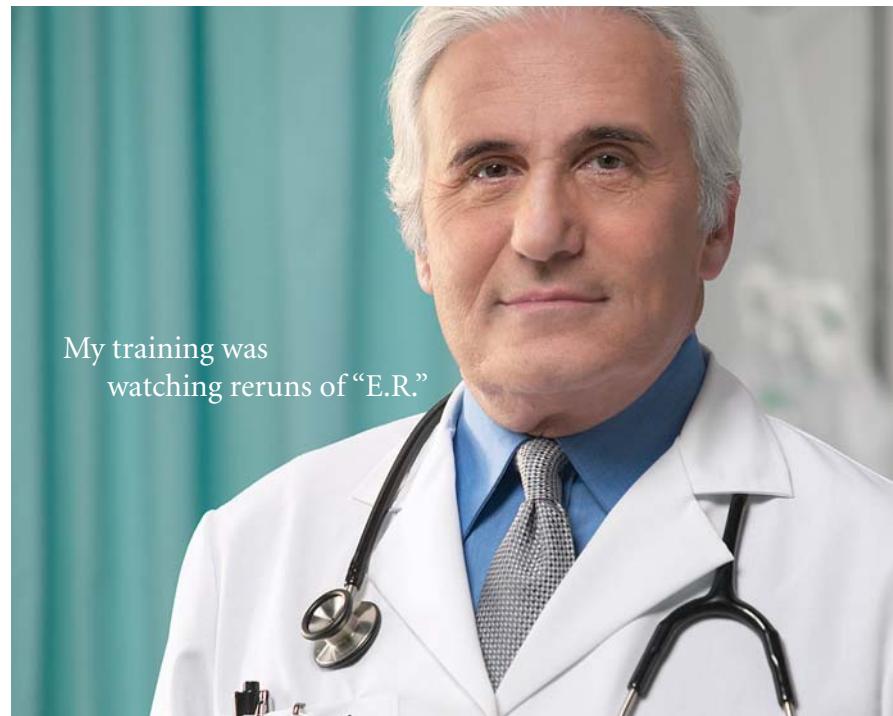
Did you hear about the Philadelphia homeowner, who found himself embroiled in a dispute with his mortgage holder, Wells Fargo Home Mortgage, about the required amount of homeowners insurance, which escalated into the lender declaring him to be in default? He hadn't missed a payment, wasn't "underwater", hadn't lost his job and had maintained his other obligations. But, Wells Fargo went to sheriff's sale nonetheless. Frustrated (to say the least), he sued the lender, got a judgment against them to rescind the sheriff's sale and award the homeowner legal damages. To collect those damages, he obtained a lien against the Wells Fargo owned office. The headline read: Philadelphia homeowner forecloses on Wells Fargo. How about that for justice? Actually, all he wanted was his legal fees, which we presume he got.

Even the recent increase in mortgage rates should not stifle the housing recovery, according to Freddie Mac Chief Economist, Frank Nothaft, who sees prices bottoming in the first half of 2011, before heading upwards. A number of experts have projected that it will be 2013 before we reach a sustainable growth rate of 3.5% to 4%, the historical average.

Yet, with all the foreclosures and all the underwater home news in today's market, a recent survey by Trulia.com found that 70% of Americans still view homeownership as being part of their American Dream. In fact, 78% of current homeowners say that their homes are the best investment they ever made. So fortunately for us, that Dream is still there for us to protect. As the ALTA slogan states: 100 years of protecting the American Dream.

Finally, one of the PAC fundraisers for this year's MLTA Summer Convention July 17-19 at Crystal Mountain will be something of a cross between American Idol and some of our historical FUNdraising shenanigans (kiss the pig, dunk tank, head shaving). Since the MLTA-attorney band, Unreal Property, will once again be performing, the projected embarrassment for this summer's competition will be to select (by \$ donations) one of six candidates, Connie Curio, Jim Dondero, Jennifer Lawrence (Latcha), Phil Savich, Cy Tope and Meredith Weingarden, to sing a song with the band at the opening night's festivities. Should be interesting and amusing! You will be contacted for the opportunity to contribute to a good cause and vote for your favorite.

Hope to see you at Crystal Mountain.



My training was
watching reruns of "E.R."

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Views from the Top



Greetings from the North to all my land title buddies. Hope this little diddy finds ya'all in good health. Like me yer probably lookin' for spring to get here ASAP. This has been a brutal winter and I ain't just talkin' about the weather! Order counts up here fell off the charts in January and February. Woulda been better off trying to pick tulips on the tundra. Me and my law partner Gordie Gillespie spent some time commiseratin' this situation to see if we couldn't get to the cause and at least understand what's happening. Didn't take us long to decide that somewhere at the bottom of all this is the government.

Now me and Gordie aren't the "militia" kinda guys...lord knows we got enough of those runnin' round up here...but dog gone it when are the boys gonna quit moving my cheese? Could be worse I guess...makes ya wonder what's going on in the Wisconsin Land Title Association these days, eh? But not to worry, I been in this business a long time and as my pappy Sam Hill (who some of you may remember) always used to say, "Change is inevitable...except from a vending machine" so things will get better, just hang in there.

And speaking about politics, ain't ya sick of all the jibber jabber, partisan politics? I agree 100% with Mark Twain when he wrote; "Suppose you were an idiot. And suppose

you were a member of Congress. But I repeat myself". Is that a bulls eye or what? And how 'bout that new Guy of ours? Nerd or not the boy has his feet movin' and that's something we ain't seen in some years. Don't know for sure what way they're movin' but their movin'! Somebody famous said "You can't change the direction of the wind but you can adjust your sail" or something like that. Here in good ole Michigan we haven't adjusted our sail for many-a-moon and more than anything that's why our rudder is stuck in the sand today. But I think I see it wigglin' loose so get ready to ride. Times will get better!



And that's the way I see it and this is the view from the North so you can see from the country what it looks like from here to there from time to time.

