The MLTA Commitment

MARYLAND'S NEWS SOURCE FOR TITLE PROFESSIONALS

Focus on the Future. . . .

Commitment
Spring 2016

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Please email any questions or comments to jlynch@firstam.com.

Your feedback is appreciated. If you are interested in advertising or submitting content to *The MLTA Commitment*, please contact me or Margaret Webb, Executive Director of the MLTA.

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Want to Write an Article?

The MLTA Commitment Committee is seeking people to write articles and contribute items for the next issue. Articles and contributions submitted should inform the MLTA membership of topics affecting the title industry in Maryland. As an added benefit for those working toward earning the Certified Land Title Professional (CLTP) designation, submission of articles can be used toward points for the CLTP designation. Contact MLTA at MLTA@mdlta.com.

Did you know?

- The Weekly Legislative Update is available for all members. Request it from MLTA@mdlta.com or register as a member on our website, MDLTA.org
- If you would like to renew your MLTA Membership, click here.
- MLTA offers several on-line CE credit classes, including a new 3-hour Ethics course. Click here to see our catalog.

The Maryland Land Title Association (MLTA) is a professional organization working on behalf of title industry service providers and consumers. We hope that you will consider joining the many title insurance agents, abstractors, attorneys, and underwriters who already have benefited from their membership.

MLTA Leadership

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President's Message

"Wherever you turn, you can find someone who needs you. Even if it is a little thing, do something for which there is no pay but the privilege of doing it. Remember, you don't live in a world all of your own."
— Albert Schweitzer

With these words, I begin my Vision Statement for the Maryland Land Title Association. We are an all-volunteer organization, and it is truly a privilege to serve an industry that is so relevant – owning a home is still the American Dream – investing in real estate a rewarding and lucrative opportunity for many – so, where do we fit in?

"We protect your property rights and provide peace of mind." These words, recently coined by the ALTA, resonate with many. Whether you are buying your first home or downsizing to your last – we all take pride in our homes. We wipe up puppy puddles, scrub the juice from our carpets, clean the beer from the ping pong table, drink wine in front of the fireplace, and ultimately – if we're lucky enough, we hold hands and grow old together. Yes, we protect the American Dream!

Speaking of volunteers – at a recent board meeting I quickly calculated the billable hours sitting around the table. You might be surprised to know that there were 7 attorneys present, 8 title professionals at the table, 3 additional attorneys on the conference call, as well as 3 more title professionals. My best guess would be a minimum of $3600/hour – that's a lot of free legal counsel in a morning, a month, and a year! Do I need to say more about the benefits of MLTA membership?

"If you're not at the table, you're on the menu."
The CFPB comment period on new legislation is expiring, a new Transfer on Death law creates numerous underwriting concerns, legislation in another state increases your liability even if you don't issue a policy, and a local non-profit is unable to move forward with expansion due to unresolvable title issues. Who's got your back? We do! These are just a few of the issues that were taken on by YOUR association last year. We were at the table, we demanded answers, and we were effective.

"Protecting you now, and in the Future…"
What initiatives will be on the agenda for the coming year? We will continue to educate and provide guidance on TRID. If you're reading this, you've survived, and we can now move on to…Advancing the Adoption of ALTA's Best Practices. We all have a few war stories that we can tell at the settlement table; however, one of our initiatives for the coming year will be to speak directly with homebuyers and realtors about the value of title insurance. Look for upcoming information about HOP - the Homebuyer Outreach Program developed by ALTA, and look for our booth and CE credit seminars at the MAR convention in OC. We will continue to promote regulatory compliance with an emphasis on market conduct. We only look good if we all look good; so please keep that in mind as you develop policies and procedures for Best Practices. Lastly, we will expand our focus on cyber security risks. A shred box in the kitchen is no longer enough. Cyber risk is real, it's scary, and it's big money!

Wanda W. DeBord, CEO
TitleMax, LLC

2015 ALTA Annual Convention
Advancing an Industry

2015-2016 ALTA President, John M. Hollenbeck, NTP
EVP, First American Title Insurance Company

It's an honor to serve as ALTA President this year. It's a privilege to serve such a great industry—an industry that has provided my family its living for 35 years. I am grateful for your confidence. I will work very hard to represent the industry well.

Thank you, Diane Evans. You have worked tirelessly serving our association and industry. You do an excellent job. I admire you and appreciate your hard work.

