in this issue >>>

Issue 1

Real Estate Lawyers Association of North Carolina

The Quarterly Newsletter for RELANC Members ♦ Summer 2015

Real Estate Lawyers Association of North Carolina
Defending Property Rights

RELANC

Regional Meeting Dates

Cary: July 14

Charlotte: August 13

Wilmington: September 23

Chapel Hill: October 16

Asheville: November 18

Greensboro: February 19, 2016

These are known dates, more will be scheduled. The objective of these events is to bring CLE and updates from your leadership to regional RELANC members and their potential member guests. Lunch will be provided. Title insurance entities are encouraged to participate and will in some cases co-host the meetings.

http://www.relanc.com

President's Message

Alan E. Ferguson, The Firm at Fisher Park, Greensboro

RELANC MEMBERS,

2015 has shaped into an eventful year for us. We have all heard about and become familiar with some of the proposed regulatory changes coming our way in the wake of new lending regulations and the attendant rules regarding "service providers" such as ourselves. RELANC has been active in sponsoring webinars to bring us all up to speed on these changes.

Bonnie Biggs, filling RELANC's new post of Executive Director has worked hard for us to keep us better organized and to increase our membership.

In the General Assembly, Jim Harrell has been invaluable to RELANC in keeping us informed, and in giving us a presence there. It is nearly impossible to give him enough credit for the services he has done our organization. Simply put, we would be groping in the dark without him there.

You are all familiar with Legal Zoom's continuing skirmishing with the State Bar. This battle (and that's what it really is) is over nothing less than the definition of the practice of law. Two weeks ago, Legal Zoom filed a complaint in federal court in the Middle District of North Carolina against the State Bar. Individual Bar counselors were named either as parties or as "co-

Continued on next page

conspirators", and charged as personally liable, in what Legal Zoom claimed was an attempt to illegally restrain trade in North Carolina.

As you know, before the filing of this new litigation, Legal Zoom and the State Bar were already involved in litigation regarding the unauthorized practice of law (UPL) pending in North Carolina Business Court. In addition to the court action, the State Bar also attempted a legislative response to the conduct which we all believe to be the practice of law. The Bar introduced a bill they believed would settle its ongoing litigation with Legal Zoom regarding its unauthorized practice of law (UPL) while retaining the tools it needed to protect North Carolinians from UPL. The Bar's bill remains pending in the General Assembly.

Legal Zoom seemed to be unopposed to the Bar's bill, and the Board didn't understand why. We spent much of our time since our winter meeting wrestling with this matter. We have devoted many hours to discussions with counsel for the Bar and others. RELANC proposed many changes to the bill proposed by the Bar.

We would rather have submitted our own bill, which we had fully prepared, and which we believed would have provided even more tools to prevent the UPL practices at the heart of the Legal Zoom matter. The Bar preferred their bill as it was written. We learned that our proposed RELANC bill regarding the definition of the practice of law would have little chance of success in the legislature. We also learned that any opposition to the Bar's bill might very well derail that bill and prevent its passage. We decided that if our efforts did result in no new bill in the legislature addressing UPL, many of the issues brought to our doorsteps by Legal Zoom would be decided in a courtroom. If the Court ruled in a way we believed was not best for North Carolinians, then we would be left only with an appeal to a higher court.

Well, much of that analysis has now been mooted by Legal Zoom's filing of its new lawsuit. This is a developing matter, but the initial consensus of the Board is that this litigation would have an effect on the practice of law in North Carolina much more dramatic than any new rules proposed by federal lending regulators.

I anticipate an important role for us in this new discussion after the State Bar has formally responded. This makes even more important our individual resolves to stay together and stay organized. Unless we can present a formidable, united force advocating for the people of this State, those who want to transform our work will have their way, unopposed. Therefore, I urge each of you to renew your membership and to encourage others to join RELANC. I believe this organization will prove to have a pivotal role to play in the ongoing UPL discussions. There is a lot of talent here, and we can make a difference.

Stay tuned.

The best to each of you until next time.

~~Alan Ferguson

Lobbying Activity Continues

James A. Harrell, Jr., Bode & Harrell, PLLC

Benjamin R. Kuhn, Chair, Strategic Planning & Public Policy Committee

See next page and page 5 for more information about this committee.

The Practice of Law, and the Protection of Consumers, Are Under Attack. RELANC Fights Back!

Benjamin R. Kuhn, Chair, Strategic Planning & Public Policy Committee

Another session at the General Assembly began earlier this year, and the law and policies swirling around the world of real estate, the protection of consumers, and the practice of law have become as swift and dangerous as one could imagine. One of the bills of interest to RELANC members, along with others, was the State Bar's bill to revise the definition of "the practice of law" to modernize same for today's technology and in efforts to resolve pending litigation with LegalZoom. I will not belabor here any detail on those lobbying activities which are outlined in Alan Ferguson's President's Message starting on page 1, other than to say that your trade association in RELANC has worked feverishly hard and been true to its mission statement, which states:

> *Our focus includes research, educational activities, and promotional and advertising campaigns regarding consumer protection abuses and practices which destabilize communities and are harmful to North Carolina citizens, their assets, real property owners, the financial industry, and the State of North Carolina.*
>
> *RELANC is committed to pursue policies, laws and regulations at local, State and Federal levels to combat, prevent, and seek compensation from persons or entities which engage in practices harmful to the client-consumers represented by North Carolina real estate attorneys.*

Adding to the ever changing dynamics at the General Assembly is the very tense and pitched battles being waged between the North Carolina State Bar and LegalZoom (i) before the State Bar Authorized Practice Committee regarding LegalZoom's proposed Pre-paid Legal Plans, (ii) in the North Carolina Business Court concerning the question as to whether LegalZoom's patented "decision-tree" branching software that runs the company's on-line technology that helps consumers prepare legal documents for a fee in North Carolina constitutes the unauthorized practice of law, and (iii) in federal district court wherein LegalZoom challenges the State Bar's denial of registration of LegalZoom's pre-paid legal plans, seeks a ruling that such a denial by the State Bar violates the Sherman antitrust act, and claiming damages in excess of $3.5 million with a request to treble that amount to $10.5 million. All of this has been in the wake of a landmark ruling by the United State Supreme Court in the case of the FTC v. the NC Dental Board which upends some of the traditional means and methods of state agency governance and functions in the realm of enforcement of unauthorized practice statutes. The practice of law is under attack.