Regards,
Lester Sam Hill



Residential Sales Statistics January 2011

Local Association	2011 Jan Sales	2010 Jan Sales	11-10 % Change	2011 Jan Ave Price	2010 Jan Ave Price	11-10 % Change	2011 Jan # Sales	2010 Jan # Sales	11-10 % Change	2011 Jan Ave Price	2010 Jan Ave Price	11-10 % Change
Ann Arbor Area Board of REALTORS®	178	164	8.54%	\$152,798	\$182,065	-16.07%	178	164	8.54%	\$152,798	\$182,065	-16.07%
Antrim Charlevoix Kalkaska Association of REALTORS®	42	26	61.54%	\$171,490	\$193,850	-11.53%	42	26	61.54%	\$171,490	\$193,850	-11.53%
Battle Creek Area Association of REALTORS®	85	64	32.81%	\$80,425	\$77,724	3.48%	85	64	32.81%	\$80,425	\$77,724	3.48%
Bay County REALTOR® Association	102	71	43.66%	\$62,964	\$54,439	15.66%	102	71	43.66%	\$62,964	\$54,439	15.66%
Branch County Association of REALTORS®	30	30	0.00%	\$76,305	\$63,757	19.68%	30	30	0.00%	\$76,305	\$63,757	19.68%
Central Michigan Association of REALTORS®	50	51	-1.96%	\$88,850	\$71,623	24.05%	50	51	-1.96%	\$88,850	\$71,623	24.05%
Clare-Gladwin Board of REALTORS®	31	22	40.91%	\$57,648	\$83,714	-31.14%	31	22	40.91%	\$57,648	\$83,714	-31.14%
Dearborn Board of REALTORS®	203	164	23.78%	\$60,891	\$62,102	-1.95%	203	164	23.78%	\$60,891	\$62,102	-1.95%
Detroit Board of REALTORS®	385	473	-18.60%	\$16,042	\$18,057	-11.16%	385	473	-18.60%	\$16,042	\$18,057	-11.16%
Down River Association of REALTORS®	60	89	-32.58%	\$76,568	\$66,560	15.04%	60	89	-32.58%	\$76,568	\$66,560	15.04%
Eastern Thumb Association of REALTORS®	96	108	-11.11%	\$96,887	\$85,964	12.71%	96	108	-11.11%	\$96,887	\$85,964	12.71%
Eastern U.P. Board of REALTORS®	19	12	58.33%	\$68,700	\$106,325	-35.39%	19	12	58.33%	\$68,700	\$106,325	-35.39%
Emmet Association of REALTORS®	27	25	8.00%	\$180,649	\$172,399	4.79%	27	25	8.00%	\$180,649	\$172,399	4.79%
Flint Area Association of REALTORS®	351	436	-19.50%	\$67,937	\$68,149	-0.31%	351	436	-19.50%	\$67,937	\$68,149	-0.31%
Grand Rapids Association of REALTORS®	849	801	5.99%	\$106,194	\$105,714	0.45%	849	801	5.99%	\$106,194	\$105,714	0.45%
Greater Kalamazoo Association of REALTORS®	137	192	-28.65%	\$130,035	\$109,583	18.66%	137	192	-28.65%	\$130,035	\$109,583	18.66%
Greater Lansing Association of REALTORS®	311	342	-9.06%	\$103,519	\$88,574	16.87%	311	342	-9.06%	\$103,519	\$88,574	16.87%
Hillsdale County Board of REALTORS®	17	23	-26.09%	\$60,627	\$59,431	2.01%	17	23	-26.09%	\$60,627	\$59,431	2.01%
Jackson Area Association of REALTORS®	120	114	5.26%	\$69,596	\$76,467	-8.98%	120	114	5.26%	\$69,596	\$76,467	-8.98%
Lapeer & Upper Thumb Association of REALTORS®	90	96	-6.25%	\$105,701	\$80,125	31.92%	90	96	-6.25%	\$105,701	\$80,125	31.92%
Lenawee County Association of REALTORS®	56	66	-15.15%	\$78,570	\$85,595	-8.21%	56	66	-15.15%	\$78,570	\$85,595	-8.21%
Livingston County Association of REALTORS®	158	160	-1.25%	\$147,434	\$142,167	3.70%	158	160	-1.25%	\$147,434	\$142,167	3.70%
Oakland	476	488	-2.46%	\$127,569	\$125,524	1.63%	476	488	-2.46%	\$127,569	\$125,524	1.63%
Macomb	519	561	-7.49%	\$81,044	\$86,973	-6.82%	519	561	-7.49%	\$81,044	\$86,973	-6.82%
Mason-Oceana-Manistee Board of REALTORS®	41	42	-2.38%	\$110,444	\$100,072	10.36%	41	42	-2.38%	\$110,444	\$100,072	10.36%
Midland Board of REALTORS®	41	49	-16.33%	\$148,498	\$139,450	6.49%	41	49	-16.33%	\$148,498	\$139,450	6.49%
Monroe County Association of REALTORS®	90	76	18.42%	\$120,044	\$116,882	2.71%	90	76	18.42%	\$120,044	\$116,882	2.71%
North Oakland County Board of REALTORS®	315	294	7.14%	\$134,803	\$123,137	9.47%	315	294	7.14%	\$134,803	\$123,137	9.47%
Northeastern Michigan Board of REALTORS®	37	28	32.14%	\$65,078	\$72,903	-10.73%	37	28	32.14%	\$65,078	\$72,903	-10.73%
Paul Bunyan Board of REALTORS®	65	57	14.04%	\$83,015	\$79,972	3.81%	65	57	14.04%	\$83,015	\$79,972	3.81%
Saginaw Board of REALTORS®	98	118	-16.95%	\$88,391	\$71,398	23.80%	98	118	-16.95%	\$88,391	\$71,398	23.80%
Shiawasse Regional Board of REALTORS®	65	45	44.44%	\$77,190	\$65,227	18.34%	65	45	44.44%	\$77,190	\$65,227	18.34%
Southwestern Michigan Association of REALTORS®	129	121	6.61%	\$164,035	\$120,278	36.38%	129	121	6.61%	\$164,035	\$120,278	36.38%
St. Joseph County Association of REALTORS®	37	36	2.78%	\$81,653	\$83,991	-2.78%	37	36	2.78%	\$81,653	\$83,991	-2.78%
Traverse Area Association of REALTORS®	100	92	8.70%	\$175,166	\$174,591	0.33%	100	92	8.70%	\$175,166	\$174,591	0.33%
Upper Peninsula Association of REALTORS®	79	77	2.60%	\$82,029	\$86,003	-4.62%	79	77	2.60%	\$82,029	\$86,003	-4.62%
Water Wonderland Board of REALTORS®	87	92	-5.43%	\$87,321	\$82,432	5.93%	87	92	-5.43%	\$87,321	\$82,432	5.93%
West Central Association of REALTORS®	65	53	22.64%	\$76,394	\$84,052	-9.11%	65	53	22.64%	\$76,394	\$84,052	-9.11%
West Michigan Lakeshore Association of REALTORS®	192	219	-12.33%	\$112,770	\$176,437	-36.08%	192	219	-12.33%	\$112,770	\$176,437	-36.08%
Western Wayne Oakland County Association of REALTORS®	760	689	10.30%	\$123,517	\$127,668	-3.25%	760	689	10.30%	\$123,517	\$127,668	-3.25%
TOTALS	6,593	6,666	-1.10%	\$99,970	\$99,284	0.69%	6,593	6,666	-1.10%	\$99,970	\$99,284	0.69%

in credits were issued to prison inmates. Other credits were issued to first time home-buyers who bought the property they already lived in from their relatives. No one moved in and no one moved out.

The original deadline to close and qualify for the credit was June 30, 2010, but at the eleventh hour, thanks to associations such as the National Association of REALTORS®, American Land Title Association® and the American Escrow Association the deadline was extended to September 30, 2010. Thank goodness, since some of our settlement agents were being asked to do things in the wrong order in an effort to meet the deadline.



