OHIO LAND TITLE ASSOCIATION AUGUST 2013

TITLE TOPICS

Serving the Needs of Ohio's Land Title Industry Since 1910.

PRESIDENT'S MESSAGE

by Samuel Shellhaas, Esq., WFG National Title Insurance Co.

"WHEN IT COMES TO OTHER PEOPLES' MONEY, WE NEED TO REMEMBER THE BASIC STANDARDS AND POLITICS OF WHAT WE DO."

Cybersecurity is becoming a hot topic as our Industry seeks ways to keep non-public, personal information safe. There are many facets to this topic: anti-virus programs, e-mail encryption, password protection, etc. However, this month's column will speak to two things that you can do to protect yourself which are much more basic.

First and foremost, do not forget about securing your IOTA and operating accounts from internal threats, external threats and plain error. Positive Pay, escrow account software systems (Rynoh, Epicor, etc.) , and three-way reconciliation are ways to secure the funds which were entrusted to you, but we should never forget that one of the best ways to protect these funds are sound escrow practices.

Never underestimate the simple rules of making sure the amounts and payees on your checks match who and how much is being paid per the settlement statement and making sure that accounts you are wiring money to are accounts held by the persons entitled to receive the funds. Above all else, be especially suspicious of last second changes on wiring instructions, especially when dealing with someone via e-mail.

Recently, we became aware of a situation where the primary communication between the settlement agent and the seller was via e-mail. At the last second, the settlement agent received an e-mail to wire the seller's proceeds to a different account than originally given by the seller. The wire didn't go through because the account was not held by the seller. When the settlement agent inquired, an e-mail response was received that the account was actually an account owned by the seller's business and requested that the funds be re-wired to that account.

The settlement agent complied. Ninety-nine percent of the time, there would be no problem. Unfortunately, this became a one percent problem when someone hacked the settlement's system and sent a "corrective" wire instruction increasing the amount of the wire. The problem was discovered in short order, but the wire could not be recalled because the money was no longer in the receiving account.

continued on page 8

OHIO LAND TITLE ASSOCIATION

INSIDE

OHIO LAND TITLE ASSOCIATION

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DIRECTOR'S MESSAGE

by Mark Bennett, CAE

"THE TITLE INDUSTRY IN OHIO IS ONLY STRONG BECAUSE OF SUPPORT FROM MEMBERS LIKE YOU."

Join Us at OLTA's 104th Annual Convention

As schools head back into session, coverage of pre-season football is in full swing and the weather providing a cooler preview of what is to come, it means fall is just around the corner. With the beginning of fall comes the OLTA Annual Convention. Only a few weeks remain for you to register for the 104th Convention, September 8-10, at the Hilton Polaris on the north side of Columbus. This is the "must-attend" event for those in the title industry in Ohio. Reconnect with your colleagues in the title industry and hear from the experts on a number of timely and relevant topics including ALTA's best practices, marketable title, data privacy, commercial underwriting, Who Wants to Be a Title Millionaire and more. This is an event you won't want to miss. Join your colleagues and register today online at www.OLTA.org or contact the OLTA office at 888.292.6582.

Join Us on Sunday Night of Convention for the OLTAPAC Reception

The title industry in Ohio is only strong because of support from members like you. It is critical to support OLTA's Political Action Committee (PAC) with a personal donation, no matter the size. OLTAPAC allows the OLTA to support candidates for the legislature who understand the importance the title industry plays in real estate transactions to protect the consumer. The OLTAPAC, along with the Association's advocacy activities, the efforts of OLTA's Government Affairs Consultant Bob Schmitz and your grassroots efforts in your district are what has given the Association a stronger voice in Columbus. You can make a donation online at http://www.olta.org/donations/fund.asp?id=4707 or by calling the OLTA office at 888.292.6582. As a thank you to donors, OLTAPAC will host a reception on Sunday night at Convention to recognize their contributions to OLTA's advocacy efforts. Those who have given this year will receive a ticket to the reception in their registration packets for the Convention.

Are You Linkedin? Your Colleagues Are

Since its inception, OLTA has had nearly 200 people join its Linkedin group. We continue to invite all OLTA members to join the group to network with your colleagues and discuss issues vital to the title industry. If you don't have a LinkedIn account, you'll be asked to create one. It's a great way to connect online with your title industry colleagues.

To find the group, select "Search Groups" in the Search field, type "Ohio Land Title Association" find the OLTA listing, select "Join This Group" on the next screen select your preferences, and then click "Join Group". When you do that, your group membership request will be pending until we validate it, usually within a day or two. You'll receive an email once your membership request is approved.

I hope to see all of you in a few weeks at the 104th Annual Convention. As always, feel free to contact me at 614.501.1100 x 3187 or mbennett@offinger.com.

OLTA CONVENTION 2013

by Don McFadden, OLTA Board of Trustees

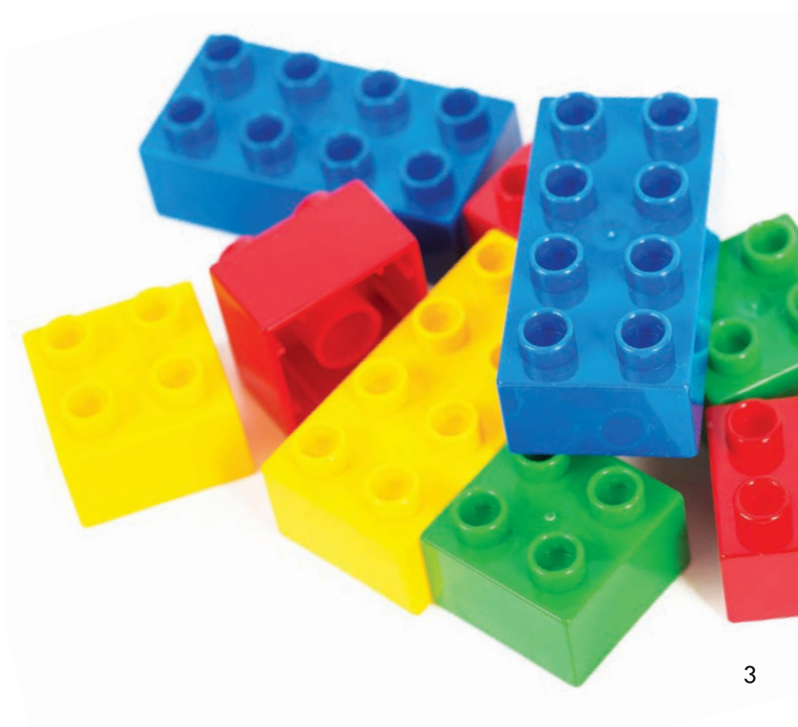
MARKETEABLE TITLE. A short summary of the upcoming presentation by Don McFadden at the convention on Tuesday morning, September 10, 2013.

