



**February, 2010**

**PRESIDENT:**

Ric Eborall, Boise

**V. PRES., PANHANDLE**

Dave Kiblen, Moscow

**VICE PRES., S. EAST:**

Sonja Monson, Idaho Falls

**VICE PRES., S. WEST**

JESSE HAMILTON, BOISE

**IMM. PAST PRESIDENT:**

Marilyn Fife, Rexburg

**SEC/TREASURER/DIRECTOR:**

John Holt, Eagle

**Lobbyists**

Larry Benton  
Nampa

Kris Ellis, Boise

**Your leadership is pleased to bring this valuable member service to you and we welcome your comments and suggestions for future issues.**

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# Idaho Land Title Association

## Report From the President

### Vote on Proposed Changes to our By-Laws

*Ric Eborall*

At 12:00 noon on Thursday, March 4<sup>th</sup>, the Idaho Land Title Association will be holding a Special Meeting of the membership for the primary purpose of conducting a vote to amend our By-Laws. Each Active member of the ILTA is entitled to vote on this issue, and we are hoping to get maximum participation from our membership on this important matter.

The Executive Committee is proposing the amendments to our By-Laws for several reasons. First, many of the provisions of the existing By-Laws are simply outdated and no longer applicable. We are proposing adjustments to fix those matters. Second, we proposing a few adjustments regarding the composition and duties of the committees authorized under our By-Laws. Finally, and most importantly, we are proposing a few adjustments to our voting process in an effort to get broader participation by our Active Members when issues are brought forth to our Association for a vote.

Below, you will find a brief outline of some of the material changes being proposed:

1. *Membership Applications* – Will grant the Executive Committee the authority to review and accept applications at their regular monthly meetings rather than waiting until the Annual meeting (convention) to consider new applicants for membership.
2. *Tract Index and Abstract Records* – Modified so description is consistent with description in IDAPA 18.01.01(011).
3. *Voting Representation for Active Members* – Clarified that Active Members must identify their delegates (those who vote on behalf of the Member) in writing to the Secretary of the ILTA.
4. *Committees* – Eliminated the Grievance Committee, moving those duties over to the Executive Committee. Added a description for the Liaison Committee. Added to the Nominating Committee, the duty to nominate persons for Honorary Membership into the ILTA.
5. *Quorum and Proxy Voting* – Defined a “Quorum” as a majority of the Active members, and required a “Quorum” to be in attendance in order for a vote of the membership to take place. To enhance the likelihood of a “Quorum” being in attendance, we modified the attendance requirement so that it can be in person or by proxy.

Our objective with this last change is to have greater participation in the voting process. Currently, most votes must be made in person at the Annual Meeting, which is held during the annual convention. Attendance at those meetings has been sporadic, often resulting in a small minority of the membership voting on behalf of the entire organization. By allowing for voting by proxy, it should help facilitate a more inclusive voting process.

We look forward to seeing you at the Education Seminar in March, and are hopeful that you will support the amendments to our By-Laws. If you have any questions about these changes, please do not hesitate to contact your Regional Vice President, or you may contact me as well.

## Message From the Nominating Committee

### “OFFICERS and HONORARY MEMBERSHIP”

By Marilyn Fife

As past President and Chair of the Nominating committee, we would like to share with the general membership what we are working on for this election, which will be at our Spring education seminar in March. Our assignment, as a committee, is to nominate the next slate of officers and the new Vice President, which will be vacated by the President elect, of our association for the 2010-2011 year (the Panhandle region this year). Also, we have determined a criteria for selection of any Honorary Members that would qualify for that honor. The nominee would be someone whom has shown exemplary service and involvement to the industry throughout their careers. Contributions and examples of exemplary service could be some of the following: support and attendance at meetings and conventions put on through the Association, monetary involvement in state and national PAC's, service on committees and board assignments, general support and involvement in issues that support and benefit our industry. We recognize that there will be many years when we won't have nominations and we don't want to minimize the honor that has been established. We, as a committee, feel however, that we should review the criteria each year to determine anyone that may fall into any of the above categories. Thank you and we would welcome visiting with any of you. Please contact me if you believe one of our peers should be recognized with “Honorary Membership”.