Kelly Collier, Sr. Escrow Officer at Fidelity National Title Co. in Palm Desert, Calif. was one of these agents. On June 30, 2010, she received a request for an estimated HUD-1 at 3:30p.m. from a well known lending institution. She acknowledged the request, explained she would work on the estimate first thing Monday morning and continued with her month-end closings and reports. At 4:20p.m. that afternoon the lender contacted Kelly and asked if she planned to "close" the same day; the lender had just funded the loan in order to make the deadline for the New Home Buyer Tax Credit. The lender went on to explain some of the other title companies had been making exceptions to "close" for the same reason.

Kelly was baffled by the request since the loan documents had not yet been drawn, let alone signed. Additionally the HUD-1 had not been prepared, nor had she requested or received the buyer's closing funds. Kelly asked the lender to clarify what she was asking her to do, reiterating no documents had been signed, including their loan documents or funds received. The lender replied she wanted Kelly to accept the loan funds and consider this day, June 30, 2010, the close of escrow. The lender repeated several other title companies were closing in this manner.

Kelly asked the lender to put the request in writing, on the lender's company letterhead, and have it signed by an individual authorized to bind the lender. Shortly after her request, the woman's manager called and explained he could not put the request in writing.

Kelly knew the request was not acceptable. The tax credit could only be applied if the file was closed. Kelly acts only upon the written, mutually executed instructions of the principals to her transaction. Because of this, she knew the instructions given required her to have the documents properly executed, with all closing funds on deposit, and record of the documents before the file was closed. The Purchase and Sale Agreement defined the closing as: "The date of recordation of the Grant Deed." Per the Agreement, one of the conditions which must be met prior to closing was: "Buyer has deposited required funds with Escrow Holder."

The loan closing instructions said: "You may not close this loan unless you fully comply with all closing instructions." The instructions required Kelly to record their Deed of Trust in first lien position. Since she did not have the Deed of Trust, borrower's funds nor the Grant Deed, Kelly was in no position to represent this file as closed. Of course she advised the lender she would NOT be inserting June 30, 2010 as the settlement date.

Why is the settlement date so crucial?

The settlement date is crucial because it is what the IRS looks at to ensure the buyer did, in fact, meet the closing deadline necessary to receive the credit. The buyer must complete and remit IRS Form 5405, as well as a copy of the Purchase and Sale Agreement, and a copy of the HUD-1 to prove they qualify. Since the HUD-1 is prepared by the settlement agent and is a federal form, the IRS relies on the information on the form to be accurate and true. If it includes false or misleading information, the settlement agent faces financial penalties and even imprisonment.

Fortunately settlement agents know and understand the importance of their duties and rely on the Purchase and Sale Agreement to define the acts which constitute the closing. Kelly Collier did this and for her efforts has been rewarded \$1,000.

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Title Policy Does Not Insure Against Subsequent Construction Liens

by Gregg Nathanson,
Couzens, Lansky Fealk,
Ellis, Roeder & Lazar,
P.C.



The Michigan Court of Appeals recently granted the title insurance industry a big victory, in its interpretation of a loan policy of title insurance. The Court held that the title insurance company was not liable to the insured lender as the result of construction liens recorded more than one and one half years after the date of the policy.

The facts were not in dispute. On November 9, 2005, Deprez-Pascoe ("Developer") purchased 17 site condominium units in the Paint Creek Country Club Estates development located in Oxford, Michigan. Developer financed the purchase with a \$1,907,600 mortgage loan it secured from the Bank. Bank received a loan policy of title insurance dated December 6, 2005.

The controversy arose with respect to Unit 31. Four separate construction lien claimants recorded a claim of lien against Unit 31. One of the contractors sought to foreclose its construction lien. The Bank submitted a claim under the title policy. The claim was denied, and a lawsuit followed.

The Court focused on the language of the title policy. The policy language states, in relevant part:

Subject to the exclusions from coverage, the exemptions from coverage contained in Schedule B and the conditions and stipulations... the title insurance company insures, as of Date of Policy, against loss or damage sustained or incurred by the insured by reason of...

7. Lack of priority of the lien of the insured mortgage over any statutory lien for services, labor or material:

(a) arising from an improvement or work related to the land which is contracted for or commenced prior to Date of Policy; or

(b) arising from an improvement or work related to the land which is contracted for or commenced subsequent to Date of Policy and which is financed in whole or in part by proceeds of the indebtedness secured by the insured mortgage which at Date of Policy the insured has advanced or is obligated to advance

In ruling for the title company, the Court concluded that Section 7(a) of the policy states that construction liens are covered only if they arise from an improvement or work contracted for or commenced before the effective date of the policy. Here, the work giving rise to the recorded construction liens was contracted for and commenced subsequent to the date of the policy. Therefore, the recorded construction liens were beyond the scope of coverage.

The Court also ruled that Section 7(b) of the policy did not apply. In this case, the Bank fully disbursed the mortgage loan proceeds at closing on November 9, 2005. Those proceeds were used to acquire the land, not make improvements to the land. This was not a construction loan used to finance the improvements giving rise to the recorded construction liens.

The Court went on to note that Section 6 of the Exclusions from Coverage portion of the policy further addressed the situation:

6. Any statutory lien for services, labor or materials (or the claim of priority of any statutory lien for services, labor or material over the lien of the insured mortgage) arising from an improvement or work related to the land which is contracted for and commenced subsequent to Date of Policy and is not financed in whole or in part by the proceeds of the indebtedness secured by the insured mortgage which at Date of Policy the insured has advanced or is obligated to advance.

Here, the construction liens arose from work commenced and contracted for subsequent to the Date of the Policy, and were not funded by the proceeds of the loan secured by the issued mortgage. Therefore, insurance coverage relating to the construction liens is not only outside the scope of the insuring provisions, but also expressly excluded by Section 6 of the Exclusions from Coverage portion of the policy.

The Bank argued that labor or material had been first furnished or contracted for prior to the date of the policy. Township records reflected completed inspections for Unit 31 during 2003. This suggests the first actual physical improvements to the real property occurred more than two years prior to the 2005 date of the Bank's insured mortgage and loan title policy. The Bank asserted that its claim against the title company ultimately relates to the priority of the Bank's mortgage compared to the construction liens. The law holds that construction liens arising under the Construction Lien Act relate back to the date of the first actual physical improvement to the property, and have priority over all interests recorded after the first actual physical improvement. In other words, if the first actual physical improvements occurred in 2003, then the Construction Liens recorded in 2007 would relate back in time and be deemed recorded in 2003 – two years before the Bank mortgage.

The Court side stepped the issue. According to the Court, the case is not about whether the construction liens had priority over the Bank's mortgage under the Construction Lien Act. The case is only about the interpretation of the title policy contract. For purposes of title insurance coverage, the Court refused to overlay the relation back principal of the Construction Lien Act on the parties' title insurance contract. The insured mortgage was used to purchase the land, not finance the future improvements which gave rise to the recorded construction liens. Therefore, the Court concluded that title insurance coverage relating to the subsequently recorded construction liens is outside the scope of the insuring provisions, as well as expressly excluded from coverage. Score a victory for the title insurance industry.

