



**November, 2009**

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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

### Assurance with Your Insurance

*Ric Eborall*

At one time or another, we've all been on the receiving end of the question "What exactly do you guys do in the title insurance business?" With that question, there's usually some undertone of skepticism about the value we bring to the table in a real estate transaction. Sometimes it's a more direct attack, such as "You guys don't ever pay any claims. Your business is a racket." I know I've heard those comments over and over again from people in the business community, and even from friends and family.

How do you respond to these kinds of comments and questions? It's not easy to explain to somebody (who has no basic understanding of our business) what you do when you might have no more than 20 seconds to tell your story. That is one of the core challenges our industry faces. How do we tell our story? How do we convey a message about our value, when the average person at best knows nothing about what you do, or at worst, has a strong negative perception based on misinformation and incorrect facts.

I believe you have the power to do a couple of things to help get our story told. The first is to work on your 20 second "elevator pitch." Come up with an explanation in your own words that is clear and concise about what it is that you do. My "elevator pitch" goes something like this:

*Our industry is the one that instills trust in the real estate transfer and lending system. More than just **insuring** a transaction involving real estate, we provide **assurance** that the underlying asset being transferred or borrowed against is exactly what it is purported to be. Without us, how could you have any real level of confidence entering into a transaction involving real estate?*

Hernando de Soto, who is widely viewed as one of the world's leading economic thinkers, presented a keynote address at last month's ALTA convention. He has studied the economies of many countries around the world; economies of some of the richest countries such as the United States, and also economies of countries who have failed to reach any kind of economic prosperity. In his studies, de Soto has concluded that our real property transfer system, and specifically the underlying record keeping system we have in America, is the core difference maker. In short, he asserts that countries with systems which provide strong levels of **assurance** have achieved consistently higher levels of prosperity than countries that do not provide the **assurance** component.

In telling our story to members of congress and regulators who have a great deal of influence over the direction of our industry, the American Land Title Association is working diligently to communicate our role not only as insurers of real estate transactions, but also our role of providing **assurance** to the persons involved in those transactions. The ability to provide such assurance is the direct result of the research and curative action steps we take prior to the closing of a real estate transaction. In one recent study by Demotech, Inc., which is a financial analysis and actuarial services firm that specializes in the title insurance industry, for every title insurance policy issued, there are approximately 10 potential claims avoided due to the curative efforts of the agent or underwriter prior to issuing their policy. Think about the impact to the real estate industry if those curative efforts were not a routine part of the pre-closing phase of a real estate transaction. There'd be very little confidence or peace of mind in our system!

What can you do to help get the message disseminated? As I mentioned above, there are two things you can do. First, learn your elevator speech. Practice it. It's a message that needs to be shared with others. Most threats against our industry stem from a general lack of understanding about what it is that we really do. Do your part by being prepared to answer the question the next time you're asked "What exactly do you guys do in the title insurance business?" As for the second thing that you can do...please read my article on the next page of this newsletter...

For other ideas for your elevator speech, please visit the ALTA's website at [www.alta.org/marketing/Title\\_Industry\\_Elevator\\_Speech.pdf](http://www.alta.org/marketing/Title_Industry_Elevator_Speech.pdf).

## Political Action Committees

### Give Back to Your Industry

*by Ric Eborall, ILTA President*

As most of you know, Political Action Committees (PAC's) are the primary vehicle used by business trade associations to raise funds for the purpose of supporting the campaign efforts of our local, state, and national politicians. Those funds are an integral part of the election process, and are often the difference maker in determining who wins and who loses an election. PAC's are important for business trade associations as well; not because the money spent on political campaigns buys them votes from the very politicians whose campaigns they supported, but because it helps get them a "seat at the table" when issues important to their industry are being debated during the law making process.

During the past year, there have been important issues, many of which could have a material impact on our industry, subject to debate in the lawmaking process. Those issues are being debated both on a state level, and also on the national level. In some cases, we've had success communicating our position, in other cases, we haven't been very successful. Regardless of the issue, we usually have a pretty good story to tell, provided we're given a "seat at the table" to tell it. The PAC money helps get us that seat.

In my previous article, I mentioned two ways that you can immediately begin to help your industry. The first is to develop your elevator pitch about what it is that you do for a living. The second is to begin giving back to the industry that provides you with your livelihood by contributing to your state and national title industry PAC. We often think about "giving back" in terms of giving back to our communities by supporting your favorite charity, or giving back to your church to support the religion of your choice. There's a solid argument to be made for giving back to your industry as well. After all, it is at the center of how you make your living. Give back to it to help ensure that we can sustain a future for our industry.