My goal is to inform title agents on three subjects: marketable title, the Marketable Record Title Act and insurable title.

On marketable title, I will search for the definition of marketable title, looking first in OSBA's title standards, then in ALTA's 2006 owner and loan policy definitions. Neither association provides a true definition of "marketable title." Turning to state law, I will discuss two leading Ohio Supreme Court cases and three fascinating Ohio appellate cases. In doing so, I will present the true definition and five characteristics of marketable title, with commentary on leases, options, ejectment, purchase agreements, clear title, easements, warranty deeds, exceptions to title, clouds on title, objections to title, free and clear title, merger, and clear, free and unencumbered title. I will throw in historical trivia including an Ohio title case and the 1066 Battle of Hastings.

On the Marketable Record Title Act, I will discuss the statute's purpose, to date. Every title agent must know the root of title, unbroken chains of title, and the ten exceptions to marketable title, as well as several of the leading Ohio cases. I will then compare marketable title to insurable title.

You can decide if these are title gems but I can assure you there will be a lot of useful information for title agents. Title agents will be able to look at a title and decide with a high degree of professional certainty if title is marketable. I will do my best to make my presentation fun, interesting and worthwhile. I can't wait. I am looking forward to it. Don't miss it. See you at the 2013 OLTA convention.



AN OLD SOLUTION TO A NEW PROBLEM

by Adam M. Schwartz and Wesley W. Gilliland of Havens Limited

"FOLLOW THE MONEY."

Follow the money. This was true for Watergate and it's true in eastern Ohio. It is an understatement to say that oil and gas fever has struck. With that comes the prospect of striking it rich. And where there is money to be made, there is money to be fought over. Bring in the lawyers.

In the fight over who owns what, Ohio property owners have turned to Ohio's Dormant Mineral Statute for help[1]. Since 2006, this Statute helps property owners get rid of pesky mineral rights that show up in the chain of title. It works by "abandoning" old mineral interests to the property owner (i.e. the one with the "surface rights"). This process involves serving notices to potential mineral rights owners and filing affidavits with the County recorder. The good news? No litigation needed. The bad news? It is loaded with uncertainty and ambiguity, and sometimes this Statute can't be used at all.

What are some of these problems?

- Inability to locate the names or locations of the mineral rights owners. In many cases, these rights were created 30, 50, even 100 years ago. The Statute, unfortunately, is not a model of clarity about the effort the property owner has to go through to track the mineral rights owners own.
- Most mineral rights owners don't even know they might own them. So by notifying someone that they may have rights leads to people crawling out of the woodwork to fight (sensing free money). Because it doesn't involve litigation (i.e. legal costs), there is incentive to assert your potential rights even if you really have no idea.
- The filing of affidavits and other documents (especially those by potential mineral rights owners) as a part of this process can complicate a property's chain of title. This can create practical problems for selling/financing/leasing because of the uncertainty over which documents have any legal effect.
- Because of the explosion in leasing and speculation activity, the Statute sometimes can't be used at all. In order to use the Statute (in general), there can't be any drilling activity or transactions involving those mineral rights in the prior 20 years.

Enter the 1989 version of the Statute. What is old is new again. Before the Statute was amended in 2006, mineral owners didn't need to be tracked down and served. Nothing had to be filed. It was a better, happier time.

In the 1980s, the Ohio State Bar Association's Natural Resource Committee recognized that there were too many outstanding, unused mineral interests throughout eastern Ohio. This Committee, in turn, persuaded the legislature to adopt a "use it or lose it" approach to these types of interests.

Thus, the Statute was born on March 22, 1989. As with the current Statute, its use depended (generally) on the lack of activity in the property's chain of title or in drilling activity over the prior 20 years[2]. Its advantage (to property owners) was that this old version essentially gave no opportunity for mineral rights holders to preserve their interests after being notified and warned those interests could be abandoned. Today, those mineral rights holders have that chance.

So how can you use this 1989 version instead? After all, once a statute is amended, don't you have to use that new statute and pretend the old statute never existed? Not quite.

You don't actually ***use*** the 1989 version to abandon old mineral interests. Rather, the argument is that the 1989 version ***already*** abandoned those old mineral interests, so you don't need to use the 2006 version at all. In other words, because the 1989 version already extinguished those mineral rights, there are no mineral

continued on page 5

continued from page 4

rights to abandon today, meaning you don't have to use the 2006 version. That was the goal – avoiding the Statute's current uncertainty, complication, or inapplicability.

This is not purely theory. Lawyers are making this argument and the courts, in general, agree. That is to say, these courts hold that mineral interests were already extinguished under the 1989 version of the Statute so there's no need to abandon them again today under the 2006 version or in any other way. These courts are in the following counties:

- Belmont[3]
- Monroe[4]
- Jefferson[5]
- Columbiana[6]
- Noble[7]
- Tuscarawas[8]
- Morgan[9]

At the end of the day, the 1989 version of the Statute can simply be another weapon in the arsenal to clear up title problems before they can impact a deal. While one downside to the 1989 version is using the court system (rather than the County Recorder) to officially extinguish those mineral rights, it may be the only way to get the job done. And the lawyers rejoice.