A word of caution. A different panel of judges, presented with slightly different facts, could reach a different result. For example, the next Court may define "improvement or work" broadly, to mean all aspects of construction of the home. If work on Unit 31 were commenced prior to issuance of the policy, then there is an argument that the liens fall within the policy coverage under Section 7(a). The facts and law of any future case will merit in-depth analysis.

For further information, contact Gregg A. Nathanson, Esq., an attorney at the law firm of Couzens, Lansky, 39395 W. 12 Mile Road, Farmington Hills, Michigan 48331, telephone 248-489-8600 or gregg.nathanson@couzens.com

The information contained herein does not attempt to give specific legal advice. For advice in particular situations, the services of a competent real estate attorney should be obtained. These materials are the exclusive property of Gregg A. Nathanson, Esq., and no reprint or other use of the information contained herein is permitted without Mr. Nathanson's express prior written authorization.

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Court Of Appeals Permits Unsatisfied Judgment Lien To Remain Attached To Real Estate Following Sale

By: Adam Kutinsky,
Kitch Drutchas Wagner Valitutti &
Sherbrook



On October 28, 2010, the Michigan Court of Appeals issued an opinion for publication entitled *Thomas v Dutkavich, et al.* The Thomas opinion discusses the failure to pay-off a recorded Judgment Lien at closing. On December 6, 2004, the Dutkaviches obtained a Judgment against Steve Pelletier in the amount of \$29,100.83. Subsequently, on December 29, 2006, Mr. Pelletier purchased Property located in Schoolcraft County by Warranty Deed. Although Mr. Pelletier was married, he was the only party named on the Warranty Deed. A future advance mortgage granted by Pelletier and his wife was recorded against the Property on February 7, 2007.

On July 20, 2007 the Dutkaviches recorded a Notice of Judgment Lien with the Schoolcraft County Register of Deeds, thereby attaching the Lien to Mr. Pelletier's property. By the time of recording of the Judgment Lien, the Judgment had increased to \$33,368.00 as a result of accrued interest.

After the Judgment Lien was recorded, on September 12, 2007, Mr. and Mrs. Pelletier executed a Warranty Deed conveying the Property to Robert Thomas. Interestingly, the future advance mortgage was discharged a day before closing and the Warranty Deed was recorded one day after closing. The sale price was \$53,000.00 and the settlement information contained in the closing statement stated that payment was made for taxes, title insurance and closing fees, thereby disbursing \$51,784.00 directly to the Pelletiers. Despite the Dutkaviches Judgment Lien being recorded prior to the sale, none of the proceeds were distributed to them and no effort was made to satisfy the Judgment Lien.

After the closing, the Dutkaviches obtained an Order to Seize Personal Property (writ of execution) under the Judgment, which resulted in a report of unsuccessful collection activity from the Deputy Sheriff. One week later, in February 2008, the Sheriff recorded a Notice of Levy of Real Estate against the property in accordance with MCL 600.6018. In an effort to discharge the Notice of Judgment Lien and any possible attachment of the Notice of Levy, on March 2, 2009, Thomas filed a quiet title action in the Schoolcraft Circuit Court against the Dutkaviches and the Schoolcraft County Sheriff. In upholding attachment of the Notice of Judgment Lien against the Property following the sale to Mr. Thomas, the Court of Appeals held:

1. A Judgment Lien properly attaches to property regardless of any dower interest of the owner's wife. Specifically, the Court stated that the Legislature specifically protected property owned by tenants by the entirety in the Judgment Lien Act and made a conscious decision not to protect dower.
2. There is no right to foreclose upon a Notice of Judgment Lien under the Michigan Judgment Lien Act, MCL 600.2819.
3. A Judgment Lien remains attached to property and cannot be discharged regardless of the sale to Mr. Thomas. This is because the purchaser was on constructive notice of the Judgment Lien and, therefore, had the option to walk away from the transaction rather than close on the property despite funds being available to satisfy the Judgment Lien. Additionally, the Court specifically found that the Legislature contemplated the continued attachment of a Judgment Lien on property where the Lien was not fully discharged at closing.
4. That the Dutkaviches may be able to levy on the property pursuant to MCL 600.6018, which is the traditional method of executing on realty to satisfy a judgment. The case was remanded back to trial court to explore the issue of levying pursuant to MCL 600.6018.

If you have any questions concerning this case or the Judgment Lien Act, please contact Adam Kutinsky at (313) 965-6731 or adam.kutinsky@kitch.com.





Legislative Update

by Cami Pendell,
Michigan Legislative
Consultants

A Quick Look Back ... SB 825 -Reinsurance Legislation

The Legislature's Lame Duck session proved to be quite a mix of events and dates. Initially they had scheduled their last day of session to take place on December 2nd, but they ultimately reconvened session for one final day on the December 15th. That extra day worked to MLTA's advantage as we were able to get SB 825, our priority reinsurance legislation, through the House of Representatives and back over to the Senate so they could provide it with immediate effect and send it to the Governor. The Governor signed the bill on December 21st and it became Public Act 338 of 2010.

A New Administration and a New Legislature

On January 1, 2011, Rick Snyder became Michigan's 48th Governor. Since delivering his inaugural speech on the front steps of the Capitol that day, Governor Snyder has been hard at work finalizing the composition of his Administration. He often speaks about working in "dog years" (seven weeks to a year), meaning the accelerated pace in which he wants to achieve his goals. In holding true to his mantra, Governor Snyder delivered one of the earliest State of the State speeches in nearly a decade when he addressed the joint Legislature on January 19th. He also unveiled his budget recommendations on February 17th and challenged the Legislature to complete its work on the budget by May 31st. We can also expect Governor Snyder to deliver special addresses to the Legislature over the course of his tenure with one already announced for April that will focus on education policy.

Governor Snyder is not the only new politician in Lansing this year. The 96th Legislature has 61 new House members and 29 new Senate members. That means, out of the 110 members in the House of Representatives only 49 were returning members. Of the 38 members in the state Senate, only 9 were returning members. With all of these new legislators, MLTA's Legislative Day on March 15th was even more important. This was a key opportunity for MLTA and its membership to build relationships and educate elected officials on our issues.

Member Spot Light

Traditionally, many legislative issues that MLTA works on go through the House Local, Intergovernmental and Regional Affairs Committee. That committee now has a new Chairman at its helm. Not only is Representative Mark Ouimet the new chair, but he is also new to the Legislature. He was selected for this quarter's Member Spot Light so MLTA members can get a glimpse into the background of one of the House's newest members.



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Rep. Ouimet was elected in November 2010 to his first term in the Michigan House to represent residents of a portion of Washtenaw County, including parts of the City of Ann Arbor and Ann Arbor Township; the cities of Chelsea and Saline; the villages of Dexter and Manchester; and the townships of Bridgewater, Dexter, Freedom, Lima, Lodi, Lyndon, Manchester, Northfield, Scio, Sharon, Sylvan and Webster. He received a bachelor's degree in business administration from Northwood University.