The consumers whom we represent and protect as clients, are under attack.

The only way to effectively combat well-financed corporations that are inserting themselves into a professional trade and providing legal services to consumers in exchange for hundreds of millions of dollars in profit for their executives and investors, with consumers standing to lose by being represented by persons or entities with no training or experience to practice law in North Carolina and no redress if they are harmed, is to fight back and make our case to policy-makers and decision-makers. This battle is in the legislature, and in the courts. This takes organization and money. RELANC has the organization. We need more support, and by that I mean money. We need your membership, participation, and dues; and we also need your colleagues to join, support, and participate in the work and advocacy that RELANC is helping spearhead for the benefit of NC consumers of real estate legal services.

Page nine (9) of this Newsletter includes a copy of RELANC's Membership Application. You can also go to www.relanc.com and join online. Instructions for sending the application and how to pay the $200 annual dues are including on the application document. Please make sure that you pay your annual dues in a timely fashion. If you have not done so for 2015, please do so now. If you have already paid, **please e-mail ten (10) of your colleagues and urge them to join and support RELANC**! Send them a copy of this Newsletter.

Please help support the continuation of RELANC's efforts and pursuit of our Mission Statement to advocate on behalf of, and protect, our consumer-clients across the State of North Carolina.

A Special Message from Michelle Korsmo

Chief Executive Officer, American Land Title Association

ALTA has made great efforts to urge the Consumer Financial Protection Bureau to implement an official hold-harmless period for enforcement actions related to its new TILA-RESPA Integrated Disclosure rule.

These efforts have included a meeting between ALTA President Diane Evans and Director Cordray on May 13, during which Diane personally requested a hold-harmless period following TRID implementation on August 1. During our Federal Conference a few weeks ago, hundreds of ALTA members met with more than 220 members of Congress or their staff to request the hold-harmless period. This request was formalized in a letter from the House of Representatives, sent by Representatives Barr and Maloney with 252 members of Congress singing the letter. Similar correspondence has come from the Senate, sent by Senators Donnelly and Scott with 41 senator signatories. Additionally, the Title Action Network, ALTA's 11,000-member advocacy organization, has sent hundreds of emails to members of Congress requesting time for the industry to work through possible issues during implementation.

Unfortunately, the CFPB released a statement last week that neglected to embrace a true hold-harmless period. On its blog (http://www.consumerfinance.gov/blog/know-before-you-owe-youll-get-3-days-to-review-your-mortgage-closing-documents/), the bureau stated that it will be "sensitive" to the efforts that companies have made in good faith to comply with the 1,888 pages of the TRID regulation. Since the bureau's statement did not include a specified time period or even define "good faith efforts," this statement fails to provide confidence to mortgage lenders or settlement service providers as they work to comply with this complex regulation that will affect millions of homebuyers in the United States. We appreciate the bureau's indication that it will be sensitive when considering enforcement actions, but the industry needs breathing room from the fear of enforcement when deciding how to interpret the rule in application during the first few months. It is highly unlikely this statement will combat the prediction of restrictive decision making and delays in closing the transactions.

I know our members are doing their best to prepare for implementation, but the uncertainty caused by this rule could result in confusion in real estate closings, which will ultimately undermine the bureau's goal of helping educate consumers about their mortgage transactions.

ALTA continues to advocate for an official hold-harmless period to help ensure that real estate closings go smoothly after the August 1 implementation date. ALTA is currently working on a letter with our partner trade groups that encourages Congress to pass H.R. 2213, which is sponsored by Congressmen Pearce (R-NM) and Sherman (D-CA) and would mandate a definitive hold-harmless period.

Can you also do me a favor? Last week, I heard several people say "the bureau announced delayed implementation." ***Now, you and I know this isn't what they said.*** But many people are just hearing the rumors and not reading the source material***. Can you make sure to let people know the rule takes effect on August 1st? Period.*** The CFPB and industry are talking about making sure the bureau doesn't start levying fines on companies who are trying to do the right thing when they apply the new rule. Thanks for leading on the delivery of this message.

I hope this ALTA Advocacy Update is useful to your work. Your comments and questions are always welcome. I can be reached at michelle@alta.org.

Best regards.

Interview Q&A : Hunter S. Edwards

WOMBLE CARLYLE CHARLOTTE OFFICE

B.A. Wake Forest University (2005)
J.D. University of Florida (2009)

What type of law do you practice at Womble Carlyle?

My practice is focused entirely on commercial real estate. I represent developers, lenders, landowners, institutional investors, and others in all aspects of commercial real estate transactions, including, but not limited to, leasing, diligence review, contract negotiation, easement preparation, and general development work for office, industrial, retail and multi-family projects. On any given day, I could be negotiating a purchase and sale contract in the morning and then spend the afternoon assisting a multi-family developer with various development matters. My background in reviewing titles helps with the amount of diligence work I do for a variety of large scale REIT transactions.

Why did you join RELANC?

I joined RELANC at its inception because it provided me with opportunities to become involved in an organization related to my practice and to introduce me to other practitioners across North Carolina. As a young attorney, I also wanted to take an active role in whatever organization I joined and RELANC allowed me to do that as I was the primary draftsman of the Standards of Practice that RELANC adopted. RELANC is a great organization to join if you want to take a more active role in shaping not only the organization's focus and goals, but also the North Carolina real estate industry as a whole, because it is very open to new ideas and incorporating new lawyers (whether new to the association or new to practice) into leadership roles to keep ideas fresh.

Why should other commercial real estate attorneys join RELANC?

