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Title Notes

Maintaining professional standards and ethics in the Title Insurance Industry in South Carolina. Providing information and education to consumers and to maintaining liaisons with users of the products and services provided by our members.

Is There Anything Minor About Modifications?

Submitted by Teri Callen Stomski

With the turmoil in the lending market, many firms are getting requests to “modify” a mortgage. Sometimes, the lenders plan to file an actual modification document, other times they call it a modification but give you another mortgage to file. Usually, the reason they are modifying the mortgage is to add collateral, extend the term or change the interest rate. That all seems well and good, but considering recent “alerts” from the S.C. Bankruptcy court, these seemingly benign requests may end up voiding a transaction or impairing our insured mortgage. Often, through the modification, the bank is trying to improve their position because the

borrower is in a financial bind. Don't assume that just because they haven't filed bankruptcy yet, that things are OK. If the borrower subsequently files bankruptcy despite the help the modification gave (as they are doing fairly frequently), the trustee has two years to “look back” to figure out if the change or modification was to the detriment of other creditors, i.e. a preference. The trustee also looks to see if the modification is truly a “continuation” of the debt or if it is a “novation.” A continuation of the debt would insure the priority of the original mortgage but if the original debt

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www.scplta.org

(Continued from page 1)

is replaced with a new debt, a novation has occurred and the original lien priority would be lost for the entire indebtedness.

Before you endorse your prior policy for a modification, be sure to check the following:

1. Verify the current parties in possession;
2. Verify taxes are current;
3. Execute a satisfactory, notarized Affidavit Regarding Liens, if applicable; AND
4. If your update indicates there are intervening junior lienholders, get a subordination from that lienholder to assure priority.

Sometimes the borrower is already in bankruptcy when the bank seeks a modification and there are even situations, as in the case of Debtors in Possession (DIP) loans, where loans are made to insolvent borrowers. And don't forget the always popular "Deed in Lieu of Foreclosure (DIL)." If the borrower decides to give the property back to the bank with a Deed in Lieu of Foreclosure before they file bankruptcy, the trustee can use his "avoiding powers" to recapture the property and void the transfer. Talk to your underwriter regarding any special underwriting requirements for DIP and DIL.

Hopefully these tips will keep a minor modification from becoming a major mistake!

Jasper County Update

A list of concerns with record integrity was brought the attention of the Board of Directors in May of 2009 by an abstractor in Jasper County. PLTA conducted a site inspection of the ROD office in Jasper County and determined that all areas cited as problems, or potential problems, are being addressed with curative action. It was also determined that the county records under the control of the ROD office were being maintained and corrected, as necessary, in an efficient and systematic manner with the support of the County, understanding budget limitations. It is not the position of the Association to require prioritizations of issues, but only to have assurance that the county records are maintained with the integrity that South Carolina law requires. The Association is satisfied that there are no current issues in Jasper County which cause any additional disclaimers rendering the records unreliable. Although each member of the Association is allowed to make its own determination as to insurability, additional assurances were provided that no South Carolina title insurer considered the Jasper County uninsurable based upon the current state of the records and the curative actions taken.

Mary G. Webster Scholarship

Did you know that the PLTA awards two \$1000 scholarships annually? The Mary G. Webster Scholarship is open to any rising Sophomore, Junior or Senior attending any major 4-year university or college in the state of South Carolina. The applicant must be pursuing an education in a business-related field. Please visit our website www.scplta.org for more information on the Mary G. Webster Scholarship.



President's Message

Stephanie Blanton Munsey, Esquire



Well, it was questionable there for awhile, but it appears that we lived through 2009; unfortunately, not all of our colleagues walked away unscathed. However, it is reassuring that the South Carolina title industry is not throwing in the towel, but rather fighting for economic recovery while serving as a national example of the responsibility the title industry has to the real estate market and the consumers.