Ouimet began his professional career as a bank teller, eventually serving as president and chairman of the board. He also served as chancellor and Chief Operating Officer of Northwood University. Most recently he has worked as a manager and fundraiser for several governmental, community and non-profit organizations including the Ann Arbor Chamber of Commerce, the Ypsilanti Chamber of Commerce, The Council of Chambers, Ele's Place, Mott Children's Hospital, Ann Arbor SPARK, the Red Cross of Washtenaw County, the United Way of Washtenaw County, the Ann Arbor Area Visitors and Convention Bureau and the Washtenaw Economic Development Council. Ouimet also served as a member of the Ann Arbor City Council from 1988 - 1992 and has been a member of the Washtenaw County Board of Commissioners since 2004.

Mark and his wife, Dr. Donna Hrozencik, reside in Scio Township and have two adult children, Mark (Kelli) and Courtney, and two grandsons, Trey and Cole.

2011 MLTA Legislative Day a success!

by Bob Wuerfel, Lighthouse Title Group

Over 30 MLTA Members and Lobbyists participated in the March 15th, 2011 Legislative Day in Lansing. While some people were protesting outside in regards to the Governor's new budget, MLTA members were busy networking and meeting with various State Senators and Representatives and staff members. In fact, we visited 92% of all State Senators and Representatives through meetings or delivering information regarding the MLTA's issues and purpose. A total of 136 offices out of 148 were visited or contacted.

Cami Pendell, our Lobbyist, along with Marcy Lay, our Executive Director and her team, did a wonderful job putting together this year's event. The day started out in the MLTA offices, located across the street from the Capital, where Cami gave an overview of the association's issue that we could cover with our legislators: **HB 4227 & 4228**- Prohibit Private Transfer Fees and the **Neal Case Fix**, permitting the use of original copies. MLTA issue brochures, along with the DVD's that the MLTA launched last year, "Closing Costs Explained Visually" were distributed to each legislative office visited.

In addition to meeting on the issues to make the Legislators more aware of the Michigan Land Title Association, we also invited the Legislators and Staffers to a lunch in the Capital. The box lunch was packed inside an MLTA cooler bag, that gave the MLTA more public relations awareness. The lunch and bags were a hit with all who attended. After the lunch, afternoon appointments continued and the event wrapped up with recap of the day as well as field notes compiled from the MLTA members turned in to Cami and Marcy.

We also would like to thank ALL of the MLTA members who attended. It was through the efforts of these MLTA members that allowed our association to cover the 92% of the legislature!!!

Thank you to:

Charity Anderson
Jeffrey Basil
Peter Brown
Lisa Cincinelli
Cathy Cook
Connie Curio
Rebecca Curtis
Allan Dick
Mary Ann Ferrigan
Kate Fetkenhier
Byron Gallagher, Jr.
Craig Gerard
Charlotte Haack
Mary Lou Hartwell
Doug Hassett
Cindy Immonen
Lorri Lavelle
Tobias Lipski
David Martyn
Timothy McDonnell
Chantelle Neumann
Kimberly O'Connor
Diana Parker
Tracey Peck
Mathew Raya
Philip Savich
Jilanne Scholtz
Jennifer Tichelaar
Amber VerBurg
Meredith Weingarden
Debbie Wiley
Bob Wuerfel

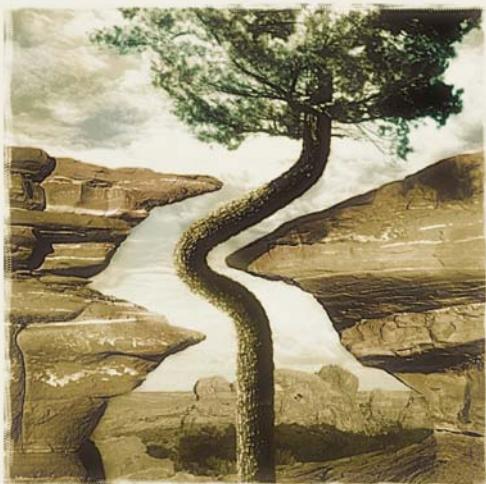
HB 4227 & 4228: Prohibit Private Transfer Fees

Private transfer fees are a new and controversial financial scheme which some developers are trying to use in an attempt to further inflate their bank accounts – at the cost of the consumer and industry. The scheme includes adding language to home purchase contracts requiring that a percentage of the sales price be paid to the original corporate owner of a property every time the property is sold. This language is usually applicable for up to 99 years. The fees infringe on property rights and require homeowners to pay a large fee to sell their homes. According to the American Land Title Association, 19 states have banned or put restriction in place on private transfer fees and at least another 6 states have legislation pending to ban the fees. Encourage your legislator to support House Bills 4227 and 4228 which would ban these practices in the state of Michigan.

Neal Case Fix: Permitting the Use of Original Codes

In 2009, a United States Bankruptcy Court Judge decided in *In re Neal* that a copy of an original instrument along with a verified affidavit does not satisfy the necessary requirements for recording a real estate conveyance because it does not contain the original signatures as required by statute. This has created a problem in the industry because of the impact it has on determining the chain of title on certain parcels of property. Additionally, there are other instances where a Register of Deeds has accepted copies of the original instrument and this decision would negatively impact the industry's ability to insure those properties in question. MLTA is in the process of having legislation reintroduced from last year that will allow a copy of an original instrument that is verified by an affidavit and recorded to be deemed as complying with all recording requirements in this state. This language will be retroactive so that it will cover these types of recordings that have happened in the past. Please ask your legislators to support this initiative and help advance it through the legislative process once it has been introduced.

Legislative Day Photos



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The Michigan Land Title Association Board of Directors and the Sponsorship Committee would like to personally thank all of our sponsors and exhibitors for their participation in the 2010 Summer Convention.

We are appreciative of these firms's interest in our association and we are very grateful for their support. The MLTA 2010 Summer Convention at Bay Harbor was a great success and the support of the companies listed to the right played a key role in that success.

Our Sponsors and exhibitors bring a variety of services to our industry and would love the opportunity to work with you. They have dedicated both their time and their financial support to the MLTA. We encourage you to utilize their services whenever possible.



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by Debbie Wiley, First American Title Insurance Co.

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Convention Sponsors - Thank you!



The image shows a comic book cover for "OLD REPUBLIC TITLE SPECIAL AGENT". The cover features a superhero-like character with a star on his chest, holding a stack of money. A speech bubble from the character says, "NO MISTAKE CAN ESCAPE MY ATTENTIVE EYE! THAT'S WHY PEOPLE COUNT ON ME!" Another speech bubble says, "HE'S FLEXIBLE AND STRONG BECAUSE HIS UNDERWRITER IS TOO!" The cover also includes text: "CONTENT CERTIFIED BY THE FEDERAL COMIC REVIEW BOARD #17", "OLD REPUBLIC TITLE", "SPECIAL AGENT", "OVER A CENTURY OF PROTECTING HOME AND PROPERTY OWNERS! THE HIGHEST INDUSTRY RATINGS SINCE 1992! THAT'S EXPERIENCE HE CAN TRUST!", and the address "Old Republic National Title Insurance Company 4000 Main Street Suite 150 Bay Harbor, MI 49770 800.554.5557".