But, you can't slow down quite yet. As you well know, our work on the ALTA Board of Governors requires continuity and experience. I look forward to working with you this coming year as you fill the important role of immediate past president.

A special thank you to my friends at First American. So many of my co-workers are here today. Thank you for being here. And thank you to First American's leadership team for recognizing the value of ALTA service. My First American colleagues may see less of me this next year, but it's not for lack of affection for such great people, at such a great company, in such a great industry.

Thank you to my wife, Karla. I deeply appreciate your support. I look forward to your company as we travel to 127 state land title conventions this year. The truth of it is that for Karla and me, our time with ALTA is fabulous. We've met many wonderful people and developed many close friendships. Our lives would be quite different without those relationships.

In fact, some of our funniest episodes take place on the road. For example, Karla and I were travelling east from California to some ALTA meeting. I don't remember the purpose but I do remember the flight. It was during the workweek, so I had my laptop open, pounding away at the keyboard.
Karla was leisurely flipping through a magazine.
At one point she interrupted me to tell me about an article she was reading about pets. She said that the author's main point was that after owning a pet for a long period of time, the pet owner actually starts to look like the pet, taking on some physical characteristics, and so forth.
I remember being rather unimpressed. All I wanted to do was get back to pounding on my keyboard. And that's exactly what I did. A full five minutes later, Karla leaned over and, nearly whispering, said "you need to get a dog that looks like George Clooney."
So thanks, Karla. I know we both look forward to a busy and productive year.

Speaking of a productive year, let's turn to the challenges and opportunities ahead of us this coming year. Here is a short but important list:

- Continue implementing TRID
- Advance the adoption of ALTA Best Practices
- Speak directly to homebuyers about the value of title insurance
- Promote regulatory compliance with an emphasis on market conduct, and
- Expand our focus on cyber-security risks

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The Know Before You Owe Rule became effective a week ago. Within days or weeks, we'll start actually closing deals using the new forms. We should all be very proud of the work of the land title industry getting ready for the new rule. In general, I think we've done a darn good job.

Obviously, our jobs are not yet complete. It will take the next few months, before the significant process, procedure and technology changes become second nature. And, ALTA has a continuing role to play with rule implementation. The rule will need modifications. It will be up to ALTA to advocate for changes to the rule that ensure transactions occur smoothly—benefitting homebuyers and sellers, and the industry as well.

ALTA is in the process of collecting real-life homebuyer experiences during the closing process. Many of you in this room are participating and we thank you for helping with this effort. These consumer closing surveys will help inform our advocacy efforts, helping us make the case for positive changes. With these surveys, we'll be able to show the CFPB the confusion that still exists for consumers at the closing table and the inefficiencies with the new forms.

For example, the manner in which owner's title insurance is erroneously disclosed needs to be fixed. That's a battle we fought and lost during the initial rulemaking. As we compile our real life stories, our industry will get a second bite at the apple as rule modifications are considered. And, we will not give up on this until the problem is solved.

So, regarding *Know Before You Owe*, hang in there. Keep working hard. At ALTA, we are dedicated to ensuring that rule modifications make things more workable for all concerned.

Mortgage lenders face a serious challenge. They are required to manage third party relationships and ensure those third party providers—including the companies they use to close their loans—don't violate federal consumer financial laws, and are capable and well suited to do the work for which they are hired.

Our ALTA Best Practices go a long way to helping mortgage lenders identify companies who do a good job and follow the rules—rules that protect homebuyers and sellers—and lenders as well. We should be proud of our efforts to bring tangible solutions where none existed through the Best Practices.

We know that requirements for third party oversight are not going away. What the regulators expect of lenders needs clarity, but this is not the proverbial pendulum swinging back and forth. The requirement for third party oversight and the need for the ALTA Best Practices are permanent parts of the landscape moving forward.

ALTA is committed to uniting the mortgage industry in its focus on third party relationships. We will work to develop a consensus on Best Practices requirements and certification standards. We'll work with the lending community to foster that consensus, and we'll work to increase the already improving rate of adoption of best practices by our members.

Our industry must do a better job explaining why title insurance is so beneficial to homebuyers. How many times in your career have you been in discussions about the need to educate homebuyers about title insurance and the closing process? It seems like a constant refrain. As infrequently as people buy

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homes, it's no wonder they don't fully understand the process, or the benefits our product provides. This age-old issue is more important now than ever. Our urgency is spawned in large part by provisions of the *Know Before You Owe* Rule. Homebuyers are now reminded — in bright lights — that owner's title insurance is optional. And, the manner in which the CFPB requires the cost of our product to be disclosed is inaccurate and confusing.