One of the major benefits to my commercial practice is that RELANC has a legislative action team that is devoted to reviewing, commenting, and advising legislators on pending legislation that impacts the North Carolina real estate industry. This action team works directly with RELANC's lobbyist, Jim Harrell, to keep a pulse on the news coming from Jones Street. While other organizations may provide similar functions, RELANC is uniquely positioned to act and react quickly to keep pace with fast moving legislation and provide tangible commentary and drafting support for the same. RELANC can also quickly get in touch with its membership to alert it of important events happening at the legislature that may otherwise get lost in the shuffle of your everyday practice.

Another benefit that I have experienced is that RELANC provides a great forum to meet other real estate practitioners outside of your direct region and to develop important and meaningful relationships with them. Because the association is very much member driven, each member is afforded many opportunities to strengthen his or her relationships by working directly with other attorneys across the state on various committees and implementing the association's goals.

Finally, I believe RELANC is unique among organizations aimed at North Carolina real estate lawyers because the focus is to advocate on behalf of North Carolina consumers as well as North Carolina real estate lawyers. I think these two functions go hand in hand with a lawyer's natural role as an advisor and counselor to his or her clients. RELANC is able to advocate for the benefit of attorneys and the general public in a way that the North Carolina Bar and North Carolina Bar Association are not able to because of their diverse membership, organizational focus, and limited resources.

Tell us about your family and free time.

Outside of work hours, I enjoy spending time with my wife, our eleven month old son, and our yellow lab. My entire family loves being outside and we take every opportunity to walk around our neighbor or just play in our yard. In whatever free time is left, I enjoy playing golf and watching just about any sport that happens to be on TV at the time. I also enjoy cooking and reading one of my many cookbooks.

Member Engagement & Committees

Operations, Membership & Resource Development Committee

Chairperson: Dan Terry, The Terry Law Firm, Charlotte

This committee identifies recruitment opportunities and member benefits in order to strengthen the membership ranks of the organization.

Membership Recruitment Opportunities

- RPS Annual Meeting Sponsorship
- Best Practices Boot Camp Webinar Co-Sponsorship
- Attendance/Raffles at Title Company Events

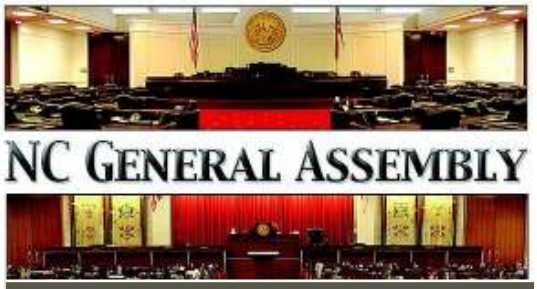
Member Benefits/Enhancements

- Referral Network /Public Referrals
- Free CLE at Regional Meetings
- Legislative Updates
- Vendor Group Discounts

Communications Committee

Chairperson: Mike Gorenflo
Sandhills Law Group

The communications committee of RELANC is quite active. Members provide quarterly newsletter content, both original and reproduced, as well as recruit authors for content and maintain a speaker list. Other members recommend and assist with mass email campaigns as well as develop any print or advertising materials for events. Further, members develop web content reflecting the mission statement, vision, and goals of RELANC.



Strategic Planning & Public Policy Committee

Chairperson: Ben Kuhn
Ragsdale Liggett, Raleigh
Members: 17

What the SP3C does:

This committee watches for any legislative matters which may impact our real estate attorney members and their property owner clients. These include any possible changes to foreclosure and eminent domain statutes, as well as changes to the S.A.F.E. Act. We also monitor changes to the Assumed Name Certificates and Removal of names from public registry.

In addition, we track and participate in discussions regarding the high profile matter concerning LegalZoom.com, Inc. and its proposed unauthorized practice of law in the state of North Carolina.

RELANC Leadership

Please join your colleagues listed below in supporting the educational, advocacy and legislative efforts of RELANC.

Chair: Alan E. Ferguson, Greensboro
Vice Chair: Hunter S. Edwards, Charlotte
Secretary: Ashleigh E. Black, Raleigh
Treasurer: Salvatore Balsamo, Charlotte

Directors:

James M. Arges, Durham
Stephen B. Brown, Chapel Hill
Keith Calder, Wilmington
Kimberly R. Coward, Cashiers
Michael G. Gorenflo, West End ♦
Benjamin R. Kuhn, Raleigh ♦
Robert J. Ramseur, Jr., Raleigh
L. Holden Reaves, Fayetteville
Kimberly B. Rosenberg, Raleigh
Christopher T. Salyer, Fayetteville
Daniel A. Terry, Charlotte ♦
Michael M. Thompson, Asheville

Past Chair: C. Thomas Steele, Jr., Burlington

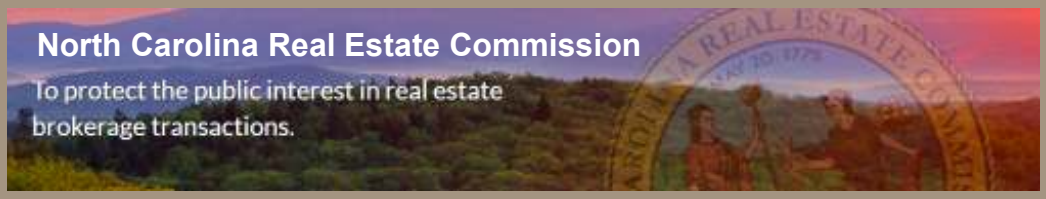
♦ *denotes committee chairs*

Thank you to our Annual Meeting Sponsors

Investors Title
INNOVATIVE BY INSTINCT

PARAGON BANK

LAWYERS MUTUAL



Attorney Robert J. Ramseur, Jr.

Appointed To North Carolina Real Estate Commission

Robert J. Ramseur, Jr. has been appointed to the North Carolina Real Estate Commission by Governor Pat McCrory. The Commission is responsible for the regulation of approximately 100,000 real estate firms and agents in the state.