## Larry & Kris' Corner . . .

The *County Fee legislation*, House Bill 521, was heard in committee past Friday. Kris led the opening salvo by explaining the history and tent of the legislation. There was no one in the audience signed to opposing testimony and before any additional supporting testimony offered, Representative Bert Stevenson proffered a motion to Send the bill to the floor of the House with a “do pass” recommendation. There was no committee debate on the issue ant the motion passed with only Rep. Erik Simpson (Idaho Falls) and Russ Mathews (Idaho Falls) dissenting. These two representatives had issues with available county funds. The bill now will be read into the general House agenda and debated perhaps as early as the end of this next week.



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Land Title legislation, *House Bill 521, clarifying the Date of Sale* clarifies the recording of the notice of the sale date and allows for postponement of the sale date. This legislation sits on the 3rd reading calendar on the House floor awaiting final House debate and action.

Land Title legislation, *House Bill 550, allows for the rescission of a trustees DeedThere* currently is not a grace period within which to record a Trustee's Deed after the sale date, nor is there a statutory process whereby a Trustee's Deed can be rescinded. The proposed amendment(s) allow the trustee and beneficiary to record a Trustee's Deed within 15 days after the sale date and, if done timely, the effective date of the Trustee's Deed will relate back to the date and time of the trustee's sale. As such, an intervening bankruptcy filing or other form of intervening lien would not affect title to the subject real property. The proposed amendment also would allow the Trustee and Beneficiary a statutory process whereby a Trustee's Deed could be rescinded in the event the Trustee's Sale was held in violation of a Bankruptcy Stay or otherwise in error.

Senate Bill 1321 has passed the Senate and awaits a hearing in the House Health and Welfare Committee. Mr. Aldridge brought the legislation h=back this year after remodeling it with the ILTA Board and legislative committee. It allows the Department of Health and Welfare to develop a form for the request for notice of transfer or encumbrance. When a person applies for and receives medical assistance (Medicaid) to provide for long term care services such as nursing home care, they are restricted in their ability to give away their property without receiving fair market value. Sometimes, after qualifying for medical assistance, an individual or his representative, through a power of attorney or other authority, will sell the real property without using the proceeds

to pay for the individual's on going care or to repay Medicaid as required by law. This may happen innocently, because of ignorance of legal requirements, because of misunderstanding, or may be an attempt to avoid Medicaid recovery laws. This legislation permits the Department of Health and Welfare to record a "request for notice" relating to the real property of a Medicaid recipient to assure that the Department receives notice if the real property is being sold or encumbered. This will permit the Department to be aware of the transfer and advise the seller of the potential consequences of the transaction, or to prevent the seller from diverting the proceeds of the sale in a manner contrary to Medicaid recovery laws. It is not, itself, a lien or encumbrance on the real property, but only provides for notice to the Department. The legislation also provides for a termination of such request for notice. This legislation does not affect title and is of interest to the title companies only from the standpoint of additional work if an applicable transfer is noticed during the transaction. The Title Association offered only explanatory language to legislators during this process and maintains a soft oppose position.

Given the lighter legislative work load and the absence of money to spent, we are estimating the 2010 legislative session to last only a few more weeks with an expected sine die near the end of March. However .. there are a number of additional legislative proposals of interest to the Title industry coming up in the days ahead. We will keep you apprised in our weekly legislative reports. Watch for them in your email each Monday while the legislature is in session.

If you wish to have a tour of the newly-remodeled Capitol while you are here next week, Give either of us a call.

Kris ((208) 250-3132

Larry (208)461-2000

### **ILTA Directory**

**As you are aware the ILTA directory is no longer in printed form. The directory and contact information for all members is found at our web site—**

***[www.idaholandtitle.com](http://www.idaholandtitle.com)***

**The way to ensure the most accurate and timely contact information is posted on the web site is for members to submit changes when they happen. This can be done by simply e-mailing John Holt at [jholt@stewart.com](mailto:jholt@stewart.com). This e-mail should identify the County (if a title company member) and then copy your address as it exists on the web site and then paste it into your e-mail with the changes.**

**IDAHO LAND TITLE ASSOCIATION  
JUDICIARY COMMITTEE REPORT**

*Cindy Guanell, Chairman*

There was one case of significance to report on during this quarter:

**Harris v. State of Idaho**, 210 P.3d 86 (Idaho 2009).

Plaintiff/Appellant Douglas and Sharon Harris (Harrises) commenced an action to quiet title to the sand and gravel rights on a parcel of real property they owned, to recover mesne profits, and damages for inverse condemnation. The District Court quieted title to the property in the Harrises. However, the court denied the Harrises mesne profits and damages for reverse condemnation, finding that the Harrises were barred from recovering under the statute of limitations and had waived their right to recover damages through a provision of the mineral lease they had signed with the State of Idaho.