As our state legislature gears up for the 2010 session, there are and will continue to be numerous proposal for enacting legislation that impacts this industry. We must be attentive to all the proposed changes in order to maintain functionality and practicality in theories of those who may not comprehend the daily operation of title. We must also advocate the positive role of the title industry in a successful recuperation of the overall economy.

Our Mission at PLTA is:

To promote the safe and efficient transfer of ownership in real property within the free enterprise system.

To provide information and education to consumers; to those who regulate, supervise or enact legislation affecting the land title evidencing industry, and to its members.

To maintain liaison with users of the product and services provided by our members and with government.

To maintain professional standards and ethics.

The PLTA in an effort to emphasize our responsibility to information and educate those who regulate, supervise or enact legislation affecting this industry and to maintain our liaison with government is making significant changes to the 2010 Annual Convention. The 2010 Annual Convention will be held in our great state capital of Columbia at the Columbia Convention Center. Additionally, the event will be held during the week. On Wednesday, March 17th a Welcome Banquet will commence at 5:30 pm. In an effort to make our presence more visible to our legislators, PLTA is extending an invitation to the South Carolina legislators to join our members for the St. Patrick's Day holiday. The following day, on Thursday, March 18th the Annual Business Meeting will be held with an all-day CLE including a continental breakfast and buffet lunch. During the luncheon, the awards ceremony will be held along with the swearing of new officers by the ALTA guest speaker.

We realize that this is very different from years past, and yes we will all miss our weekend together, however, with all the constant uncertainty, as an industry, we must come together and remain actively involved. No one person or entity can solve our problems. Therefore, we ALL must do our part in order to emerge stronger and better, and together our collective voices will be heard. I encourage each of you to renew your membership with Palmetto Land Title Association (PLTA) and contact your legislator encouraging them to attend our Annual Convention.

As always, thank for your commitment and involvement in PLTA.

Mutual Indemnification Agreement Update

After requests by the membership, PLTA drafted the First Amended and Restated Mutual Indemnification Agreement, which went into effect on January 1, 2010 and will replace the original MIA. Companies that were part of the original MIA but do not sign the revised MIA will no longer be able to indemnify through the MIA and third parties will instead have to get letters of indemnification from those underwriters.

To date, the following companies have signed the revised MIA and third parties will be able to use the MIA for their indemnification as of 01-11-2010:

- Investors Title Insurance Company
- First American Title Insurance Company
- Fidelity National Title Insurance Company
- Lawyers Title Insurance Company
- Commonwealth Land Title Insurance Company
- TransUnion National Title Insurance Company
- Chicago Title Insurance Company

The original MIA was enacted in November 2006 and was signed by ten SC title insurance companies. It covered certain defects, including outstanding mortgages and judgments, so long as the prior policy (owner's or if following a foreclosure, lender's) was at least one year old and the amount of the liability was less than \$500,000.

The revised MIA will now cover additional matters, subject to certain criteria, such as:

- The failure of the instrument to affirmatively state the date of execution of the instrument, to designate on the instrument the expiration date of the notary's commission or the failure of the individual taking the acknowledgment or probate to designate the date of said acknowledgment or probate on the instrument.
 - Recorded UCC(s) or Assignment(s) of Rents and Leases executed contemporaneously with a companion Mortgage has been fully satisfied and canceled of record.
- Setback violations where the violating structure/improvement is more than 10 years old; and the degree of violation is five percent (5%) or less.

The revised MIA further clarified the following:

- Mental health liens are specifically NOT covered by the MIA.
- It is the sole discretion of the Indemnitee to accept that the defect is covered by the Agreement.

Nothing in the Agreement prevents a Title Insurer from requiring separate letters of indemnity or requesting the Indemnitor acknowledge coverage under the Agreement.

For a complete copy of the First Amended and Restated MIA, please contact PLTA at plta@pbtcomm.net.