ALTA's Homebuyer Outreach Program provides many of the tools needed for members to reach out to homebuyers directly. Our new Homebuyer Guide includes nearly 60 marketing pieces, advertising, blog posts, social media content and presentation samples. I encourage you to use these tools to get positive messages out to homebuyers in your communities.

ALTA's HomeClosing101 website is another excellent resource for homebuyers. The site was recently fully renovated to better serve consumers and now reflects the closing process post-Know Before You Owe rule implementation. Use this retooled website—and link to it on your own website—to provide consumers better insights into the home-buying process and the benefits of owner's title insurance.

Our industry must do a better job, not only educating consumers on the benefits of our product, but also creating positive impressions of our industry in general. The two go hand-in-hand. Think about it. How can we expect a homebuyer, unfamiliar with the benefits of owner's title insurance to buy our product, if the only impressions they have our industry are negative? Maybe they read in the New York Times that title insurance is a scam. Maybe they've heard about allegations of kickbacks, or read about a title person going to jail for stealing money from an escrow account. Maybe they've read reviews on Yelp about an unethical closing agent.
This point is worth repeating. If we expect homebuyers to act on our recommendation to buy an owner's policy, we need positive impressions of our industry circulating in the communities we serve.

We in the title industry are good, hard-working, law abiding people. We are ethical and trustworthy. We follow the rules. Our industry is full of people that want to do the right thing. This makes me proud to be a title guy.

Unfortunately, a few outliers may not follow the rules and thereby tarnish our collective image. We can't stand for that. We cannot permit negative impressions from the unethical behavior of a few to define our industry. It's time that our industry does more than follow the rules. We must advocate for regulatory compliance, and marginalize bad actors. There is a market demand for compliance, some from our regulators but even more so from the consumer. We must meet a higher level of transparency in the way we follow the law. Sometimes we view this conversation as though we are under a heat lamp. Instead, I would argue that as an industry we must use this greater transparency as a spotlight. We have no room for less than our very best.

ALTA can and must promote compliance with laws. Regulatory compliance is and should be held as a high ideal by ALTA.

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As the CFPB paints the boundaries of what it considers permissible behavior through its various enforcement actions, ALTA must do an excellent job educating its membership. The message to our members should be clear and realistic. Our membership, in turn, should be united in creating positive impressions of our industry through advocating for regulatory compliance.

One of the biggest threats we must tackle is cyber-security. This issue transcends all levels of business and government. The risks are significant and may be the most severe threat we face in the near and mid-term. Homebuyers can lose confidential information entrusted to our care and escrow trust accounts can be drained.

ALTA is working to connect our membership with cyber security experts to stay on top of the latest challenges and solutions. For example, we are in the process of joining the Financial Services Information and Analysis Center. This is a global resource for cyber threat intelligence analysis and sharing. Many of our lender customers actively participate in this organization. This resource will help us as each of our companies work to protect confidential information and our trust accounts.

There is no shortage of issues facing our industry. In challenging times like these, we depend on a strong trade association. Fortunately, ALTA is strong. Our staff is excellent. Involvement by our membership is robust.

Our industry is up to the challenges I've outlined today. We are very good at what we do. Our products and services are valuable to those we serve, to the nation's economy, and to society in general. Amidst all of the challenges, the future of the land title industry is bright. Our role in the real estate transaction remains vital.

I love this industry. It's what I've done my entire adult life. And, I'm honored to serve as ALTA president this year. I promise to work hard and represent you well. Thank you.

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ALTA CALENDAR OF COMING EVENTS

2016 Business Strategies Conference
March 16 - 18| JW Marriott Indianapolis | Indianapolis, IN

2016 Federal Conference & Lobby Day
May 16 – 18 | Renaissance Downtown | Washington, DC

2016 Annual Convention
October 4- 7 | Fairmont Scottsdale Princess | Scottsdale, AZ

*Note: Annual Convention now starts on a Tuesday and ends on a Friday

MLTA Maryland Land Title Association

2016 Calendar

Southern Maryland Chapter

The MLTA Southern Maryland Chapter is holding its annual 4-hour CE event on March 10, 2016. Registration begins at 12 pm. Class is 12:30 – 4:30 pm.