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[1]ORC § 5301.56.
[2]There is uncertainty over when the 20 year look-back period begins to run.
[3]Tribett v. Shepherd, 12-CV-180 (C.P. Belmont County)
[4]Eisenbarth v. Reusser, 12-CV-292 (C.P. Monroe County)
[5]Shannon v. Householder, 12-CV-226 (C.P. Jefferson County)
[6]Bender v. Morgan, 12-CV-378 (C.P. Columbiana County)
[7]Walker v. Noon, 12-CV-98 (C.P. Noble County)
[8]Wendt v. Dickerson, 2012-CV-02 0135 (C.P. Tuscarawas County)
[9]Wiseman v. Potts, 08-CV-145 (C.P. Morgan County)

EDUCATION

NEED CONTINUING EDUCATION CREDITS OR TO STUDY FOR THE TITLE AGENT LICENSING EXAM?

OLTA keeps you informed with online continuing education, the OLTA Title Agent Exam study guide and *Principles of Ohio Real Estate Titles* textbooks. Each is available for purchase at www.OLTA.org with reduced rates for members.

WE DO GOOD DEEDS: THE TITLE AGENCY ORDERS A DEED: WHO IS THE CLIENT?

By Don McFadden

"OHIO REAL ESTATE LAWYERS PREPARE DEEDS, HOPEFULLY ALL OF THEM, GOOD DEEDS."

As a title claims lawyer, I have, thankfully, seen a lot of deeds which are not good. I say thankfully, as incorrectly prepared deeds have kept me reasonably well employed correcting errors in deeds prepared by others. The Ohio Supreme Court states that deed preparation in Ohio is the practice of law. Ohio State Bar Ass'n v. Dalton, 124 Ohio St. 3d 514; 2010 Ohio 619; 924 N.E.2d 821; 2010 Ohio LEXIS 445, November 4, 2009, Submitted, March 2, 2010; *Toledo Bar Ass'n v. Chelsea Title Agency of Dayton, Inc.*, 100 Ohio St. 3d 356; 2003 Ohio 6453; 800 N.E.2d 29; 2003 Ohio LEXIS 3414.

Incorrectly preparing a deed can be the basis for disciplinary action against the lawyer who prepared the deed. See, *Disciplinary Counsel v. Brueggeman*, 128 Ohio St. 3d 206; 2010 Ohio 6149; 943 N.E.2d 509; 2010 Ohio LEXIS 3175. In Brueggeman: "A second client retained Respondent to prepare a deed. Respondent prepared the deed incorrectly, and it was rejected by the Recorder's Office. Respondent also misplaced the client's file, forcing the client to resolve the problem himself. Moreover, Respondent admitted that he never filed a corrected deed." *Id. Rule 1.1 of the Ohio Rules of Professional Conduct states:*

> RULE 1.1: COMPETENCE
> A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness, and preparation reasonably necessary for the representation.

Likewise, incorrectly preparing a deed can be the subject of a legal malpractice action. See, *Wells Fargo Bank, N.A., v. Bowman*, 5th App., 2012 Ohio 576; 2012 Ohio App. LEXIS 499. In Bowman, a buyer sued a title agent attorney for not following the instructions in preparing a deed. The deed as prepared placed title in buyer and her husband's name rather than buyer's name alone, making it difficult for buyer to refinance as a result of husband's federal tax liens.

R.C. 317.111 requires the name of the person who prepared the deed appears at the conclusion of the instrument.

Before an Ohio lawyer can practice law he needs a client. This article will address the situation where a title agent, engaged in the business of handling escrows, sends a deed request to an Ohio lawyer to prepare a deed incident to a residential closing. R.C. 3953.23(B) permits an Ohio, licensed, title agent to engage in the business of handling escrows.

Typically, the escrow agent's deed request comes to the lawyer with an order form identifying the real property, by address and by permanent parcel number; providing the seller's name and marital status; indicating the type of deed requested, general warranty, limited warranty, fiduciary, or quit claim; indicating if joint grantees, whether there is a right of survivorship; attaching a copy of the title commitment showing the legal description and other information; attaching a copy of the purchase agreement executed by the buyer and seller which calls out the type of deed the parties agreed upon and the exceptions, if any, to free and clear title; attaching a copy of the last deed of record, the title vesting deed and sometimes all of the documents from the title search.

> A typical, relevant provision in a purchase agreement is as follows:

continued on page 7

continued from page 6

TITLE: Seller shall convey a marketable title to Buyer by general warranty deed and/or fiduciary deed, if required, with dower rights released, free and clear of all liens and encumbrances whatsoever, except a) any mortgage assumed by Buyer, b) such restrictions, conditions, easements (however created) and encroachments as do not materially adversely affect the use or value of the property, c) zoning ordinances, if any, d) all coal, oil, gas and other mineral rights and interests previously transferred or reserved of record and e) taxes and assessments, both general and special, not yet due and payable.

This article will first discuss the scope of the lawyer's services and second will discuss the identity of the client. Both discussions are preliminary and subject to an actual fee agreement which should clearly define the scope of services and the identity of the client.

Scope of Services. The lawyer's job is to prepare the deed as the parties have agreed in the purchase agreement. Rarely is a lawyer involved in representing either the buyer or the seller. Usually, the selling broker's form purchase agreement, a one size fits all garment, defines the deed in cryptic language as sampled above. Another example:

Deed:
6.1 The Seller shall convey to the Buyer marketable title in fee simple by transferable and recordable general warranty deed, with release of dower, if any, or fiduciary deed, as appropriate, free and clear of all liens and encumbrances not excepted by this contract, and except the following:
(a) those created by or assumed by the Buyer;
(b) those specifically set forth in this contract;
(c) zoning ordinances;
(d) legal highways;
(e) covenants, restrictions, conditions and easements of record that do not unreasonably interfere with present lawful use; and
(f) all coal, oil, gas and other mineral rights and interests previously transferred or reserved of record.