Ramseur is a partner at the law firm of Ragsdale Liggett PLLC and chair of its real estate department. His practice is focused on residential and commercial real estate transactions, real estate financing and development, tax and entity structuring, lease negotiations and drafting and real estate litigation.

About Robert J. Ramseur, Jr.

Licensed to practice law in 1996, Ramseur formed his own firm in 1997 and merged his real estate practice with Ragsdale Liggett in 2001. He acts as counsel for buyers and sellers, real estate developers, homebuilders, banks and mortgage brokers, real estate brokers, landlords and tenants. In addition to his extensive experience in all aspects of real estate transactions, he is a licensed North Carolina Real Estate Broker.

He is past president of the Wake County Real Property Lawyers Association, past Chair of the Joint Forms Task Force for the North Carolina Bar Association and North Carolina Association of REALTORS®, and past president of the Real Estate Lawyers Association of North Carolina, Inc. (RELANC), a trade association with over 350 members.

Ramseur has been named to Best Lawyers in America® list, the North Carolina edition of Super Lawyer| in Real Estate as well as top 100 North Carolina Lawyers in the 2015 Super Lawyer| edition by Thomson Reuters. He also holds the Martindale-Hubbell® AV Preeminent peer review rating for lawyers and has been named Legal Elite by *Business North Carolina* every year since 2006.

Active in civic and charitable activities, he is a Director for Band Together, serves on the Board of the Y-Guides and Princesses Program of the YMCA of the Triangle, and was its Nations Chief in 2011. He is past president of the Rotary Club of the Capital City and has served on the Board of Directors for Raleigh's Theatre in the Park since 2005 and Board of visitors for Camp Sea Gull and Camp Seafarer since 2008. Ramseur is a 2011 Graduate of Raleigh Chamber of Commerce Leadership Raleigh.

7

What is RELANC?

The Real Estate Lawyers Association of North Carolina, Inc. (RELANC) is committed to engaging in energetic advocacy on behalf of real estate attorneys and our consumer clients in the State of North Carolina.

RELANC is an association comprised of real estate closing attorneys, short sale and REO attorneys, title counselors, and litigators. Members come from all over the state of North Carolina to share a common vision focused on defending, developing and defining ethical and viable real estate business practices.
RELANC is first and foremost committed to defending consumers who purchase real property in North Carolina. Our focus includes research, educational activities, and promotional and advertising campaigns to combat, prevent, and seek compensation from persons or entities which engage in practices harmful to North Carolina property owners.
Additionally, RELANC provides continuing legal education and up to date information regarding relevant, immediate changes to the industry and its practitioners, through its co-sponsorship of the *NC Closing Attorney Best Practices Task Force Boot Camp Webinar Series* as well as regional meetings held throughout the state.

What is the Urgency?

RELANC was established in part to seek authoritative guidance for real estate professionals across the state as to whether handling a real estate closing involves the practice of law and the exercise of legal judgment requiring licensure by the State Bar to perform such services on behalf of third-party consumers. This also anticipates potential entry into the North Carolina market by vendors of online forms, such as Legal Zoom.com, Inc It is our firm position based on existing law and decades of practice that *all aspects of a real estate closing in the State of North Carolina must be performed or supervised by a licensed North Carolina attorney.*
In recent history, there has been significant confusion about who or what sorts of entities may manage a closing involving real property located in North Carolina. This has led to numerous instances of Unauthorized Practice of Law (UPL). Often, when illegal UPL is discovered in this context, it is because the person or entity engaging in UPL has done something wrong or their actions have caused damage to a consumer who seeks legal advice and counsel about their real estate transaction.

RELANC's over 250 members include attorneys from across North Carolina, as well as from numerous independently owned title agencies, North Carolina based and national title underwriters. 45 of these individual members serve on the three committees and on the board of directors. Without their membership and active participation, RELANC's work would not be possible.

How YOU Can Help

Advocacy, especially good advocacy, costs money. RELANC is active at all levels of policy-making as it affects our consumer-clients and the manner in which their interests in real estate are transacted and handled. Now, more than ever, RELANC needs your support, experience and dedication. Please visit ***www.relanc.com*** to learn more and to join this vibrant team of professionals who continuously strive to foster better standards and practices for how real estate professionals transact business within North Carolina.

Membership

Membership in RELANC is $200 per year. Additional attorneys from within the same firm may join for $100. Dues payments may be made online, in person at an event, or via check payable to RELANC and sent to the address on the back of this brochure. Please click over to the web site, to find out more and join!

www.relanc.com

Real Estate Lawyers Association of North Carolina
Defending Property Rights

Membership Application

Real Estate Lawyers Association of North Carolina
Defending Property Rights

Please print or type the following:

Full Name: _____

Firm: _____

Address 1: _____

Address 2: _____

City, State, Zip: _____

NC State Bar Number: _____

Phone Number: _____

E-mail Address: _____

Please check one of the following: (These are the only two classes of attorneys eligible.)

☐ I am in Private Practice

☐ I am employed by or own a Title Agency or Title Underwriter that issues title policies insuring title to property located within North Carolina which is closed only by North Carolina real estate attorneys.

Payment Amount:

☐ First member in firm / sole practitioner $200.00

☐ Additional attorney practicing with a paid member $100.00

Payment Information

Check # _____ (*Payable to RELANC*)

Credit Card: _____ Visa _____ MasterCard

Card # _____ Exp: _____

Name on Card: _____

Signature: _____

Please send this completed Membership Application to:

RELANC
4711 Hope Valley Road, 4F-132
Durham, NC 27707

RELANC welcomes credit card payments. To join RELANC online and pay by your membership fee by credit card please click to http://www.relanc.com. If you do not know whether your 2015 membership is current, please email the Executive Director at BonnieBiggs@relanc.com or call 844-4RELANC to inquire.