Useful Statutes, Cases, and Regulations for Maryland Title Insurance Professionals
– Ned Livornese, Stewart Title

TRID
– Diana Rucci, Wells Fargo Home Mortgage

Every Deed Tells a Story
– Eileen Weiss, First American Title Insurance Co.

SMAR - Graham Room
8840 Old Leonardtown Road, Hughesville, MD
Register here

Pre-Licensing

Prepare to become a Licensed Title Producer: Next class: **March 7 and 10, 2016**

FREE TWO HOURS of CE Credits in Cambridge – March 23, 2016

The **MLTA Eastern Shore Chapter** is offering Members and Non-Members two FREE Continuing Education credit hours: Hyatt Regency Chesapeake Bay Golf Resort, Spa & Marina Cambridge, MD

Registration begins at 8:30 am. Class begins at 9 am.

Commercial Closings- 1 hr
Every Deed Tells a Story- 1 hr

Instructors:
Sally Presler McCash, Esq., Joseph Greenwald & Laake, PA
Eileen Weiss, First American Title Insurance Co.

You must PRE-REGISTER for this class. Class size is limited.
E-mail your name and MD title license number to MLTA@mdlta.com

Events

MLTA Ninth Annual Crab Feast: June 8, 2016
MLTA 2016 Fall Convention: September 8-10 – The Grand Hotel and Spa - Ocean City, MD
MLTA 2017 Fall Convention: September, 2017 – Wisp Resort – McHenry, MD

Meetings Calendar

Education Committee: March 2 – 9:30 am
Convention Committee: March 3 – 9:30 am
Board of Directors: March 8 – 9:30 am
Membership Committee: March date TBD – 9:30 am
Technology Committee: March 16 – 9:30 am
To join a committee, e-mail us: MLTA@mdlta.com

Chapter NEWS

MLTA BCH Chapter

Charlene Perry, CLTP

Mission statement
The mission of the BCH Chapter, representing Baltimore, Cecil, and Harford counties, is to continue the MLTA's efforts of promoting professionalism and communication throughout our industry through legislative initiatives and educational programs. The BCH Chapter attempts to achieve these goals with regular meetings to discuss the issues of the day and trends in today's business practices. We meet with others in the industry, including abstractors, clerks of the court, and vendors that service our industry. Past meetings have included:

· *Two abstractors discussing their different approaches to running titles and the issues affecting the abstracting industry.*
· *The Harford County Clerk of Court attended at our request to discuss issues with the newly- implemented cover sheet.*
· *MLTA President attended to discuss various industry topics.*

2016 Objectives
In 2016, the BCH Chapter will continue supporting the industry by holding regular meetings where members can gather to discuss industry topics. The chapter also will continue to present education events. The first event of 2016 was a meeting on February 4 where Eileen Weiss, underwriting counsel for First American Title, presented a 1-hour CE class on Deeds. This class was free for all of those registered to attend. We have had discussions with both the MIA and MAHT to attend and give presentations. As we near the release of e-recording in Maryland, we will attempt to have a representative from the state to discuss progress.

Charlene Perry
Co-Chair, Charlene Perry has been in the title insurance industry for the past 30 years, starting as a data entry clerk and running the gamut to include being co-owner of a small title agency. She currently is working as a marketing representative/settlement agent for Key Title, Inc., assisting management with issues concerning TRID and Best Practices compliance, and current issues affecting the industry and staff education. She has been awarded Fannie Mae's Signature Award representing excellence in title operations and services. She is an MLTA Certified Land Title Professional (CLTP), and is currently working to acquire the ALTA National Title Professional (NTP) designation. Charlene has been a presenter at several MLTA-sponsored continuing education events, as well as having been a speaker at the National Settlement Services Summit. She has been a guest lecturer for many local real estate firms and for Elite Learning Academy, focusing on education for our local realtors on current topics including TRID implementation.

Eric Batz
Co-chair Eric Batz has worked and supported the title insurance industry in several different capacities. He started in 1996 working as a licensed settlement officer at a Baltimore title company for several years. From there, he moved to a supporting role while working for software vendor. Next, he worked as an investigator for the Maryland Insurance Administration. Currently, Eric is an agency representative for Old Republic Title where he assists agents in a wide variety of capacities, including underwriting questions, policy production, and new employee training.