6.2 Seller has not transferred, conveyed, or reserved, nor does Seller have any knowledge of any prior transfers, conveyances or reservations of any coal, oil, gas, or other mineral rights or interests in the premises, except for the following (none if nothing inserted): ________________________ .

The lawyer's job is not to rewrite the contract as to the quality of title to be conveyed, the type of deed or the exceptions to the covenant against encumbrances in a deed. If buyer or seller, or rarely, their respective lawyers, want something different, both parties must agree and sign an amendment to the purchase agreement. Provisions permitting unilateral modification are not usually part of a signed purchase agreement.

The deed drafting lawyer may, or may not, depending on the scope of services, spend considerable time making sure the chain of title, to the extent provided, is unbroken, double checking legals, prior deed executions, and obtaining or requiring resolutions, articles of incorporation or organization, partnership agreements, by-laws, operating agreements, trusts, powers of attorney, and other authority documents to verify that the proper person is signing the deed as prepared. Some parts of these tasks may be shared with the escrow officer. Probate issues abound and must be resolved. The fiduciary deeds may involve an attorney who has made an appearance at probate court for a guardian, an estate or a trust. That fiduciary's attorney should be contacted and consent obtained before his or her client, the fiduciary, executes the deed. In any event the scope of services should be defined in a written fee agreement which can embrace all or only some of these tasks and a single deed or a series of deeds.

The Client. The second question is the identity of the client. Prof. Con. Rule 1.7 requires the lawyer to make conflict checks when he or she is retained. Rarely does the deed drafting lawyer contact the buyer or the seller. All of the contact is with the title agency. *Prof. Cond. Rule 1.4* requires the lawyer to inform, explain, consult, and communicate with the client. Attorneys acting only as realtors, title agents, closing agents or escrow agents are governed by the *Prof. Cond. Rules* when practicing those professions or occupations. *Prof. Cond. Rule 5.7* specifically addresses attorneys and "law-related services or "ancillary business," and requires the attorney or his law firm and attorneys therein, to make specific disclosures. The affiliated agency should also make required disclosures. The lawyer can't represent the buyer and the seller in the same transaction as their interests conflict, a bright line conflict. It is difficult if not impossible to disclose out of the conflict. The conflict issues and disclosure issues are avoided if the client is not the buyer or the seller.

continued on page 8

continued from page 1

I feel bad for the agent. The request seemed innocent enough, but as a good friend of mine once told me, "That's how crooks and crazy people suck you into their world."

Bottom line, technology is a wonderful tool that allows us to leverage resources and see more than what we would ever be able to see and do without it. However, when it comes to other peoples' money, we need to remember the basic standards and policies of what we do.

Finally, I recently became aware of a new insurance product that will be of interest. We are being asked to take steps and identify how we protect non-public personal information, but what happens if despite all your best efforts, you fail. Enter cybersecurity insurance policies that are essentially extensions of your E & O policy relative to security of non-public personal information. As more information becomes available, we'll let you know.

continued from page 7

In most cases, where the signed purchase agreement does not specify which attorney prepares the deed, the title agency handling the escrow, choosing the lawyer, requesting the deed, is the client. The deed preparing attorney may be an employee or an independent contractor. In either case, the deed preparing attorney is practicing law, needs to be on "active" status with the Ohio Supreme Court *(See, Gov. Bar Rule VI)* and should either have malpractice insurance or, if the attorney does not maintain professional liability insurance, should comply with the notice provisions of *Prof. Cond. Rule 1.4(c)*. A title agent's escrow agreement should clearly delineate the escrow agent's duties. A sample provision is as follows, where "YTA" is "Your Title Agency."

> YTA agrees to act as Escrow Agent in closing the transaction described above, the "Transaction." YTA agrees, at the cost of the Parties, to prepare documents (such as the HUD-1) or to hire attorneys of its choice to prepare documents (such as the Deed), to obtain the execution of documents, to record documents, to disburse funds, and to otherwise close the Transaction, in accord with the Instructions, subject to these Conditions. Escrow Agent has no duty or obligation except in contract as specifically set forth in the Instructions subject to these Conditions. Escrow Agent is not an attorney, does not give legal advice and has no duty to give legal advice to the Parties or to any Party or to disclose any matter, not specifically required to be disclosed by the Instructions, subject to these Conditions.

In most cases, the fee of the deed preparing attorney will be paid by the check of the title agency handling the escrow, choosing the lawyer and requesting the deed, that is, the client. The fact that the funds to pay the attorney fee for preparation of the deed originate, as shown by a HUD-1, from a seller or some other person should not alter the deed preparing attorney's scope, duties or professional relationship with the title agency client. Where an attorney is paid directly by a third party, other than his client, the attorney should review and comply with Rules of Professional Conduct, 1.8 "Conflict of interest: current clients: specific rules" including Official Comments (11), (12) and (12) (A); and, Rule 5.4 "Professional Independence of a Lawyer."

Readers who have a different view from this article, or who have comments are invited to contact the author. mcfadden@deedsohio.com. Comments are welcome. Happy drafting! The author thanks Bill Heer and Robert Wasserman for their insightful questions and review of this article. All opinions are the author's.

OUR MAN IN THE STATEHOUSE

by Tom Fiegl, OLTA Publications Committee Chairperson

"QUICK WITH A HANDSHAKE AND A BRIEF STORY, HE IS SELDOM AT A LOSS FOR WORDS."