Topic of Interest >>>

Welcome to a Brave New World: Integrated Disclosures – August 1, 2015

By Jonathan W. Biggs, J.D.
Vice President – Director of Risk Management & Education
Investors Title Insurance Company

When Aldous Huxley presented his 1932 vision for the future, entitled a Brave New World, he imagined a lot of things that could potentially affect our daily lives by the time we reached 2015. However, he did not imagine the comprehensive overhaul to the way we perform residential real estate transactions every day. He might have imagined a strong government reaction to a problem threatening our society, but did not go as far as to prophesize the Integrated Disclosure. Huxley would have agreed with the CFPB, that financial stability was the "primal and ultimate need" if civilization was to survive. Well, with or without the help of Mr. Huxley, we enter a Brave New World of our own on August 1, 2015.

When the "Housing Bubble" burst in and around 2008, the word "Financial Crisis" became the standard introductory phrase on the nightly news. In the wake of this crisis, Congress became very active to attempt to make sure that this type of financial threat would never happen again. On July 21, 2010 the Dodd-Frank Wall Street Reform and Consumer Protection Act (Pub. L. 111-203, H.R. 4173) was signed into law (hereinafter "Dodd-Frank"). Title X of Dodd Frank created the Consumer Financial Protection Bureau (hereinafter "CFPB"). The CFPB was charged with re-thinking and re-inventing the manner in which financial terms were communicated to consumers, codifying this new paradigm in our financial landscape and enforcing the very rules that it promulgated. Specifically, Dodd Frank mandated that the CFPB combine, clarify and streamline the consumer disclosures used in a typical residential mortgage transactions.

Historically, consumers had two different agencies promulgating, regulating and enforcing the use of two different consumer disclosure forms. First, we had Housing and Urban Development (hereinafter "HUD") that was in charge of these issues as they related to the "Real Estate Settlement Procedures Act" (hereinafter "RESPA"). HUD and RESPA were primarily concerned with the settlement statement (known as the HUD-1), which detailed all of the expenses and credits of the real estate transaction. Second, we had the Federal Reserve Board (hereinafter "Fed") which was in charge of these issues as they related to the Federal Truth In Lending Act (hereinafter "TILA"). The Fed, through TILA, was charged with accurately informing consumers on the cost of credit ("Annual Percentage Rate" or "APR") and payment terms. The consumer disclosures required by both agencies were required to be disclosed at similar times on similar issues, while using inconsistent terms and complex calculations.

Congress, through Dodd-Frank, said that the consumer had had enough of competing forms and regulations. Further, Congress asserted that while everything was being done in the name of the consumer, the consumer was the victim of competing government regulations. Section 1032(f) of Dodd-Frank requires the CFPB to combine the RESPA & TILA disclosures within one year of establishment. The CFPB started work on July 21, 2011 and released the proposed 1088 page rule on the Integrated Disclosures on July 9, 2012.

The goals of Dodd-Frank were simple and noble in their origins. First, protect the American economy from unreasonable risks. Second, create an easier to use and easier to understand integrated disclosure for a consumer residential mortgage transaction, which would allow the consumer to compare financing terms and avoid undesired surprises at the closing table. In order to achieve these objectives, the CFPB conducted numerous forums, solicited feedback, and worked diligently to meet the Congressional mandate and provide the consumer with what the consumer wanted in a disclosure. After listening to all of the data collected, the CFPB issued the final rule on the Integrated Disclosures on November 20, 2013

with an effective date of August 1, 2015.

The integration and consolidation of these closing disclosures did not end with the documents themselves. The promulgation, interpretation and enforcement of the regulations were moved under the purview of the same agency, the CFPB. No longer should intergovernmental wrangling occur over the importance and/or effectiveness of one agency over the other. Four disclosures from two agencies were reduced to two disclosures from the same agency. There are actually two primary Integrated Disclosures, the Loan Estimate (following application) and the Closing Disclosure (preceding consummation).

Loan Estimate

Previously, the Fed had the initial Truth in Lending Disclosure (hereinafter "TIL") and HUD had the Good Faith Estimate (hereinafter "GFE") for initial disclosure by the lender within three (3) days of the receipt of the application. Both of these documents provided the consumer with key loan terms and financial responsibilities. Both of these documents are being discontinued in favor of the new Loan Estimate. Congress saw these disclosures as competing with each other and potentially confusing to the consumer. The goal of this Integrated Disclosure, known at the Loan Estimate, is to provide the consumer with one document per lender for the purpose of comparison shopping. Each lender will have to produce the Loan Estimate within three days of application, so that they consumer may lay them side by side and choose the most appropriate financial decision for their household.

Closing Disclosure

Previously, the Fed had the final TIL and HUD had the HUD-1 Settlement Statement. Both of these documents were iconic in the length of their utility in the consumer residential real estate closing. With only small modifications, the forms endured in excess of forty (40) years. While these replaced forms will still exist in certain types of transactions which are excluded from the Integrated Disclosures Rule, as of August 1, 2015, they will not be a part of most closed-end consumer residential mortgage transactions. While an article of this length could not possibly do justice to the depth information and analysis required to complete and to implement the Closing Disclosure, there are a few significant points that are worth identifying in this short introduction:

a) Closing Disclosure replaces the final TIL and the HUD-1
b) Tolerances on APR deviations are redefined
c) Must be delivered to the consumer three (3) days in advance of closing
d) Re-disclosure (restarting the three day period) is required if there are changes in the transaction post disclosure to the consumer such that:
    a. The APR tolerances are violated;
    b. Change to the loan product; and/or
    c. Addition of a pre-payment penalty.
e) If there are changes to the final figures post-closing, there are re-disclosure requirements as well.
f) Either the Creditor or Settlement Agent may prepare and provide the Closing Disclosure to the consumer. If it is provided by the Settlement Agent, then the Settlement Agent is considered the creditor for the purposes of compliance with the rule regarding the Closing Disclosure.
g) The HUD-1 line numbers have been replaced with similar section headings, but the items on the Closing Disclosure must be alphabetical within the section headings.