Chapter NEWS

MLTA Eastern Shore Chapter

The MLTA Eastern Shore Chapter is sponsoring TWO FREE Continuing Education hours, to both Members and Non-Members, on Wednesday, March 23, 2016, 9 – 11 am, at the Hyatt Regency Chesapeake Bay Golf Resort, Spa & Marina, in Cambridge, MD.

Our instructors are Sally Presler McCash, Esq., speaking about *Commercial Closings*, and Eileen Weiss, presenting *Every Deed Tells a Story.*

Registration begins at 8:30 am.

Space is limited. You must pre-register by faxing or e-mailing the following information to MLTA@mdlta.com or 804-794-0248:

Name
MD Title License Number
Company
E-Mail Address

This will be a good opportunity to see the importance of your MLTA membership and to help start new memberships on the Eastern Shore.

New members who join March 23 will receive 25% off the registration fee for the MLTA 2016 Fall Convention, September 8-10, at The Grand Hotel & Spa, in Ocean City, MD.

Kathee Brown, Chairperson

Spotlight on Legislation

The MLTA supported House Bill 1129 (Cross-filed with Senate Bill 837) originally introduced in the 2015 Session and re-filed in the 2016 session. This important pending bill would establish practices and procedures for bringing actions to quiet title in the Circuit Court system. This codified procedure for actions to "quiet title" will standardize the manner of determining the validity of adverse claims and clouds on title and will bring uniformity to curing title defects. Watch for future updates in the Spotlight on Legislation Corner of The MLTA Commitment!

MLTA PAC - Strength in Numbers

As the legislative and regulatory bodies become more and more involved in our professional activities (often with unintended consequences), it has become critical for us as land title professionals to pull-together to be heard at the state house. Our MLTA Legislative Committee is strong. The committee diligently reviews and tracks proposed legislation, and committee members are active in providing testimony before lawmakers when helpful. We are fortunate to have J. William Pitcher as our lobbyist in Annapolis. Our legislative and lobbying efforts are supported when we build solid relationships with elected officials. Campaign contributions from the MLTA PAC are a very effective way to establish these relationships.

The MLTA PAC allows us to pool funds to provide campaign contributions to legislators running for office in Maryland. Contributions are made to candidates who support the ideals of our association regardless of political affiliation. While the monetary campaign contributions are important, the connections that we establish with candidates provide real value when we need allies in Annapolis. Whether we are advancing a cause, or whether we are educating the legislature regarding consequences of proposed legislation, we are much more effective as an association when we have firm relationships with lawmakers.

The bonds that we build by donating PAC funds help us to find support in the state house when we need to be heard. The MLTA PAC is gaining ground; the silent auction at last year's MLTA Fall Convention was a great success, and we are looking to extend our reach even further by expanding our volunteer base, increasing contributions from MLTA members, and enhancing our ability to let our collective voice be heard in Annapolis.

If you have made a recent contribution to the MLTA PAC, thank you. If not, please take time today to make a contribution at the MLTA website:

http://mdlta.org/Advocacy/PAC/tabid/105/Default.aspx.

The committee also is looking for volunteers to help with fundraising and administration of the fund. Please contact any member of our committee to volunteer. Finally, please consider the impact we have as an association when we pool our resources to ensure that our collective voice is heard in Annapolis.

Bryan McGahan
MLTA Legislation Committee

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Physical Security Controls under Pillar III - Best Practices

One Agent's Experiences

Like all of America, you have heard one of Under Amour's slogans, ***"Protect This House."*** When the sportswear company began, it aired commercials that inspired a passion for the product—using the slogan as its battle cry. The slogan seems to apply also to the title and settlement industry. "Protect This House" is the battle cry of the Consumer Financial Protection Bureau for the real estate settlement industry to protect the consumer's nonpublic personal information (NPI). With the lender's increased accountability over third-party vendor relationships, settlement and title companies will need to be able to communicate to their lenders how they will be protecting the consumer's nonpublic personal information (NPI) by providing proof of cyber and physical controls limited access to NPI to authorized individuals. Similarly, the mandate of the American Land Title Association's Best Practices under Pillar #3 to adopt and maintain written privacy and information security programs to protect non-public personal information as required by local, state, and federal law. Pillar #3 is by far the most challenging and costly pillar to implement, but the most important in the eyes of your lenders because it is all about protecting NPI of your customers.

Although there are multiple physical and cyber controls in Pillar #3, there are, in my estimation, several things to keep in mind when implementing physical controls that should be addressed individually, there are some things to keep in mind when you develop physical, logical, and network access controls.