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We are an integral part of protecting the "American Dream", home ownership! Whether buying, selling or mortgaging real property, the members of the MLTA are committed that each and every transaction they facilitate is addressed professionally and securely so that all the parties are assured of optimum results.

Warranty Work Does Not Extend Time to Record Construction Lien

by Gregg Nathanson, Couzens, Lansky Fealk, Ellis, Roeder & Lazar, P.C.

The Michigan Court of Appeals recently considered whether warranty work can extend the 90-day period to record a construction lien under the Michigan Construction Lien Act.

Weimer Plumbing secured a contract to provide all plumbing work for construction of a home. Weimer completed all rough and finish plumbing work by the end of September 2006. In December, 2006, Weimer came back to repair a leaky kitchen sink. Weimer came back again on May 29, 2007, to repair a small whirlpool tub leak and replace a toilet ball and cock assembly. Weimer identified this work as "warranty service calls" and did not send an invoice for its repair work. Weimer recorded its claim of lien on August 23, 2007, less than 90 days after its May 29, 2007 service call.

Did Weimer record its lien timely?

The Construction Lien Act ("Act") provides that a claim of lien must be recorded within 90-days after the lien claimant's last furnishing of labor or material for an improvement, pursuant to the lien claimant's contract. An improvement arises as the result of labor or material provided by a contractor, subcontractor, supplier or laborer. A repair completed pursuant to a contact is an improvement and the last furnishing of an improvement commences the 90-day filing period. However, the performance of "warranty work" to correct deficiencies in work performed by the contractor does not constitute an "improvement" under the Construction Lien Act. Therefore, in such situations, the 90-day filing period commences on the date of completion of the original installation work; the filing period is not extended by the later performance of warranty work. The Court found that the "warranty work" in question did not confer any value beyond the value furnished by completion of the original work. It was performed because the original work had minor deficiencies that needed to be corrected. As a result, Weimer's construction lien was not recorded within 90 days of completion of the contract work and, therefore, the lien was invalid.

For further information, contact Gregg A. Nathanson, Esq., an attorney at the law firm of Couzens, Lansky, 39395 W. 12 Mile Road, Farmington Hills, Michigan 48331, telephone 248-489-8600 or gregg.nathanson@couzens.com



Property Tax Appeals

by Craig S. Gerard, Gallagher Law Firm, PLC

Michigan's real estate market has certainly been on the decline over the past several years. Putting aside the high foreclosure rate and the declining sales numbers, Michigan residents who have managed to hold on to their residential or commercial properties are increasingly seeking to challenge the assessments of their properties' values. Soon, township, village and city tax assessors will send new tax assessment notices that set the "true cash value" for all taxable property in their jurisdictions. "True cash value" is based on the Michigan Constitution and statute and is defined as the "price that could be obtained for the property at a private sale." "Tentative taxable value" is either (1) no more than 50 percent of the adjusted true cash value for the preceding year multiplied by the lesser of 1.05 or the inflation rate or (2) the property's current state equalized value (SEV) that becomes the new tentative taxable value after a transfer of ownership.

Anyone with an interest in the property may appeal the assessment. Assessment appeals often occur when a taxpayer concludes the tentative taxable value is higher than the property would sell for at a private sale, or if a transfer occurred which resulted in the SEV becoming the new tentative taxable value, that is higher than the property would sell for at a private sale.

Assessors frequently point out that tentative taxable values have been reduced by recent assessments. However, it is rare that tentative taxable values and SEVs are ever voluntarily reduced enough to reflect current market values.

A property owner can appeal the property tax assessment in three ways. First, an informal appeal directly to the assessor. Second, by appearing before the Board of Review. Third, by filing an appeal with the Tax Tribunal.

Residential taxpayers are required to protest before the Board of Review to preserve a right to appeal to the Tax Tribunal. Taxpayers disputing an assessment of commercial, industrial, or developmental property are not required to protest to the Board and may appeal directly to the Tribunal. The Board is made up of community residents selected by local elected officials and meets on certain pre-scheduled dates and times. The Taxpayer and the Assessor each explain their respective positions to the Board. The Board deliberates and makes a written determination as to the assessment. It is fair to say each Board is different in terms of its professionalism, objectiveness and experience.

The Tax Tribunal consists of 2 forums - the Entire Tribunal, and the Small Claims Division. Most appeals are made to the Small Claims Division which uses an informal hearing process to resolve appeals. There is no formal record of the hearing at the Small Claims level. The residential and Small Claims division handles appeals where the assessed property is exclusively residential and where there is not residential property whose taxable value or state equalized value is less than \$100,000, or where the tax in question is less than \$6,000. The Entire Tribunal is more complex with hearings that are much more formal and complicated.

Appeals to the Tax Tribunal must be made by May 31 for commercial, industrial, or developmental properties. Appeals to the Tax Tribunal must be made by July 31 for residential and certain other property types. An appeal of right to the Court of Appeals is available from a Tax Tribunal decision.

Local governments need property tax revenue more than ever and property owners feel they are over taxed. We have seen a steady increase in property tax disputes each year and expect there to be more disputes this year than ever as there is simply no end in sight.

Please contact Byron P. Gallagher, Jr. at bp@thegallagherlawfirm.com, or Craig S. Gerard at csg@thegallagherlawfirm.com with any questions or concerns pertaining to property tax appeals.



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by
Martin T.
Shepherd, Esq.
Sikora Law LLC

mshepherd@sikoralaw.com

The Sixth Circuit Court of Appeals recently issued an unpublished decision which limits the scope of a title insurance agent's authority to the terms of the agency agreement. *Bergin Fin, Inc v First American Title Co*, No. 08-2453, 2010 WL 3272756 (CA 6 August 19, 2010). Lincoln Financial, as the title agent for First American Title Insurance, closed a series of "flip" transactions for a mortgage company known as Bergin Financial. The flipping scheme involved the sale of several properties by Stollman Entities to a flipper, Terry Barnes. The sales to Barnes were for less than market value. Barnes then sold the properties to straw buyers for inflated prices, which were substantiated by appraiser, Robert Willey. The conveyances from Stollman to Barnes and Barnes to the straw buyers were closed on the same day. The straw buyers defaulted on the loans from Bergin, which resulted in "millions of dollars in damages" to Bergin.

Bergin filed suit against, among others, First American. In its complaint against First American, Bergin alleged that First American, as principle for Lincoln, committed civil conspiracy and violated the RICO statute, 18 USC 1962(c). The district court, in granting First American's motion for summary judgment, found that Bergin's allegations were premised on the vicarious liability of First American for the actions of Lincoln as the closing agent, but that the agency relationship between Lincoln and First American was governed by agreement under which Lincoln was not an agent for the purpose of loan closings. Bergin appealed the district court's ruling, and argued, primarily, that Lincoln had actual or apparent authority to perform the closings.

On appeal, the Sixth Circuit in Bergin, following Michigan precedent, held that the agency agreement between Lincoln and First American defines the scope of the agent's undertaking and that there is not an implied agency relationship where there exists a clear, written agreement. The agency agreement in question stated that Lincoln was First American's agent "only for the purposes and in the manner specifically set forth in this agreement and for no other purpose and in no other manner whatsoever" and the only purpose so stated in the agreement was "issuing...title insurance commitment and policies."