2010 PLTA Spring Convention

It's hard to believe that it's 2010, but a new year has come and it's time to start planning for PLTA's annual Spring Convention. In fact, this year it's more important than ever to make your plans to attend now because this year's Convention is coming early. What's more, we're meeting in Columbia in order to host a reception for members of the General Assembly, so come out and let your voice be heard!

Schedule of Events:

Wednesday, March 17, 2010

*Reception for PLTA members and the S.C. General Assembly
5:30 pm to 8:30 pm*

Thursday, March 18, 2010

*PLTA Annual Meeting & CLE
8:00 am to 5:00 pm*

All events will be held at the Columbia Convention Center in the beautiful Congaree Vista.
Registration information to follow.

2010 PLTA Membership Renewals

Our annual membership renewal drive is now underway and we are looking forward to a great year for our association.

PLTA is the only trade association representing the interests of the land title industry in our state. PLTA gathers information regarding the industry for the use and benefit of our members. We publish a quarterly newsletter *Title Notes*. Which contains information and articles geared specifically for the land title industry as well as general business articles on subjects that affect everyone in the entire real estate industry. In addition, PLTA offers an entertaining and educational Spring Convention that qualifies for Continuing Education units.

If you have not renewed your membership, you can do so today by completing the membership roster on the following page or by going to our website www.scplta.org.

You may also contact us at plta@pbtdcomm.net; any member who has not renewed by January 31st will be removed from the membership roster.

MEMBERSHIP CATEGORY DEFINITIONS

- REGULAR MEMBERS

\$750.00 per year for Title Insurance Underwriters which have offices within the State of South Carolina

\$750.00 per year for firms of 20 or more attorneys.

\$625.00 per year for firms of 9 to 19 attorneys.

\$500.00 per year for firms of 4 to 8 attorneys.

\$250.00 per year for firms of 2 to 3 attorneys.

\$250.00 per year for title insurance producing companies *not* affiliated with a law firm.

\$175.00 per year for a sole practitioner

- ASSOCIATE MEMBERS

\$400.00 per year for title insurance underwriters the *do not* have offices within the State of South Carolina

\$150.00 per year for individuals, attorneys, firms, corporations, banks or mortgage lenders that *do not* derive direct or indirect financial benefit from title insurance premiums



Date: _____

MEMBERSHIP RECORD

Membership Name: _____

Mailing Address: _____

Registered Representative: _____

Alternate Representative: _____

Additional Contact Person: _____

Phone #: _____ Fax#: _____ E-mail: _____

Additional Address(s)*: _____

PLEASE MARK THE APPROPRIATE BOX UNDER THE APPLICATION CATEGORY:

REGULAR MEMBER

Please see back of form for appropriate category \$ _____

ASSOCIATE MEMBER

Please back of form for appropriate category \$ _____

*Please add \$25 if you prefer to receive hard copies of mailings \$ _____

All Association correspondence will be communicated electronically unless noted on this form.

TOTAL AMOUNT ENCLOSED \$ _____

Please make your check payable to **PALMETTO LAND TITLE ASSOCIATION** and mail it along with this form
to:

TREASURER
Palmetto Land Title Association
Post Office Box 11372
Columbia, SC 29211

If you should have any questions, please contact Kim Burkett, Executive Secretary, by telephone or fax at (803)892-5582

ALTA For Licensing Initiative

All Non-ALTA members were mailed a free ALTA membership that began October 1, 2009, along with a license to use ALTA's forms for the remainder of 2009. ALTA also extended an invitation to rejoin ALTA in 2010 as full dues paying members. Those who elect not to join will be billed for a license. The license to use ALTA's Policy Forms is a \$195 annual fee, regardless of volume. However, ALTA offers an "occasional use" license waiver for those agencies and attorneys who generate very little each year in title premiums. Agents who wish to apply for this waiver must provide documentation on the volume of their annual title premiums.