For the last 20 years, Bob Schmitz has represented the Ohio Land Title Association as our Legislative Consultant, basically serving as the eyes and ears at the Statehouse and Department of Insurance in Columbus. Many of us know Bob and are familiar with the ease with which he moves amongst us at our semi-annual functions. Quick with a handshake and a brief story, he is seldom at a loss for words. What many of us do not know, though, is his "back story", or rather, how Bob became a state capitol insider.

It started when as a young Accounting student at Ohio State in the early 1970s, Bob took a part-time job as a Page in the Ohio Senate, earning a princely salary of $180 per month. The hours were long, but the experience and contacts he made were invaluable. Thomas E. Bateman, Clerk of the Senate at the time, a post he held for 50 years, took Bob under his wing and appointed him Journal Clerk. From this position, Bob had a front row view of state-level political processes and procedures. In fact, it was there he began to hone his political skills, and was given the foundation to become a successful lobbyist. By paying close attention to how bills were drafted, Bob became adept at reading those bills as they took shape and eventually became law.

After graduation, rather than finding a position in accounting, Bob landed his first legislative consulting position in 1973, when he was hired to serve as a representative for the Ohio Savings and Loan League. While those fields of endeavor seem to be opposites, the common thread that runs through them is the need to pay attention to details. Bob prides himself on knowing all of the nuances of a situation and notes that even the slightest piece of information can be a tipping point for his clients. As a self-described "information fanatic", Bob reads several major newspapers each day and subscribes to a number of online news services. In fact, he said he "gets up every morning to learn something new", because "he doesn't want someone to know something before he does".

Bob also represents the Ohio Chamber of Commerce and third-party Workers Compensation TPAs and managed care organizations. Additionally, he was appointed by Governor John Kasich in April 2011 to be Chairman of the Ohio State Racing Commission, a fitting role for a person who has been involved with horses for many years.

Bob acknowledges that his field is driven by relationships. By virtue of his more than 40 years in the political arena, Bob has made countless friends and strategic alliances with other trade associations, regardless of their political affiliation. As it goes, when Bob Schmitz calls, he gets through to the right parties or his messages get returned. His tenure in Columbus has allowed him access to people and information that others may not get. As Bob stated, "I know a lot of people." Many OLTA members have seen Bob in action around legislators and can attest to the ease with which he moves from group to group.

Bob and Jenny, his wife of 40 years, have three grown daughters. As one might expect, Bob is a voracious reader, especially when it comes to works of non-fiction and history. On his reading list right now are books by Doris Kearns Goodwin, David McCullough and Ron Chernow. Even though Bob quickly admits technology has made it easier to gather information, he still prefers his books the old-fashioned way – hard cover!

Book lover. News junkie. People person. Detail man. Father. All of those qualities and more make up Bob Schmitz, OLTA's Legislative Consultant. So the next time you see him, don't be surprised if Bob greets you with a firm handshake and brings up something to you that you may have mentioned once. After all, information and knowing people are the tools of Bob's trade.

REQUEST FOR ARTICLES!

Is your company involved in a current case or legislative or regulatory action? Let us know! Have a closing war story? Let us know! OLTA offers revision services so don't be afraid to submit your articles or ideas to OLTA at afosler@offinger.com.

POLICY PRODUCTION: HOW WOULD YOUR CUSTOMERS RATE THEIR SHOPPING EXPERIENCE?

By Kelley L. Shellhaas, Esq., WFG National Title Insurance Company

The topic on everyone's minds right now is "ALTA Best Practices." In fact, it seems reckless to write an industry article and not focus on this subject now. Frankly, it's not hard for me to do. For a "Type A" Personality like me, having a list of seven guidelines for all to follow is bliss. Checklists? Bulleted examples? Everyone on the same page, with the same expectations? This girl is in heaven.

But it goes deeper. These topics are meaningful and will help our industry operate, as the title implies, in the best possible manner. And because these standards were developed as a showing of good faith to our largest customer base – the lending industry – we know that our customer's satisfaction with these standards is nearly guaranteed. As many have pointed out, these aren't "So–So Practices," "Mediocre Practices" or "Minimum Effort Practices." These are the standards by which we will strive for professional *excellence*.

For those who need a refresher, the Seven "ALTA Best Practices," also known as the "Seven Pillars," can be summarized as follows:

1. **LICENSING:** Establish and maintain current license(s) as required to conduct the business of title insurance and settlement services.
2. **ESCROW TRUST ACCOUNTING:** Adopt and maintain appropriate written procedures and controls for Escrow Trust Accounts allowing for electronic verification of reconciliation.
3. **PROTECTING NON-PUBLIC INFORMATION:** Adopt and maintain a written privacy and information security plan to protect Non-public Personal Information as required by local, state and federal law.
4. **SETTLEMENT PROCESSES:** Adopt standard real estate settlement procedures and policies that ensure compliance with Federal and State Consumer Financial Laws as applicable.
5. **POLICY PRODUCTION:** Adopt and maintain written procedures related to title policy production, delivery, reporting and premium remittance.
6. **INSURANCE COVERAGE:** Maintain appropriate professional liability insurance and fidelity coverage.
7. **CUSTOMER CARE:** Adopt and maintain procedures for resolving consumer complaints.

Much has been said about the "hot button" items within the Seven Pillars: information security, recording, and E&O coverage. These are all incredibly important aspects of our business. However, being the contrarian (or, as I prefer to think of it, pragmatist) that I am, my mind focuses on what might be a less provocative, but certainly an important, topic: "Policy Production."

Why? I would argue that the 5th Best Practice, while hidden in the middle of the list, is the most important because our product is our policy. It's our "widget," our tangible item we offer the lender and consumer. Without it, the other pillars mean nothing. There is no licensing, settlement process or accounting practice if we don't have a product to sell in the first place.

continued on page 11

continued from page 10

At times, we've done just that. We've sold our product without actually delivering it. We get busy (a good problem to have, right?), we move on to the next transaction, and we focus on generating new business. Soon, following through on policies falls through the cracks.