Every agent's solution to physical access controls will be different, and largely dependent more on the physical configuration of their offices rather than a "standard solution" adaptable to every title agent. For example, in our title office, we have implemented electronic door locks with key cards on the front door, as well as multiple doors within the office. Once you enter our reception area, multiple cameras record your movements within our office on a 24-hour monitored recording system. Is this required for every office under ALTA Pillar 3? The answer is a resounding NO! These systems, while costly, were necessary for our offices to implement effective physical access control largely because of the existing physical layout of our offices. Our front door was entirely glass and accessible to the general public either by a hallway or stairwell just outside our front door. Additionally, the receptionist, only feet away from the hallway and stairwell, could not effectively monitor and control the front door access on busy days. To compound the problem, the interior of our office has multiple access points off the lobby, creating potential physical access to non-authorized personnel. In evaluating compliance, the physical costs of modifying the interior of our offices were far more costly than implementing the electronic locks and video controls in an effort to ***Protect Our House.***

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As tittle agents across American have discovered, there is no one solution to compliance with Best Practices; each agent will fashion a compliance solution that is appropriate for their level and type of business, physical configuration of their offices, and expectations of clients and lenders they deal with. A solution for one agent title operation is not necessarily the same for the next; we are all unique in our practices, policies, and compliance standards. But despite our differing business operations, there is still one thing that is common to us all; as we adopt and implement Pillar #3, our slogan is ***"Protect This NPI."***

Mark S. Lynch, Esq.
MLTA Director Emeritus
Mid-Maryland Title Company

While the hundreds of licensed title insurances producers in Maryland have different procedures, software, policies, and practices, we all have one thing in common. We all have to deal with the multitude of changing state and federal requirements mandated by ALTA's Best Practices, TRID, and the continually evolving escrow settlement sheet. *The MLTA Commitment* would like to invite a title agent from our membership to submit an article to the *Commitment* describing yourself, your agency, and how your agency dealt with understanding and complying with an aspect of the changing regulatory environment. Share your ideas with the membership through our new Agent feature, "Let's Talk About It!" Send your submissions to Janice H. Lynch, CLTP at jlynch@firstam.com!

SUGGESTED READING

Finding the Right Path: A Guide to Leading and Managing A Title Insurance Company

by Roger C. Lubeck (Author), Christopher R. Hanson

After 20 years consulting in the Title Insurance Industry, Roger Lubeck and Chris Hanson, from Corporate Behavior Analysts, Ltd., share their insights into leading and managing a title insurance company. Finding the right path in today's business environment requires leaders and managers to embrace change. Using examples specific to the title insurance industry, the authors explore change in the context of leadership, assessing a company, setting direction, metrics, team development, culture, starting to manage, influencing behavior, setting standards, coaching, problem solving, why meetings are important, and making change practical.

Janice Lynch CLTP, the Executive Director of the Maryland Land Title Association Foundation announced at the 2015 MLTA Fall Convention that the foundation was making a $5,000.00 charitable donation to the Kenneth P. Bayne Foundation in memory of his passing on March 8, 2015 after a heroic battle with cancer. The announcement of the donation, which was made during the installation of the officers ceremony, was met with heartfelt applause by the MLTA membership in the memory of Ken Bayne and his legacy as one of the most dedicated and respected members of the Maryland Title Industry. His longtime friend, Joseph G. Blume of Stewart Title, spoke fondly of his friend Ken, and shared with the MLTA membership Ken's spirit of professionalism and dedication to the Maryland real estate industry.
Jan concluded her remarks by observing that the charitable donation by the MLTAF to the Kenneth Bayne Foundation was in furtherance of one of the core mission statements of the MLTAF to promote the recognition of current and historic contributions of land title professionals in our Community.
The Maryland Land Title Foundation was formed through the support of the Maryland Land Title Association, and approved by IRS in February of 2006 as a 501(c)(3) organization.

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The New Math - FIRPTA Calculation

Just as the real estate industry recovers from the multitude of changes implemented by TRID and the mastery of the new math calculations necessary under the amended federal regulations, we have yet another mathematical calculation for FIRPTA starting in February of 2016. FIRPTA is a tax law originally passed in 1981 requiring foreign persons to pay U.S. income tax on the gains they make from selling U.S. based real estate. The requirements of the act fall on the buyer of the real estate from the foreign person, rather than the settlement agent. That duty imposed is to deduct and withhold a portion of the sales price and report the sale to the Internal Revenue Service. Buyers can potentially withhold less than the statutory amount if they obtain a determination of the specific amount of tax owed by the foreign national using IRS Form 8288-B. While the settlement agent is the party who actually remits the funds to the IRS, the buyer is held legally responsible for the payment of tax.