The license to use the forms is included in the benefits ALTA members receive with a membership. If you are not sure if you are a member, you can check <http://www.alta.org/search> or contact ALTA at membership@alta.org or 202-261-2944

Under RESPA, the license to use ALTA Policy Forms is a thing of value, which underwriters are prohibited from providing agents and therefore, title underwriters cannot pay this on your behalf. Further, unless your agency is more than 50% owned by a title underwriter, you are not considered a member of ALTA through a title underwriters' membership. Membership in a state association, such as PLTA, will also not satisfy ALTA's licensing requirement, as PLTA and ALTA are not affiliated.

From ALTA's FAQ, it appears that ALTA will rely upon the title underwriters to assist them in policing. Under a title underwriter's license agreement they are required to provide the contact information for agents who have written title policies in the previous year. ALTA will compare this data to the ALTA membership and license users in good standing. It is unknown what the penalty will be but since ALTA is referencing the copyright indicia, one might assume they will rely upon the basic federal copyright infringement laws.

Any changes to an ALTA Form will make it "non-standard" and agents are cautioned to remove the ALTA logo if they change these licensed forms.

For more information, please contact ALTA at 202-296-3671 or email them at service@alta.org. Additional information is also available at these links to ALTA's website at <http://www.alta.org/membership/intro.cfm> and <http://www.alta.org/images/PDF/20091014%20PFL%20FAQs.pdf>

2010 ALTA Policy Forms License Application

The American Land Title Association, founded in 1907, is the national trade association and voice of the abstract and title insurance industry. By purchasing a license to use the Policy Forms, your company will have access to Basic Policies, Commitment Forms, Endorsement Forms, Reinsurance Agreements, and Related Documents such as Closing Protection Letters.



There are three simple ways to apply for a license:

1. Online at www.alta.org/license
2. By mail to: ALTA-1742901
P. O. Box 17429
Baltimore, MD 21297-1429
3. By fax at 888-329-2582

Licensee Information

Contact Person _____

Contact Person's Phone _____

Contact Person's E-mail _____

Company Name _____

Address _____

City _____ State _____

Zip _____ County _____

Company Phone _____ Company E-mail _____

Fax _____ Web Site _____

Payment Information:

License Amount \$195.00

TOTAL PAYMENT: \$195.00

Payment Method:

- Check (Payable to ALTA) VISA
 Mastercard American Express

Card Number _____ Exp. Date _____

Cardholder's Name _____

Billing Address (if different from above) _____

Cardholder's Signature _____

ALTA-1742901

MINUTES OF MEETING



DATE 8 SEPTEMBER 2009 @ 12:00 P.M.
LOCATION Office of Roger, Townsend, & Thomas, Columbia, SC
PRESENT Stephanie Munsey / Joby Castine / Graydon Olive / Clint Farborough / Derek Gillis / Demetri Koutrakos / Martha McConnell / Terri Callen Stomski / Robert Clawson

Called to order by President (Stephanie Munsey) once quorum was present.

Minutes of Past Meeting (July 2009) – Unanimously Approved

OFFICERS AND DIRECTORS REPORTS

President – See below under Old and Unfinished Business

Treasurer Report – (Given by President – Unanimously Approved)

As of 8 SEPTEMBER 2009:

ASSOCIATION ACCOUNTS

Savings Account \$17,764.64
Operating Account \$ 1,249.62

EDUCATION ACCOUNTS

Brokerage Account \$12,657.33
Ed. Savings Account \$ 3,560.67

PAL / PAC \$ 6,740.78

Directors Reports – No Reports

Executive Secretary Report – (Kim Burkett) No Report

COMMITTEE REPORTS

Convention – Benjamin Dunn No Report

By Laws – Derek Gillis No report

Communications and Public Relations – Terri Callen Stomski
Materials for the upcoming newsletter have been given to the Executive Secretary for publication.
All new members are asked to submit photographs for inclusion in the newsletter