One of the downsides of technology, if there is any, is that we automate so much that we sometimes forget that *we need to actually provide a physical policy to our customer.* In what other business can you conceive of a product being sold without it ever reaching the consumer? I promise you that if any of us purchased an item on Amazon or eBay, and were charged but never received it, we'd do more than just offer poor customer feedback when we receive that follow-up email that says "How would you rate your shopping experience?" We'd make a fuss, demand a refund and shop somewhere else – and that's just for starters. The 5th Pillar of the ALTA Best Practices reminds us that our insureds are no different. Providing a Commitment to an insured is not a substitute for providing a final policy, nor is charging for a final policy a substitute for providing a final policy. The file isn't closed when the closing takes place, but *when the customer receives our final product*.

There is great news here: This Pillar is where we may have the most room for improvement, especially for our lender customers, and is one of our best opportunities to increase customer satisfaction. ALTA has even defined what it means for us to meet this standard. Specifically, we **must issue and deliver policies within 30 days of settlement if terms and conditions of title insurance commitment have been satisfied.** This standard makes lenders very happy. As Craig Haskins of Knight Berry Title said in his presentation for ALTA on the topic, "If I'm speaking to a lender group and I'm starting to lose them, I skip right to number 5, and boy do they perk up knowing that they won't have to chase title companies months and sometimes years after the closing." As a title agent, how can you not be thrilled to have that kind of positive impact on our customers' experience?

For some, this will be easy. It may even be a lower standard than what they are already meeting. For others, this will be more of a challenge. Either way, this is a reasonable and attainable standard. Lenders have spoken and told us that, because the Consumer Finance Protection Bureau (CFPB) makes them responsible for our actions as title agents, they want their final policy delivered in a timely manner by us.

The 5th Pillar ends with the words "and premium remittance." ALTA addresses the topic of remitting in this Pillar because regulators and lenders have noticed a correlation between escrow fraud and agents who are slow to produce final policies, slow to remit, or those who remit from accounts other than a trust account. Anecdotal evidence of the same can be found in articles like the FBI 2010 Mortgage Fraud Report.

ALTA's 5th Pillar remittance best practice procedures are to: **(1) Report policies (including a copy of the policy) to underwriter by the last day of the month following the month in which the insured transaction was settled and (2) Remit premiums to underwriter by the last day of the month following the month in which the insured transaction was settled.**

A case can probably be made that "remitting" may deserve its own Pillar, yet wise agents will realize that timely policy production and timely remitting go hand in hand. Agents who view the two as separate are missing an opportunity to streamline their business, save time and achieve compliance with their agency contracts and this industry standard.

Again, these procedures may be new to some. They may find that cutting and sending a remittance check when a final policy is issued is an easy way to not "touch" a file twice, while honoring this standard. Others may find it easier to view remitting as they would any other monthly business expense, remitting to their underwriter(s) at the same time they pay monthly rent or utility bills.

Finally, agents who remit via check and spreadsheet may not be accustomed to forwarding a physical policy to their underwriter, and their underwriters may not currently require them to forward a policy copy. In this situation, both parties will need to use the next 12-18 months to implement this 5th Pillar.

Ultimately, what adherence to the 5th Pillar will do is return pride back to those of us who sell the title insurance product, a "win" for us. Moreover, by rapidly and competently delivering the product to customers, we elevate its importance, emphasizing its value, which will generate future purchases. The effect? A five-star experience for us all.

★★★ OLTAPAC DONATION FORM ★★★

Send your contribution to: OLTAPAC • 1100-H Brandywine Blvd • Zanesville, OH 43701-7303

Contributions to OLTAPAC are not deductible as charitable contributions for federal income tax purposes. Completing this form serves Management notice that you agree to be contacted by mail, phone, fax and/or email.

Name ____________________

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- ❑ President's Club........ $ 250.00
- ❑ Sponsor .... $ 100.00
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- ❑ Supporting........ $ 25.00
- ❑ Other .... $ ______

METHOD OF PAYMENT

(payment due at time of order)

Checks payable to: OLTA

❑ Personal Check/Money Order ❑ Debit Card

Credit Card

❑ MasterCard ❑ VISA

All payments in US funds drawn on US Banks.
A $25 fee will be charged for all returned checks.

Card Number ____________________

Exp Date ____________________

3-Digit Security Code ____________________

Amt to be Charged $ ____________________

Name on Card (Print) ____________________

Billing Address ____________________

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HELP US REACH OUR GOAL!

THANK YOU OLTAPAC DONORS:

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MORE THAN $10,775 RAISED TO DATE!

TO DONATE VISIT WWW.OLTA.ORG AND CLICK ON OLTAPAC DONATION FORM

BUILDING CONSTRUCTIVE RELATIONSHIPS

The Ohio Land Title Association is pleased to invite you to the 104th Annual Convention at the Hilton Columbus/ Polaris in Columbus, Ohio.

SUNDAY, SEPTEMBER 8, 2013

12:00 pm – 5:00 pm
Registration Open

3:30 pm – 4:30 pm
Committee Meetings:
OLTAPAC
Regulatory
Membership/PR
Publications

4:30 pm – 5:30 pm
Committee Meetings:
Legislative
Education
Regional Title Associations
Technology

6:15 pm – 7:00 pm
OLTAPAC Reception
We invite everyone to attend the OLTAPAC Reception to support the Ohio title industry's Political Action Committee (PAC) and its advocacy efforts. The suggested donation is $30, made by personal check or credit card to OLTAPAC.

7:00 pm – 9:00 pm
OLTA Welcome Dinner
Sponsored by First American Title Insurance Company
OLTA welcomes you to Columbus for the 104th Annual Convention. Relax with your industry colleagues for a casual evening of dinner and networking.