With regard to Lincoln's apparent authority, Michigan law states that apparent authority exists only where "the alleged principal has made a representation that leads the plaintiff to reasonable believe that an agency existed and to suffer harm on a justifiable reliance thereon". *Id*, citing *Little v. Howard Johnson Co.*, 183 Mich.App. 675, 455 N.W.2d 390, 394 (Mich.Ct.App.1990); see *Pal Properties*, 2008 WL 5158894, at *3-4.

The Court found that a website printout from First American was not a sufficient representation to create the reasonable belief that Lincoln was First American's closing agent. The Court in Bergin also referenced the practice within the title and mortgage industries of lenders requiring a closing protection letter from the title underwriter before funding a transaction. The Court stated: "[t]he conclusion that Lincoln Financial did not act as First American's agent when closing real estate transactions is also supported by industry practice. Title insurance industry practice generally requires an additional document - a closing protection letter - before title insurance companies can be liable for the actions of their independent title insurance agents when those agents are conducting closings. As a district court recently explained, [b]ecause there is a difference between closing and issuing a policy, lenders routinely ask for a "closing protection letter" to be issued on behalf of the underwriter. In a closing protection letter, the underwriter agrees to indemnify the lender for any problems that arise from the closing agent's failure to properly apply the funds, as set forth in the closing instructions, and the title insurance commitment."

Ticor Title Ins. Co. v. Nat'l Abstract Agency, Inc., No. 05-CV-73709-DT, 2008 WL 2157046, at *5 (E.D.Mich. May 22, 2008). *Bergin Fin, Inc v First Am Title Co*, No. 08-2453, 2010 WL 3272756 (CA 6 August 19, 2010).



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Definition of Qualified Residential Mortgage will Determine ‘Soup-of-the-Day’ for Mortgage Lending

by Kurt Pfotenhauer, ALTA

While Main Street is worried about the prospect of a double dip for housing prices, Washington is abuzz debating new lending rules that have the potential to make the situation worse.

As regulators rush to meet an April deadline for one of the myriad regulatory actions required by the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (Dodd-Frank Act), the mortgage industry is asking “What makes a loan safe?”

Dodd-Frank set out a new “skin in the game” requirement that forces lenders to retain 5 percent risk for loans sold to the secondary market. However, the act exempted from the risk-retention requirements, MBS composed entirely of certain high-quality, lower-risk mortgages known as “Qualified Residential Mortgages (QRM).”

The mortgage industry is currently divided over what loan characteristics should be included in the definition of a QRM and thus exempt from the risk-retention requirements. The outcome of this debate will shape the mortgage market for the foreseeable future and drastically affect which Americans have access to affordable mortgage credit.

Regulators should consider the harmful consequences of issuing a narrow QRM exemption as it would make it harder to obtain credit. If an artificially narrow QRM is established, millions of creditworthy borrowers will be considered high risk and would only be eligible for mortgages with higher interest rates and fees and without the protections against risky loan features.

Central to facilitating a housing and economic recovery is ensuring access to conventional mortgage credit for all qualified buyers and refinancers, including low- and moderate-income households, minority families, and first-time buyers, while preserving high quality, empirically sound underwriting and product standards.

Meanwhile, some have suggested that a QRM standard should only include loans with an excessively high down-payment requirement in order to limit QRM eligibility to an arbitrarily small percentage of the market. This would make mortgages unavailable or unnecessarily expensive for many creditworthy borrowers.

One of the nation’s largest mortgage originators recommended a 30 percent down-payment standard as the sole factor in determining whether a mortgage is safe. If regulators are persuaded by this suggestion, millions of qualified borrowers could be shut out from the market or driven to the Federal Housing Administration, which is exempt from the risk-retention rules. This would move a substantial amount of risk from the private sector to the government. It could also mean further consolidation among lenders, thus disrupting competition in the mortgage industry.

The rationale of qualified residential mortgages is to generate a finance structure that encourages responsible lending and borrowing. A broad QRM exemption will promote safer underwriting standards, smarter loan features and reduce the costs of credit for lenders and borrowers alike.

Instead of trying to pick winners and losers in the future mortgage market, we should work to identify and support the underwriting and product features that result in a lower risk of default. At its most basic, mortgage origination involves two essential underwriting steps, underwriting the borrower and underwriting the collateral. As an industry we need to analyze the time tested standards that have worked in the past including a title search backed by a title insurance policy.

Title insurance is an important underwriting tool for a sound real estate transaction. ALTA has told regulators that a title search, examination, curative work and the placement of both an owner’s and loan title insurance policy are best practices that protect both individuals and creditors, and should be included in the QRM exemption.

A well designed QRM can maximize its potential to generate uniform, national standards, protect a greater percentage of mortgage applicants and encompass the widest possible range of mortgage products – including those with both short-term and long term maturity, a fixed and variable rate, conforming and jumbo – so that the maximum number of qualified buyers have access to homeownership. By focusing on underwriting standards that can be universally applied to a variety of borrowers and loan products, the benefits of the QRM can set precedents that extend beyond its specific market share to the market as a whole.

Kurt Pfotenhauer is the chief executive officer of the American Land Title Association, the national trade association and voice of the abstract and title insurance industry representing nearly 4,000 member companies.



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MIND CAPTURE MARKETING:

Why You Must Customize Your Communications to Connect

by Tony Rubleski, Mind Capture Group



Mass advertising and messaging are losing both credibility and effectiveness for a variety of reasons which I described in chapter nine as persuasion nets shape our own BS Meter in relation to marketing messages. Here are six additional reasons it's of key importance to customize your communications to help you get Mind Capture with your marketing messages:

#1. The ability to niche market messages is becoming much easier to pull off

#2. The customer of today is becoming more and more resistant to mass messaging due to time shifting and new tools created specifically to filter out ads – think TIVO, podcasts, YouTube, etc.

#3. People are burned out and even offended by marketers that are woefully still trying to cram a square message into a round hole

#4. In the age of free content, information, and a sea of competing choices, people's expectations and appetite for customized solutions are quickly becoming the norm

#5. If you don't differentiate and add value – perceived or real – you risk losing profit margins and move into the realm of becoming a commodity in your marketplace

#6. In a tightening economy, people are more price sensitive, pickier, and often waiting longer to make decisions in the selection process. Marketing legend Dan Kennedy describes the marketing process with the following simple, yet brilliant statement:

“Marketing is getting the right message to the right people via the right media and methods.”

Let me narrow your search and share with you ten smart ways to customize and make your communications memorable. Top marketer's use these techniques to build Mind Capture with people in an ever increasingly noisy and saturated media universe. Some you've heard me mention earlier in the book, while others are being presented for the first time. They are based on my own 20+ years of studying and applying marketing and persuasion strategies in a wide range of industries with thousands of people.