Exclusions From The Integrated Disclosures Rule

While the Integrated Disclosures Rule applies to most closed-end consumer residential mortgage loan transactions, there are exclusions from the rule. Specifically, the rule does not include the following:

a) Home Equity Lines of Credit (hereinafter "HELOC")
b) Reverse Mortgages
c) Mortgages / Deeds of Trust Secured By Mobile Homes (which are not affixed/attached to the real property in accordance with state law)
d) Creditors that make five or less mortgage loans per year which are covered by the rule

Repackaged Information Designed to Better Inform

At the end of the day, the information contained in the new Integrated Disclosures (whether it be the Loan Estimate or the Closing Disclosure) is an effort to reorganize the information disclosed to the consumer to foster a better understanding of the biggest financial decision that most consumers will ever make. Yes, it has changed the paradigm from the status quo. However, how are we inconvenienced? We have been merely asked to learn where the same old information is disclosed on two new forms. Hardly the Brave New World professed by Huxley.

Aldous Huxley gave a dark view of the role of strong governmental influences in World State in 2540 AD. His Brave New World included government involvement in nearly every aspect of life, from reproduction, to psychological manipulation, to classical conditioning all designed to "improve" society. Some say that we enter our own Brave New World on August 1, 2015. This new paradigm is coming with a similar goal of not repeating the financial instability of the past. All that has been asked of us so far is merely participate in a process that allows the government to eliminate duplicitous disclosures for a better informed consumer. True the format of the new federal disclosures will change forever. However, in several years, we will all wonder what the big deal was.

Breaking News: Receive Referrals via RELANC

This spring has seen a significant increase in the number of referrals requested through the RELANC office. We have received calls from members of the public throughout the state, seeking names and numbers of RELANC member attorneys to assist them with their closings and other real estate matters. This is an important member benefit. If you have changed your contact information *in any way* in recent history, please update your record with the NC State Bar and send a copy to your Executive Director, Bonnie Biggs, at bonniebiggs@relanc.com.

COA Holds Revenue Suspended Corporation Can Wind Up

By Chris Burti
Vice President and Senior Legal Counsel
Statewide Title, Inc.

LE Oceanfront, Inc., et al v Lands End of Emerald Isle Association, Inc. COA14-287, Filed on December 31, 2014, is a significant appellate decision from a unanimous panel of the North Carolina Court of Appeals that presents a modern treatment and recognition of the old doctrine recognizing de facto corporations and which resolves the question of whether a corporation subject to a revenue suspension may wind up without reinstatement after dissolution.

The individual plaintiffs are owners of beachfront lots in a residential subdivision (the ‘‘Subdivision”) in Emerald Isle, North Carolina. The corporate plaintiff was formed by the individual plaintiffs and the defendant is the homeowners association (‘‘the HOA”) which owns all of the Subdivision’s common areas. The Subdivision was developed by a series of developers over two decades. The property which makes up the Subdivision proper and the Strip, or portions thereof, were transferred on a number of occasions between different developer entities during this time and this fact does not affect the outcome of the case, therefor the Court used the term “Developer” to refer to any or all of the developers of the property as we also will.

The strip of land at issue in this case consists of a 14 plus acre tract of land between lots in the Subdivision as platted and the high water mark of the Atlantic Ocean (the ‘‘Strip.”) The HOA claimed that the Strip is actually part of the Subdivision’s common area, which it acquired by deeds from the Subdivision’s developers (“the Developers”) in 1988 (“the 1988 deeds”) conveying the open spaces and common areas shown on the recorded maps to the HOA or, alternatively, that it had an easement to use the Strip. The corporate and individual plaintiffs in this action appealed from the trial court’s summary judgment order in favor of the HOA ruling that the HOA was the fee simple owner of the Strip. The plaintiffs contend that the 1988 deeds did not include the Oceanfront Strip and that the plaintiff corporation became the owner of the Strip through three quitclaim deeds from the Developer delivered in 2011 and 2013 (‘‘the quitclaim deeds”).

By 1973, the Developer acquired the tracts of land comprising the Subdivision and the Strip. The Subdivision was developed in sections and the Developer recorded several maps (‘‘the 1974 maps”) for different sections depicting lots, streets, common areas, open spaces, and other features within each section in the development process as well as a Declaration of Covenants and Easements (‘‘the 1974 Declaration”) referencing these maps. The Developer subsequently filed four corrective maps in the 1980’s, (‘‘the 1980’s correction maps”), two of which correct the two 1974 section maps depicting the Subdivision adjacent to the Strip. The individual plaintiffs purchased two of the beachfront lots in 2004 believing them to extend all the way to the mean high water line of the Atlantic Ocean and subsequently installing sand fences; planting sea oats; building decks, walkways and gazebos; paying beach nourishment assessments to the Town of Emerald Isle as oceanfront owners; and giving the Town easements for beach nourishment projects.

The HOA sent letters to all beachfront lot owners claiming ownership of the Strip in 2005 as the result of questions concerning those homeowners’ installation of structures in the Strip. To support its contentions, the HOA presented evidence that it had been pumping excess storm water into the Strip from time—to—time since the 1990’s and the individual Plaintiffs contended that they had observed that the HOA had pumped excess storm water in front of their residence in 2010. The individual Plaintiffs formed the corporate Plaintiff in 2011 and secured quit claim deeds from Developer quitclaiming whatever

interest these Developer entities had in the Strip.

The Court of Appeals set out the procedural history of the case succinctly as follows:

In 2011, Plaintiffs filed suit against the HOA, raising claims (1) to quiet title (based on the quitclaim deeds) ; (2) for slander of title (claiming ownership) ; (3) for equitable estoppel (based on alleged conduct by the HOA when selling the beachfront lots in acting in a manner to lead purchasers to believe that those lots extended all the way to the ocean's mean high water mark) ; (4) for nuisance (based on the storm water pumped into the Oceanfront Strip) ; and (5) for trespass; and requesting inter alia '[t]he Court declare that [the corporate Plaintiff] is the owner of the Oceanfront Strip[.]" The HOA filed its answer including counterclaims for declaratory judgment that it was the owner of the Oceanfront Strip, a claim to quiet title, and, in the alternative, for an easement over the Oceanfront Strip.