MONDAY, SEPTEMBER 9, 2013

7:30 am – 5:00 pm
Registration Open

7:45 am – 5:00 pm
Exhibits Open

7:45 am – 8:30 am
Continental Breakfast

8:30 am – 8:45 am
Introductions

8:45 am – 9:30 am
Today's Paperless Options for Title Insurance Agents
Peter Johnson, Pioneer Technology Group and Scott Fairbanks, GreenFolders
There are numerous paperless options for today's title agency. Cloud storage, closing production software, paperless management systems, transaction management platforms and secure document delivery each represent a piece of the paperless "puzzle" for agencies. The topic for discussion is the relative merits of each technology, how they work (or don't work) together and what implications security plays in this process in the new regulatory environment.

9:30 am – 9:45 am
OLTA Business Meeting

9:45 am – 10:00 am
Break

10:00 am – 11:00 am
Best Practices: Where do I start? How? When? Gulp!
Sponsored by Fidelity National Title Group
Craig Haskins, Knight Barry Title, Inc.
So ... you own or manage a title agency and you've been tasked with implementing the seven Best Practice Pillars – some of which are entirely new concepts and procedures for your company. No problem, right? But wait, where do I start? How much time will I need? And how much time will it take? Have these and other questions answered.

11:00 am – 12:00 pm
ALTA Best Practices Panel
Moderator: Craig Haskins, Knight Barry Title, Inc.
Panelists: Tom Finnegan, First Merit Mortgage; David Townsend, Agents National Title Insurance Co.; and Leslie Wyatt, SoftPro
A panel comprised of an underwriter, lender and software vendor will address the ALTA Best Practices from their perspective, explaining what they will seek from title agents to be compliant with the Best Practices and how software may assist title agents in satisfying these requirements.

12:00 pm – 1:00 pm
Lunch

continued on page 15

continued from page 14

1:00 pm – 2:00 pm
A Data Privacy Primer for Title Companies
Jane Hils Shea, Frost Brown Todd
This session will address an overview of data privacy law as it relates to title insurance companies, including the Gramm-Leach-Bliley Act. In addition, Jane Hils Shea will address best practices concerning privacy policies and security procedures and recent FTC enforcement actions.

2:00 pm – 3:00 pm
Clear versus Insurable Title: Lien Release Tracking
Pat Carney and Kristen Malcom, reQuire Release Tracking
Laws, regulations and contractual duties provide the mortgage servicer and title insurer with the minimum guidelines to comply with the mortgage lien release. They do not, however, fulfill the reasonable expectation of the consumer that their paid off mortgage at closing will clear the mortgage lien from their recorded title. This session will examine the varying perspectives of parties associated with the residential real estate closing with a focus on the mortgage lending process, increasing regulations, industry best practices and what they mean for your customer – the consumer.

3:00 pm – 3:15 pm **Break**

3:15 pm – 3:45 pm
ALTA Update
Bill Burding, Orange Coast Title Company
Listen to an update on the latest news from the American Land Title Association concerning its federal advocacy efforts, including a review of federal laws impacting settlement agents, ALTA's response to vetting companies, ALTA's development of "Best Practices", a review of required written privacy and information programs and a review of the required disaster recovery program.

3:45 pm – 4:00 pm **Break**
4:00 pm – 5:00 pm
Who Wants to be a Title Millionaire?
Michael Holden, North American Title Insurance Co.; Rick Rennell, BayPort Consulting LLC; Mike Wypasek, Fidelity National Title Insurance
It's the game show you know from TV. Your host Regis Philbin (OLTA's version, that is) will be there to ask the questions and our team of researchers will have all questions about title insurance for the contestants. Contestants will be chosen from the audience and the prizes will be real ... but may not total a million dollars! Join us for this fun and interactive game to test your land title knowledge.

6:00 pm – 6:30 pm
Past Presidents Reception (By Invitation)
The OLTA Past Presidents invite the past Honorary Life Member Award and Meritorious Award recipients to a reception to honor their service to the Association and to Ohio's title industry.

6:30 pm – 7:00 pm
Inaugural Reception
Sponsored by Simplifile
Join us in the Polaris Foyer for the Inaugural Banquet Reception.

7:00 pm – 9:30 pm
104th Annual Convention Inaugural Banquet
Sponsored by OLTA Member Underwriters
The black-tie optional banquet will include the installation of the 2013 Ohio Land Title Association Officers and Board of Trustees including the installation of Frank Long as OLTA's 91st President. The banquet will conclude with a presentation of awards.

TUESDAY, SEPTEMBER 10, 2013

7:00 am – 12:00 pm
Registration Open

7:30 am – 8:15 am
Continental Breakfast

8:15 am – 8:30 am
Introductions

8:30 am – 9:15 am
Commercial Underwriting Hot Topic Panel
Sean Harley, Westcor Land Title Insurance Co., Frank Long, Stewart Title Guaranty Co., Samuel Shellhaas, WFG National Title Insurance Co. and Robert Wasserman, Old Republic National Title Insurance Co.
A panel of title insurance underwriters will discuss several commercial underwriting topics giving rise to commonly asked questions, including issues relating to loan modifications, receivership sales, mechanic's liens and the new ALTA forms.

9:15 am – 10:15 am
Marketable Title and More
Don McFadden, McFadden and Freeburg Co., LPA
A Brief Discussion of "marketable title," "clear title," objections to title, clouds on title, title standards, "free and clear title," "clear, free and unencumbered title" – and the Norman Invasion of 1066, marketable record title and insurable title by focusing on Ohio Case Law and Ohio Statutes with passing commentary on ejectment, easements, general warranty covenants, deed exceptions, use restrictions, merger by deed, roots, chains and muniments.