The Harrises acquired the property in 1980 and began extracting sand and gravel. Their predecessor in title had acquired the property from the State of Idaho in 1971 subject to the reservations contained in Idaho Code § 47-701. In 1985 the Department of Lands contacted the Harrises and informed the Harrises that the mineral rights, including sand and gravel, belonged to the state. As a result the Harrises agreed, in 1986, to enter into a Mineral Lease with the state. In 1999 the State sent the Harrises a letter disclaiming any interest in the property, terminating the lease and offering to compensate the Harrises for a portion of the payments the state received under the mineral lease.

The Harrises declined the states offer because they wanted all of the payments returned. The State refused and the Harrises sued the State of Idaho for quiet title, mesne profits and reverse condemnation. The Harrises won the quiet title action due to the Supreme Court's decision in Treasure Valley Concrete v. State, 978 P.2d 233 (Idaho 1999), which held that prior to 1986, pursuant to Idaho Code § 47-701, a mineral reservation did not reserve rights to sand and gravel. The court determined that the reverse condemnation claim was barred by Idaho Code § 5-224 which provides: "[a]n action for [inverse condemnation] must be commenced within four (4) years after the cause of action shall have accrued." The Court then determined that the cause of action began to accrue in 1986 when the Harrises entered into the mineral lease with the state. Lastly the court denied the Harrises' mesne profits claim (damages) due to a provision in the mineral lease agreement which stated as follows:

TITLE: Lessor makes no representation or warranty whatsoever with respect to its title to said leased premises and Lessee shall be solely responsible for satisfying itself with respect to the ownership of such lands; and if subsequently divested of said title, no liability shall be incurred by virtue of this lease for any loss or damage to the Lessee; nor shall any claim for refund or rents or royalties therefore paid, be made by said Lessee, its successors or assignees.

The Court determined that the above provision was clear and unambiguous. Therefore Harrises were estopped from making a damages claim against the State.

The most important holding in this case, from the ILTA perspective, is the Supreme Court's affirmation of Treasure Valley Concrete v. State, 970 P.2d 233 (Idaho 1999) which defined what is encompassed by the term "mineral rights".

### **2010 ILTA Winter Education Seminar**

This winter's 2010 ILTA Education Seminar will be held on Thursday March 4<sup>th</sup> and Friday March 5<sup>th</sup> at the Red Lion Down Towner in Boise. This year's topics cover very timely issues on both the title and escrow fronts. Water Resources, Short Sales, Foreclosures, Mortgage Fraud, RESPA changes, DOI update, Escrow liability, E-recordings, Claims Chronicles, Legislative and Judiciary committee reports and IPAC/TIPAC updates all combined will make a very informative and enlightening seminar. Please register early. I wish to thank the education committee for their time and effort to once again bring topics of interest and timeliness to our industry. The committee is made up of wonderful volunteers from around the state. The committee members are Becky Shubert, Katherine Brockhoff, Marie Hunter, Melissa Raschke, Les Lake and Steve Jewett.

We look forward to seeing you and having you be a part of this education process.

See you in March.