Starting Feb. 16, 2016, title settlement agents will need to start holding back more proceeds from the sale of property by foreign nationals due to recent changes to the Foreign Investment in Real Property Tax Act (FIRPTA) signed into law by President Obama on Dec. 18, 2015. Under the changes, the withholding rate for sales by foreign nationals will increase from the current 10% under existing law to 15% of the total sales price. The changes do not impact the current FIRPTA exemptions including the exemptions for sales under $300,000 for the sale of primary residence or vacant land. Additionally, the current 10% withholding amount still applies to sales of primary residences where the sales price is less than $1 million.

What do I need to know?

• If the amount realized (generally the sales price) is $300,000 or less, AND the property will be used by the buyer as a primary residence, the withholding rate is 0%.

• If the amount realized exceeds $300,000, but does not exceed $1 million, AND the property will be used by the buyer as a primary residence, the withholding rate is 10% on the full amount realized.

• If the amount realized exceeds $1 million, then the withholding rate is 15% on the entire amount, regardless of use by the buyer.

Title and settlement companies will want to review their current FIRPTA policies and procedures to ensure they will be in compliance with the law.

Mark S. Lynch, Esq.
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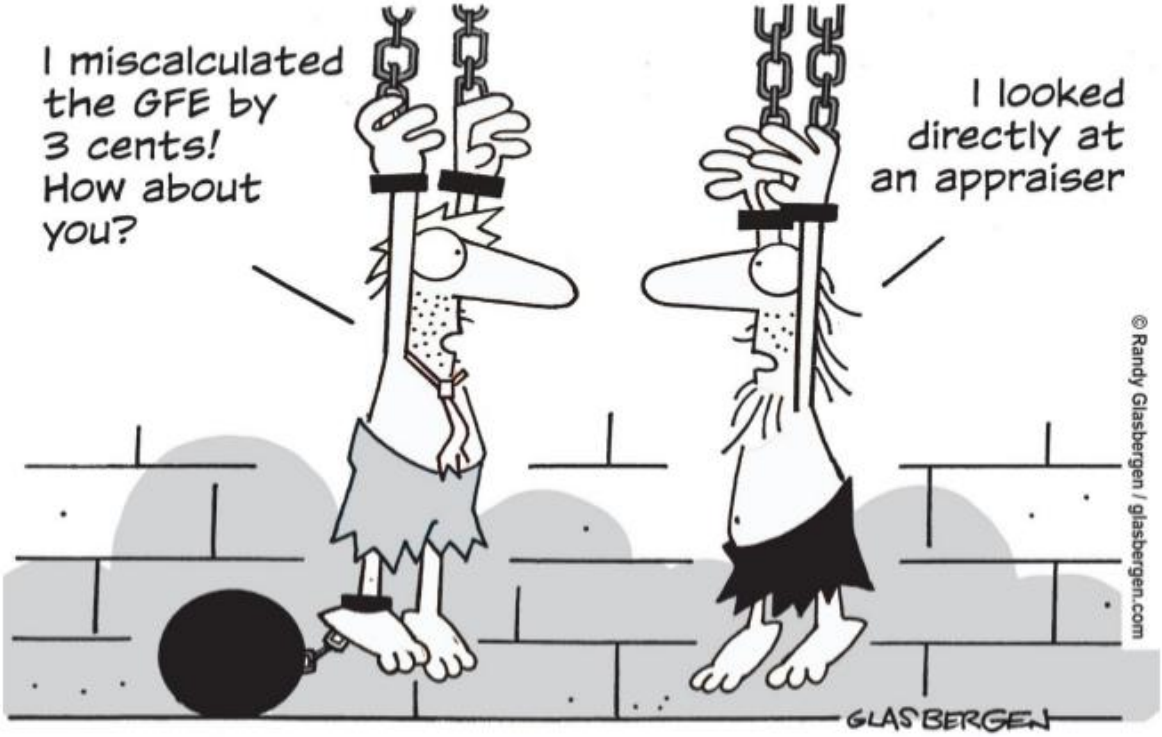
The Lighter Side...



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