10 POWERFUL TIPS FOR CUSTOMIZING YOUR MESSAGE TO CAPTURE OTHERS

#1. Use the person's name in your message(s). The most important word in any persons mind is their own name. Mass marketing is dying; customization is the new norm. If you do any form of direct mail or email marketing, this is a huge way to bump up readability. From the outside envelope, to the headline of your letter or email subject line, to the salutation, the recipient's name should be included for maximum results.

#2. Use custom mailings such as cards, articles, or an unexpected gift or thank you note. I love direct mail. While more and more companies are foolishly abandoning it for a variety of reasons which I will not waste space arguing here, all I can say is that many smart businesses and non-profits use it with outstanding results. Take away all my marketing tools if you must, but leave me with a pen, card and a postage stamp and I can connect with almost anyone.

#3. Employ humor and make people laugh. Business is far too stuffy and “corporate” these days. Always remember that real people, not focus groups or company yes men, are the folks you're trying to reach. An often overlooked way to capture people is to get them laughing. It's a positive emotion you should employ in your communications. I'm not going to tell you how and when to use it. You know your customers better than anyone else. Tune into them, do what's comfortable, and get them laughing. Positive reaction, word-of-mouth and new sales are often the byproducts of this strategy.

#4. Reveal something unique about yourself. As a professional speaker I have the honor to get in front of thousands of people each year. Without a doubt, what helps to build the bridge with my audiences is the use of stories from my own life. I reveal memorable moments that often center around my travels, pets and our three children. I enjoy telling the stories and the lessons learned. Based on comments we get from the audiences and meeting planners, they appreciate me sharing other shades of what makes me tick versus strictly business.

Here are a few ideas on areas of interest to get the ball rolling:

- *Fun or memorable stories related to family, friends, and customers
- *An award or accomplishment you or a key business associate have earned
- *Your successes and failures and the lessons learned from each
- *Hobbies or things you enjoy doing outside of work
- *Causes you believe in and give time, energy or monetary resources to

#5. Offer free content or tips that improve their life or situation. This is a must these days. As we've mentioned several times throughout this book, the customer is buried with choice which often creates confusion and hesitation in the influence process. Your mission is to bring them to the conclusion that you are the superior choice and worthy of their business. One of the smartest ways to do this is via the use of great content, online and offline, to educate and differentiate you from the competition. Let me say it again: The age of heavy handed sales pitch is almost done. It's two-minutes to midnight and the time is now to make your move and add this strategy into your online and offline communications.

#6. Be brief and promise speed. Think YouTube and Twitter for a second. Short, direct and engaging is the new norm. People are buried in information and lack the necessary filters and time to sort through it all. An interesting way to combat this huge problem we all face is to clearly telegraph in your communications a promise of speed. As noted earlier in the book, when seeking a phone or face to face appointment with a prospect, it's to your benefit to promise that you won't take up much time. Honor this, and if things are going well you can always ask permission for more time or a second meeting. Let the other person know you're busy too so they get a sense that even if what you propose isn't a fit, you won't lead them into a trap of wasting their valuable time.

#7. Send a short video message or greeting. I can tell you that in the last few months this is one of my favorite ways to blast through message clutter and capture people. I argue that a custom video message sent by you not only will get viewed almost every time, but more importantly it will leave the recipient "wowed" because it's so different than what everyone else is doing. Capturing and sharing video has gotten ridiculously easy. For example, we use a combination of professional video for certain marketing initiatives and FlipVideo® for real-time video such as sending greetings or capturing happy customer testimonials.

#8. Make a thank you phone call. Yes, pick up the good old phone and reach out and touch someone. Does that last sentence sound familiar? In the age of texting, tweeting, poking, and sharing comments, the telephone is still a powerful way to cut through and connect with anyone. In the age of social media, many people skip this strategy and downplay its importance. I caution you to resist the temptation and allure to just send digital communications only. If you employ a balance of communications with customers, referral partners and prospects your ability to influence and connect with more people will greatly increase.

Granted, it's harder to get people on the phone these days, you can still work wonders by leaving a short, crisp thank you message. It used to be the primary way people communicated and it's becoming a novelty as people are going more and more digital. The biggest argument I get with this strategy is that people don't have the time to make a phone call. Come on, are you kidding me? Excuse me here for just a few seconds. If it's one of your key customers or contacts I certainly hope you come down from your ivory tower Mr. or Mrs. I'm Too Important, and pick up the good old phone. If not, you risk that your competition will. Use the trend of digital laziness and distraction to your marketing advantage to help you stand out from the herd.

#9. Share stories. Here's timeless sales advice worth sharing I heard years ago at a seminar: Facts tell, stories sell! Timeless wisdom that far too many sales reps, marketing directors and even high level corporate executives still ignore and foolishly downplay. So why do most people still not use the power of storytelling? I'll push a few buttons right now and offer up my best answer. Most people have no clear plan of persuasion and often forget to make the use of success stories a staple in their communications. The best storytellers cast a spell on people and pull them into an almost magnetic trance. Once they've cast the spell, it's hard not to engage them and add several levels of credibility to their claims, especially if it's a story that directly relates to the customer or prospect's life or current situation.

#10. Ask powerful questions to get people thinking. Oh, the power of a great question. If asked at the right time, it can freeze someone and get them thinking in a whole new light. I'm often asked by others why I ask so many questions. I quickly respond that my rationale is simple and strategic in nature: Questions engage the mind. You should have a list of what I call "mind benders" at your disposal within all of your communications. These questions are designed to make a customer or prospect think of you as someone who "gets it" and understands them at a much different and deeper level than others.

*Tony Rubleski is the president of Mind Capture Group based in Spring Lake, MI. He recently released his third book in the bestselling series titled: *Mind Capture: How to Awaken Your Entrepreneurial Genius in a Time of Great Economic Change*. For details on the new book visit: www.MindCaptureBook.com. He can be reached at: Tony@MindCaptureGroup.com.*





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MLTA Upcoming Events

April 13	Spring Seminar Comfort Inn and Suites <i>Mt. Pleasant, MI</i>
May 4	Spring Seminar Marriott Detroit Livonia <i>Livonia, MI</i>
July 17-19	Summer Convention Crystal Mountain Resort <i>Thompsonville, MI</i>

ALTA Events

October 12-15	2011 Annual Convention Charleston Place <i>Charleston, SC</i>
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Michigan Land Title Association - 2011 Summer Convention

July 17-19, 2011 Crystal Mountain Resort, Thompsonville, MI

Speakers:

- ALTA Representative – Rob Chapman, Executive VP and CIO for Old Republic
- John Gallagher, Business Reporter, Detroit Free Press – “Reimagining our Cities”
- “East meets West” moderated by Mary Kramer, Editor, Crains Detroit News

Activities:

- 9 holes golf – Betsie Course, Crystal Mountain
- Afternoon at the Spa

Entertainment:

- We will be hosting the 1st ever “MLTA Idol” contest on Sunday evening.....see page 1 for details.

Convention schedule:

Sunday – Check in, Ice Breaker Reception, Welcome Dinner, MLTA Band Performance
Monday – Committee Meetings, General Session, activities on own in afternoon, President’s Reception & Annual Banquet
Tuesday – General Session



Convention packets to be mailed in early May.

visit www.milta.org for details