10:15 am – 10:30 am **Break**

10:30 am – 12:00 pm
Redefining Leadership in Today's Multi-Generational Title Industry Workforce
Kevin Smith, University of Akron, Institute for Leadership Advancement
A shifted economy, advances in medicine, and a wildly changed workday has created a world where our workforce now has four generations working side-by-side. If the definition of leadership wasn't already undefinable enough, it's becoming even more difficult when considering the vast differences among various age groups and their often complex working styles. The purpose of this session is to provide an entertaining and educational perspective of what leadership looks like between the generational gaps.

12:00 pm – 12:05 pm
Closing Remarks/Adjournment

OLTA ANNUAL CONVENTION REGISTRATION FORM

September 8 – 10, 2013 • Hilton Columbus/Polaris • Columbus, Ohio

OHIO LAND TITLE ASSOCIATION

SEND COMPLETED FORM WITH PAYMENT TO: OLTA • 1100-H Brandywine Blvd • Zanesville OH 43701-7303

FOR CREDIT CARD ORDERS ONLY – FAX TO: 740-452-2552 **OR REGISTER ONLINE AT:** www.OLTA.org
Be sure to note your membership ID number (5 digits) which can be found above your name on the mailing panel of this brochure.

QUESTIONS: Call OLTA at 888-292-6582 or 740-450-1315 x 3351 or e-mail: llandry@offinger.com

1 REGISTRANT INFORMATION (PLEASE PRINT/TYPE CLEARLY)

Name ______________________________

Non-Industry Guest ______________________________

Company ______________________________

Business Address ______________________________

City ____________________ State __________ ZIP+4 __________

Business Phone ____________________ Fax ____________________

E-mail ______________________________

Completing this form serves Management notice that you agree to be contacted by mail, phone, fax and/or email.

National Producer Number (NPN) ______________________________

2 CONVENTION REGISTRATION

	Early Bird	After 8/22	Onsite	Total
Member	$299	$345	$360	$ ________
Honorary Life Member (Free for retired honorary life members only)	$235	$270	$285	$ ________
Non-Member	$385	$450	$465	$ ________
Non-Member Underwriter	$800	$900	$1000	$ ________
Non-Industry Guest (Includes Welcome Reception, Lunch and Inaugural Banquet)	$215	$255	$270	$ ________
Honorary Life Member Non-Industry Guest (Includes Welcome Reception, Lunch and Inaugural Banquet)	$185	$220	$235	$ ________
Printed Book of Speaker Handouts (All attendees receive a complimentary flash drive with the event materials)	$20	$20	$20	$ ________

GRAND TOTAL

$ ________

OVER →

3 SPECIAL ACTIVITIES

(Check if attending)

	Attendee	Guest
OLTA Welcome Dinner	______	______
Monday Breakfast	______	______
Monday Lunch	______	______
Monday Inaugural Reception and Banquet	______	______
Tuesday Breakfast	______	______

4 METHOD OF PAYMENT

(Payment due at time of order. Make check payable to OLTA.)

❑ Check ❑ Cashier's Check/Money Order ❑ Debit Card
Credit Card: ❑ MasterCard ❑ VISA

All payments in US funds drawn on US banks.
A $25 fee will be charged for all returned checks.

Card Number ____

Exp Date _________________ 3-Digit Security Code ___________

Amt to be Charged $_____________________________________

Name on Card (Print)_____________________________________

Billing Address ____

Authorized Signature ______________________________________

CONTINUING EDUCATION

- We have applied for 9.5 general CLE credit hours from the Supreme Court of Ohio.
- We have applied for 9.5 CLE credit hours from the Kentucky Bar Association.
- We have applied for 9.5 title CIE and 2 ethics CIE credit hours. The course level is intermediate.
- The experience and qualifications of the instructors is available upon request.

To receive continuing insurance education (CIE) credit, you must do the following (an exam is not required to receive credit):

1. Sign the attendance roster before the start of the program.
2. Attend the session in its entirety.
3. Complete & sign the request for CIE credits.
4. Turn in the request for CIE credits at the end of the program.

Partial CIE credit can be given to attendees of this seminar. The credit must be rounded down to half hour increments.

OLTA will only accept National Producer Numbers (NPN) for Continuing Insurance Education credit. We cannot accept social security numbers or license numbers. To find your NPN, visit https://gateway.insurance.ohio.gov/UI/ODI.Agent.Public.UI/AgentLocator.mvc/DisplaySearch. Requirements for Continuing Legal Education credit have not changed. You are still required to provide your Attorney Registration Number to receive credit.

GENERAL INFORMATION

Please register only one person and one guest per registration form. Name badges will be required for admittance to all events. Registration by fax will be accepted if paid with a credit card. To register online, please visit www.OLTA.org.

HOTEL

The Ohio Land Title Association has reserved a block of rooms at the Hilton Columbus/Polaris in Columbus, Ohio. Please contact the hotel directly to make your reservation. To receive the convention rate of $119 + tax per night, you must reference Ohio Land Title Association 2013 when you make the reservation. The hotel will honor the rate until August 15, 2013. OLTA guests can enjoy free onsite, self-parking.

Hilton Columbus/Polaris, 8700 Lyra Drive, Columbus, OH 43240 • 614-885-1600

CANCELLATION POLICY

Cancellations received by noon, August 23, 2013 will be refunded, less a $30.00 fee. After that date, those not attending will receive any seminar materials in full consideration of fees paid. Substitutions of participants are permitted. Registrations will be limited to available space.

SERVICES FOR PHYSICALLY CHALLENGED INDIVIDUALS

The Ohio Land Title Association takes reasonable steps to ensure no individual who is physically challenged is discriminated against because of the absence of auxiliary aids and services. If special arrangements or diet are required for an individual to participate in this program, please contact us in advance at 888-292-6582 or Info@OLTA.org.

FOR OFFICE USE ONLY Rcvd ________________ Ck# ________________ Amt _______________ Ackd ______________