In 2013, the HOA filed a motion for summary judgment on all claims and counterclaims. After a hearing on the motion, the trial court granted the HOA's motion for summary judgment. The judgment declared that the Developer deeded the Oceanfront Strip to the HOA in fee simple in 1988 and that the Oceanfront Strip is part of the ''common area" of the Subdivision; and dismissed all other claims and counterclaims with prejudice, except Plaintiffs' claims for nuisance based on the storm water pooling in front of their residences. Plaintiffs took a voluntary dismissal of their nuisance claims and, subsequently, filed their notice of appeal from the trial court's judgment.

With regard to the easement claims of the HOA, the Court of Appeals determined that there were unresolved questions of fact and remanded the issue to the trial court for hearing. The Court of Appeals in addressing the HOA's claims that it acquired fee simple title in the Strip through the 1988 deeds notes that those deeds do not explicitly reference the Strip and do not include a metes and bounds description. Instead, they convey the "streets and other common areas" to the HOA describing them by reference to the 1974 Declaration as amended and the two 1980's correction maps. The Court of Appeals analyzed the 1988 Deeds to the HOA, the 1974 Declaration, the 1974 Maps and the 1980's correction maps. The Declaration references the maps for descriptive purposes, therefore the Court's analysis focuses on what they depict. The opinion states that there is nothing in any of the 1974 maps to indicate that the Strip were to be considered part of any section of the Subdivision and the court further concluded that these maps show a contrary intent. With respect to the relevant 1980's correction maps, the opinion reveals the Court was convinced that they were "unambiguous in demonstrating an intent by the Developer not to include" the Strip as part of the area affected by the maps. The opinion recites that the 1980's correction maps show "various portions" of Strip, however, "much of this strip is covered by the survey's seal and notary signature." Further, these maps did not disclose the complete boundaries revealing to the court, additional evidence "that the Developer did not intend to include the Oceanfront Strip in the conveyance." Thus the court disposed of the claims of title by the HOA in the Strip by virtue of the 1988 deeds. There is a valuable lesson for real property practitioners to be had in this case. Known claims of property rights based upon matters "suggested" on plat cannot be simply ignored even when clearly insufficient under the law. This case amply demonstrates that parties may be willing to contest these issues at great expense right on up to the appellate level.

In this litigation, the HOA also contended that the Developer's 2011 quitclaim deed to the corporate Plaintiff was invalid because, the corporate Plaintiff had not been properly formed as a legal entity at the time the deed was filed and because the Developer allegedly lacked capacity to act as a corporation because it had been dissolved as the result of a revenue suspension and had not been reinstated.

The corporate Plaintiff's articles of incorporation were filed with the Secretary of State forty-nine minutes after the quitclaim deed was recorded. The HQA contended that the corporate Plaintiff as grantee was not a ''legal person" as is necessary in order to be a grantee capable of taking title as required for a valid conveyance. The plaintiffs contended that the transaction occurred on the same day the corporate Plaintiff was formed, that it should be considered a 'de fact' corporation and that the deed was therefore valid. The Court's opinion notes with particularity that the record evidence

in the case disclosed that the Plaintiffs' counsel sent the articles of incorporation to the Secretary of State's Office by courier hours prior to the recordation of the deed in the Register of Deed. Significantly, the opinion notes that in North Carolina where "there has been a bona fide effort to comply with the law to effectuate an incorporation, and the persons affected thereby have acquiesced therein, and have exercised the functions pertaining to the corporation, it becomes a de facto corporation, whose corporate existence cannot be litigated in actions between private individuals nor between private individuals and the assumed corporation. And, again, if a corporation de facto exists, it may exercise the powers assumed, and the question of its having a right to exercise them will be deemed one that can be raised only by the State... citing "Wood v. Staton, 174 N.C. 24[6], 253, 93 S.E. 790, 794 (1917)". However the companion case Pocahontas Fuel Co v. Factory, 93 S.E. 790 (N.C., 1917) actually bears the text of the North Carolina Supreme Court opinion and bears citing. The Court of Appeals found that the quit claim deed was valid because "a bona fide effort was made to comply with the law to incorporate and that 'the persons affected' - which would include the Developer and the corporate Plaintiff - acquiesced in the action." It should be noted that for title examination purposes, it might well be considered prudent to treat such situation like adverse passion, questionable until determined by a court of competent jurisdiction.

Unless overturned on further appeal, this case is also significant in that it resolves a long standing question with respect to the winding up powers of a dissolved corporation subject to a revenue suspension that hasn't been reinstated by the North Carolina Secretary of State pursuant to N.C.G.S. Section 105-232. Such a corporation's power to act is explicitly limited under North Carolina N.C.G.S. Section 105-230. The HOA contended that the Developer could not convey property because it was under revenue suspension by the Secretary of State in 2011, pursuant to N.C. Gen. Stat. § 105-230(b), administratively dissolved and that it had not been reinstated pursuant to N.C. Gen. Stat. § 105-232. This has been a widely accepted contention prior to this decision. The plaintiff's contended, as do some legal pundits, that N.C.G.S. Section 105-232 does not limit the Developer's conveyance of the Strip as an act of winding up its corporate affairs pursuant to N.C.G.S. Section 55-14-05.

N.C.G.S. Section 105-230(b) provides: Any act performed or attempted to be performed during the period of suspension is invalid and of no effect, unless the Secretary of State reinstates the corporation or limited liability company pursuant to G.S. 105-232. However, N.C.G.S. Sections 55-4-05(a)(2) and 55-4-05 (a)(5) provide:
(a) A dissolved corporation continues its corporate existence but may not carry on any business except that appropriate to wind up and liquidate its business and affairs, including:
(2) Disposing of its properties that will not be distributed in kind to its shareholders;
(5) Doing every other act necessary to wind up and liquidate its business and affairs.
The Court of Appeals concludes the the latter provisions override the Chapter 105 provision and "even if the Developer was under revenue suspension, it could still transfer its property if done so pursuant to winding up its affairs."