Education – Charles Hedgepath No Report

Election – Cynthia Durham Blair No report

PAL PAC – Joby Castine No Report

Government / Legislative Combined Committee – Gray Olive
- See below under Old and Unfinished Business

Membership – Stuart Lee
- No Report

Scholarship – Jennifer Rubin
- No Report

OLD AND UNFINISHED BUSINESS –

- [A] The check was cashed by the hotel as payment-in-full for the 2009 Spring Convention bill. No reply was received from the letter sent accompanying payment.
- [B] Allendale County – The President will seek an update on the recording and logistical issues as Allendale tries to regain its records.
- [C] Terri Callen Stomski gave a verbal update on the progress made at the previous meeting (July 29, 2009) of the underwriters regarding the Mutual Indemnity Agreements. An updated version of the discussion will be sent to the members with a deadline for comment. Once the deadline has passed, a write-up of the meetings outcome will be made available.
- [D] Convention 2010 –
 - Agreement was executed for the Columbia Convention Center
 - The Legislative Banquet will be 17 March 2010 from 5:30 to 8:30
 - Members are encouraged to formulate a list of the Legislative Subcommittees desired for attendance.
 - The Convention will be 18 March 2010 from 8:00 to 5:00
 - Continental Breakfast and Lunch will be provided
 - The costs per attendee are being discussed

NEW BUSINESS –

- The President will seek an update on the Electronic Recordation status and relay the response to the Board.
- PLTA will not, at this time, take an official position of the subject of adopting a requirement similar to North Carolina rule 45A-4 concerning recording and disbursement.
- PLTA will not, at this time, take an official position on the recent South Carolina Department of Labor, Licensing, and Regulation dated August 26, 2009 regarding the underwriters use of ‘Survey Affidavits’ regarding prior surveys in connection with issuance of title insurance.
- Much discussion concerning the requirement of an ALTA licensing fee in order to use ALTA forms. The Board will check with the President Elect (Benjamin Dunn) to see about his availability to attend the upcoming ALTA convention in Florida to voice the various concerns of the Board. If he is unavailable to attend, the current President (Stephanie Blanton Munsey) will be available, and is planning, to attend the ALTA convention. A motion was made, and carried, that PLTA pay for the Registration Fee in the event that the President Elect is not available and the Current President goes to voice the concerns of the Board.

GOOD AND WELFARE -
- N/R

ADJOURNMENT

MINUTES OF MEETING



DATE 13 OCTOBER 2009 @ 12:00 P.M.
 LOCATION Office of Roger, Townsend, & Thomas, Columbia, SC
 PRESENT Stephanie Munsey / Joby Castine / Graydon Olive / Derek Gillis / Martha McConnell /
 Terri Callen Stomski / Robert Clawson

Called to order by President (Stephanie Munsey) once quorum was present.

Minutes of Past Meeting (September 2009) – Unanimously Approved

OFFICERS AND DIRECTORS REPORTS

President –
 - No Report

Treasurer Report – (No Treasurer Report For Meeting)
 - Report will be disbursed to board members via e-mail

Directors Reports –
 - No Reports

Executive Secretary Report – (Kim Burkett)
 - No Report

COMMITTEE REPORTS

Convention – Benjamin Dunn
 - Executed Agreement with Columbia Convention Center
 - Initial Deposit made / Balance due by 12-18-2009
 - Legislative Banquet = March 17, 2010 @ 5:30 pm
 - Seminar = March 18, 2010 @ 8:00 am

By Laws – Derek Gillis
 - No report

Communications and Public Relations – Terri Callen Stomski
 - Newsletter went out to members
 - Now accepting new articles for next publication
 - Next publication will be December, 2009

Education – Charles Hedgepath
 - No Report

Election – Cynthia Durham Blair

- No report -

PAL PAC – Joby Castine

- No Report

Government / Legislative Combined Committee – Gray Olive

- No Report

Membership – Stuart Lee

- Membership Notices need to go out first o November

Scholarship – Jennifer Rubin

- Notices to schools need to go out in January, 2010

OLD AND UNFINISHED BUSINESS –

[A] Terri Callen Stomski has circulated the proposed alterations to the MIA (Mutual Indemnity Agreement). The Committee has until 10-23-2009 for comments, and the general membership has until 10-31-2009 for comments.