The Education Committee

***Save The Date!!***

***2010 Pacific Northwest***

***Land Title Convention***

***August 5—7, 2010***

***Sun Valley, Idaho***

***Make Plans TODAY to attend ...***

## Idaho Land Title Association Education Seminar

Thursday and Friday March 4<sup>th</sup> and 5<sup>th</sup>, 2010

Red Lion Down Towner – Boise, Idaho

### PROGRAM AGENDA

#### Thursday – March 4<sup>th</sup>    Continental Breakfast Provided

- 7:30 A.M.        Registration
- 8:15 A.M.        Welcome from Ric Eborall, ILTA President
- 8:30 A.M.        Water resources and the impact on real property – Dave Tuthill- President  
Idaho Water Engineering
- 9:30 A.M.        How to handle short sales/concurrent closings – Suzie Colbry- Sr. Vice President -Alliance Title
- 10:30 A.M.        Morning Break**
- 10:45 A.M.        Foreclosures – timelines – **Jesse Hamilton**-General Counsel, Pioneer Title Company  
Vice President, Pioneer 1031 Company
- 11:30 A.M.        Kris Ellis, Benton Ellis and Associates  
*Idaho Legislative Updates*
- 12:00 P.M.        Hosted Lunch**
- 1:00 P.M.        Mortgage Fraud from the FBI and Dept of Finance perspective – Anthony Polidori with  
the Dept of Finance and Dominic Venturi – Special Agent with the FBI
- 2:30 P.M.        Afternoon Break**
- 2:45 P.M.        New RESPA regs – Jeff Wiener - Old Republic
- 3:45 P.M.        Review of REG 56/ Q & A with the DOI – Dale Freeman
- 4:30 P.M.        Judiciary Committee update
- 5:00 P.M.        Adjourn
- 5:30 P.M.        Legislative Reception – Shige’s Japanese Cuisine 100 N 8<sup>th</sup> Ste 215

#### Friday – March 5<sup>th</sup>    Coffee Provided

- 8:00 A.M.        Escrow Liability Issues - Richard Mollerup – Meuleman and Mollerup LLP
- 9:00 A.M.        Break/Checkout**
- 9:30 A.M.        E-recording – The Title Agent’s Competitive Advantage – Vicki DiPasquale – National Sales  
Manager - Simplifile
- 10:30 A.M.        IPAC & TIPAC Update - Chris Bramwell - First American Title
- 10:45 A.M.        Claims Chronicles - Steve Hardesty – Attorney - Hawley Troxell Ennis and Hawley
- 12:00 P.M.        Adjourn

## **Liaison, Convention and Other News**

By John Holt

The Liaison Committee has had active monthly discussions in the last quarter regarding legislative issues inclusive of our joint effort with the Association of Counties to address the charge per electronic document and our bill to clarify foreclosure procedures. We have also discussed issues of concern from the Department of Insurance as reported by Dale Freeman. These issues have included the Department's focus to review web sites as part of their auditing; HUD issues; short sales; transfer fee covenants; filing requirements; and, DOI legislation to clean up examination reports and clarify what is confidential information. In addition, we have discussed the fast approaching education seminar that will include a vote on amendments to the by-laws which are focused on updating archaic and outdated issues and providing for voting procedures to allow for increased participation from membership. The vote will be held at the noon lunch break of the education seminar on Thursday March 4.

Also of frequent discussion is the 2010 convention. The "Pacific Northwest Land Title Convention" will be a landmark five state convention August 5-7, 2010 at the Sun Valley Resort on a Thursday thru Saturday format. The convention offers a tremendous opportunity and experience to collaborate with peers from Idaho, Montana, Oregon, Utah and Washington. The agenda calls for the meeting to officially start at 2:00 pm Thursday afternoon with individual state business meetings to be followed by an icebreaker with the vendors and agent/underwriter dinners. Friday is set for a full slate of speakers and educational classes. We are striving for 7 education hours for the meeting. Friday will include breakout sessions with underwriters and vendors. As of this newsletter we have 18 one hour classes planned during a 3 1/2 hour block. After a full day of education we plan to have a reception and banquet finale that evening. This will include a keynote speaker; installation of officers; silent auction PAC fundraiser; and, individual state recognition of honorary members. Saturday is planned for a morning breakfast with a speaker to be followed by the golf tourney or other activity. Saturday is basically planned as an optional day which would include the golf/activity and optional participation at the Sun Valley dessert and Ice Show. Please mark your calendars and look for updates as we expect more than 250 of your peers to network and associate with. We are also projecting at least 20 vendors for a great vendor show.

### **Budget Corner:**

<b>2009 Year End Revenues:</b>	<b>\$76,262.04</b>
<b>2009 Year End Expenses:</b>	<b>\$68,759.16</b>
<b>2009 Year End Income:</b>	<b>\$7,502.88</b>