The opinion explains: "Although acquisition of new property is not an incident to winding up, see Piedmont & Western Inv. Corp., 96 N.C. App. at 108, 384 S.E.2d at 689, we hold that the disposition of property in this case is precisely what N.C. Gen. Stat. § 55-14-05(a) (2) or (5) was enacted to allow. We note that Ronald Watson, who signed all the 2011 quitclaim deed on behalf of the Developer entities, stated that it was his intention to transfer the entire Oceanfront Strip to the corporate Plaintiff as part of winding up the entities. Further, there is no indication that any of the Developer entities were still engaging in any development activities or had any intent to do so in the future." While it has long been clear that a dissolved corporation continues to exist until its affairs have lawfully been consummated, this decision seems to be an authorization for winding up deeds in situations where the public record is very clear that defunct corporation is no longer carrying on business and the deed is reasonably furthering the winding up process. The opinion was unanimous and as of this writing, it is unknown whether a discretionary appeal will be allowed.

Outline of ALTA Best Practices: Pillars # 1 – 4

Salvatore Balsamo
Barrister's Title Services, Barrister's Title Services, Charlotte

Best Practice #1 relates to licensing and requires the implementation of procedures to make sure that all licensing requirements are met on an annual basis and that licenses are properly displayed. The first tip is to maintain your licenses in a central location. In the case of Closing Attorneys that applies to your Law License and Annual Privilege License. Equally important to maintaining the licenses is establishing written procedures that assign responsibility to certain person or persons so that the licenses are properly maintained. If you are audited by a Lender, they will want to see these written procedures.

ACTION ITEM(S):

1. Create list of Personnel with licenses and licenses which need to be renewal with renewal dates.
2. Maintain copies of all licenses and keep in a central location or display as is appropriate.
3. Develop written procedures for renewing all licenses with assigned responsibilities.

ALTA BEST PRACTICES: PILLAR #2 ESCROW ACCOUNTING

All of us with Escrow Accounts must adopt and maintain appropriate written procedures, checklists and controls for their Escrow Accounts allowing for electronic verification and reconciliation. Escrow Accounts must be balanced periodically. While the State Bar requires a minimum of quarterly reconciliations, the best practice, per ALTA, is a monthly reconciliation. Most software programs allow for daily reconciliations, which would be the very best standard to adhere to. Reconciling the Bank Statement with your trial balance is not sufficient. You must perform a three-way reconciliation at least monthly. This additional step relates to files with open balances. Files with open balances should be taken care of as quickly as possible.

Security is tantamount. Utilizing Bank Security Programs such as Positive Pay is highly recommended. Pillar #2 indicates that there should be some segregation of duties enabling for a check and balance system to prevent theft from the account. Background checks on any employees with access to entrusted funds must be performed every three years.

ACTION ITEM(S):

1. Develop written procedures related to your Escrow Accounting.
2. Reconcile accounts periodically; daily if possible
3. Implement security protocols such as Positive Pay.
4. Perform Back Ground Checks on appropriate personnel.

ALTA BEST PRACTICES: PILLAR #3

Continuing with our Summaries of the ALTA Best Practices, we turn our attention to the Best Practice that has likely drawn the most attention… protecting data and information. Pillar #2 is entitled "Information and Data Privacy. In today's modern era, replete with Cyber Criminals, taking steps to protect our clients' private data has become critical. Which data you ask?

You will need to become acquainted with the term Non-public Personal Information or NPI for short. NPI is defined as "Personally identifiable data such as information provided by a customer on a form or application, information about a customer's transactions, or any other information about a customer which is otherwise generally unavailable to the general public." NPI includes the obvious, a client's name coupled with a social security number, driver's license number or credit card number. Less obvious, it includes information related to a transaction such as the lending institution and loan amount for any particular deal.

Pillars, continued from previous page

In addition to taking steps to safeguard our clients' NPI, we must have written procedures in place and your respective offices must comply with those procedures.

ACTION ITEM(S):

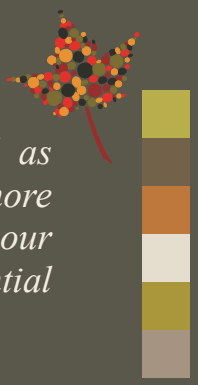
1. Securing NPI in the workplace, including, but not limited to, secure networking and messaging;
2. Restricting Access to NPI to authorized employees only;
3. Performing background checks on employees with access to NPI;
4. Prohibiting and controlling the use of removable media from the workplace;
5. Establishing a Disaster Management Plan;
6. Training employees so that they comply with Company procedures;
7. Overseeing third party vendors and suppliers to prevent breaches;
8. Implementing procedures to actively and continually improve your Company's security Program

Many of you have discussed with each other or your co-workers the effect these requirements will have on our work lives. Many of us will need to change the way we work. We can no longer have files open on our desks when we are not in the office. Offices, filing cabinets and computers that contain NPI will have to be locked up to prevent security breaches. It's a Brave New World.

About Your New RELANC Newsletter

The newsletter is intended to serve several purposes for our members: First, it will feature original content from and about RELANC members, including member profiles and information about member benefits. *Second, it will provide legislative updates, as strategic communication with our lobbyist and his contacts allows.* Third, many of you receive the newsletters of just one or two of the title companies serving our industry. In this model, a lot of great articles don't make it to a lot of the attorneys who need the information. Therefore, we intend to republish articles from a variety of different newsletters each quarter in hopes of broadcasting that information to a wider audience. Credit will be given to each source. Voluntary submissions are welcome.

finalthoughts...



As the real estate market continues to improve, and as August 1 looms near on the horizon, it is even more important that we work together to insure the success of our clients, North Carolina's commercial and residential property owners.

Bonnie Biggs, Executive Director
TEL: 844-RELANC Email: BonnieBiggs@RELANC.com
http://www.relanc.com
4711 Hope Valley Road, 4F-132, Durham, NC 27707