[B] No word as yet from the SC Bar regarding the LLR (Dept. of Labor, Licensing, and Regulation) memo regarding the use of ‘Survey Affidavits’ in closings.

[C] ALTA Licensing Fees
ALTA has granted free memberships for the remainder of the year 2009.
On January, 2010, agents will have to either join ALTA or pay a licensing fee of \$195.00 in order to use ALTA forms.

[D] PLTA will not be able to send a delegate representative to the ALTA convention due to scheduling conflicts and budget concerns.

[E] Electronic Recording Committee – No report until 2010 state legislative session.

[F] Allendale County :
All records from October, 2005 are on-line and indexed.
Users of the new system seem to be well pleased.

NEW BUSINESS –

None

GOOD AND WELFARE -

- Serving Director Demetri Koutrakos and his wife Christine welcomed their new child (Timothy Demetri Koutrakos) which was born on October 8, 2009.

ADJOURNMENT

PLTA MINUTES OF MEETING



DATE 11 NOVEMBER 2009 @ 12:00 P.M.
LOCATION Office of Roger, Townsend, & Thomas, Columbia, SC
PRESENT Stephanie Munsey / Graydon Olive / Derek Gillis / Martha McConnell / Robert Clawson / Benn Dunn / Clint Yarborough / Kim Burkett / Jim Koutrakos

Called to order by President (Stephanie Munsey) once quorum was present.

Minutes of Past Meeting (October 2009) – Approved Unanimously (1 Abstention – Yarborough)

OFFICERS AND DIRECTORS REPORTS

President –
- No Report

Treasurer Report – (AS OF NOVEMBER 8, 2009)
- Savings Account = \$11,271.38
- Operating Account = \$ 3,900.98
- Brokerage Account = \$13,994.74
- Savings Account = \$ 3,562.73
- Pal/Pac = \$ 6,741.64

Motion to approve = Gillis / Second = McConnell / All Approved

Directors Reports –
- No Reports

Executive Secretary Report – (Kim Burkett)
- No Report

COMMITTEE REPORTS

Convention – Benjamin Dunn

- Meeting of the committee was held. The current President will send past convention materials to Mr. Dunn for use in the final planning stages of the upcoming convention. Work on the new budget is going forward and should be able to be presented to the Board in January, 2010.
- Save the date e-mail going out for potential attendees.
- Legislative banquet = Wednesday March 17, 2010 (5:30 to 8:30)
- Convention = Thursday, March 18, 2010 (8 am to 5 pm)

By Laws – Derek Gillis
- No report

Communications and Public Relations – Terri Callen Stomski

- The next issue of Title Notes goes out in December, 2009
- Members are encouraged to submit materials or ideas for upcoming issues.
- Next issue may include MIA (Mutual Indemnity Agreement) revisions.

Education – Charles Hedgepath

- No Report

Election – Cynthia Durham Blair

- No report -

PAL PAC – Joby Castine

- No Report

Government / Legislative Combined Committee – Gray Olive

- Mr. Olive to review the accounting data and legal proprieties for the invitations to the legislative committees.

Membership – Stuart Lee

- Executive Secretary to send out membership notices this week

Scholarship – Jennifer Rubin

- No Report

OLD AND UNFINISHED BUSINESS –

[A] MIA (Mutual Indemnity Agreement) – Report should go out this week for editing. Possible inclusion of the new revisions in the next issue of Title Notes. The goal for the effective date is January 1, 2010.

NEW BUSINESS –

None

GOOD AND WELFARE -

None

ADJOURNMENT