How about starting by setting aside \$1 per week for your state (IPAC) and/or national (TIPAC) Political Action Committee? Take 2 weeks per year off for vacation, leaving 50 weeks to contribute your \$1, resulting in a total contribution of \$50. If each of us were to take on that responsibility, we could be virtually guaranteed a seat at the table each and every time an issue important to our industry came up for debate. Again, that's all we really ask for, because we think we've got a good story to tell!

To obtain more information about how you can begin contributing to IPAC or TIPAC, please contact Chris Bramwell at (208) 785-5511, or by e-mailing her at [cbramwell@firstamholding.com](mailto:cbramwell@firstamholding.com). Thank you in advance for your support. It is greatly appreciated!

## 2010 ILTA Winter Education Seminar

This winter's 2010 ILTA Education Seminar will be held on March 4<sup>th</sup> and 5<sup>th</sup> at the Red Lion Downtowner in Boise. 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. The seminars list of potential topics include New RESPA regs; How to handle short sales and concurrent closings; a review of Rule 56/ Q & A with the DOI; Foreclosure/timelines; Claims; Mortgage Fraud from the FBI and Dept of Finance perspective; Escrow function- customer service or crossing the line?; Legislative update and Judiciary Committee update.

Currently we are looking for some additional qualified speakers. If you know of someone that may be a good candidate to speak, please let us know.

See you in March.



The Education Committee > Steve Jewett, Chair

## **Larry & Kris' Corner . . .**

The legislative session is scheduled to begin January 11, 2010, and much like last year, your elected officials will be primarily consumed with the revenue shortfall and how to pass a balanced budget. Twenty-ten is an election year so the appetite to raise taxes to cover this shortfall is certainly lacking. With regards to

title issues, Kris, Larry and your legislative committee have been working diligently with the Idaho Association of Counties to develop a piece of legislation that will be acceptable to both associations in making uniform the take out fee charged to title companies for records. We anticipate this will be accomplished within the next two weeks. Last year the ILTA defeated Senate Bill 1113 that would have put a burden on title companies to notify Medicaid in cases where money was owed to the state and more importantly, left title companies at risk for liability suits. Although it is doubtful the ILTA will support such legislation, we are working with the Department of Health and Welfare to make the proposal as palatable as possible. Your legislative committee is also working on two legislative proposals; one that would give a 15 day grace period within which to record a trustee's deed after the sale with the effective date of such trustee's deed relating back to the date and time of the sale, and another that would allow for a postponement of the trustee's sale by the trustee in the event affidavits are not timely recorded in order for the affidavits to be recorded not later than 20 days prior to the sale, as well as allow for recording a rescission of the trustee's deed in the event the sale was held in violation of the stay provisions of a bankruptcy stay or otherwise.

It is sure to be a busy year in the newly remodeled capitol building, and we are looking forward to representing the association in all their legislative endeavors.

Kris and Larry

### **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*

The report for this newsletter focuses on three Idaho Supreme Court opinions dealing with real property. The primary issues in the three cases were: (1) validity of a contract for sale of real property; (2) non-judicial foreclosure sale; and (3) enforcement of an indemnity agreement.

**Ray v. Frasure**, 200 P.3d 1174 (Idaho 2009)

Case deals with the validity and enforceability of a contract for the sale of real property. Idaho Supreme Court held that a property description consisting solely of a physical address does not satisfy the statute of frauds.

Defendant Frasure entered into a contract with Plaintiff Ray for the sale of real property located in Kuna, Idaho. The contract described the property as 2275 W. Hubbard Rd., City of Kuna, County of Ada, Idaho 83634. No legal description of the property was given or attached to the contract.

Defendant Frasure (seller) did not perform under the contract and subsequently sold the property to a third party for a higher price. Plaintiff Ray sued for specific performance and damages. The district court ruled in favor of Plaintiff and ordered specific performance. Defendant Frasure appealed arguing that the contract was not enforceable because it did not satisfy the statute of frauds. The Idaho Supreme Court agreed with Frasure and ruled that the contract was not enforceable.

The Supreme Court determined that the statute of frauds renders an agreement for the sale of real property invalid unless the agreement or some note or memorandum thereof is in writing and subscribed by the party charged or his agent. I.C. § 9-505(4). Further, an agreement for the sale of real property must not only be in writing and subscribed by the party to be charged, but the writing must also contain a description of the property, either in terms or by reference, so that the property can be identified without resort to parol evidence. *Garner v. Bartschi*, 139 Idaho 430, 435 (Idaho 2003).

What this means for the title industry is that all documents purporting to convey or encumber property must contain a full legal description. While this does not appear to be a daunting task...the issue usually arises when the legal description is on an attachment that is mistakenly omitted.

**PHH Mortgage Services Corp. v. Perreira**, 200 P.3d 1180 (Idaho 2009).

This case involves the validity of a non-judicial foreclosure. One of grantors on the deed of trust that was foreclosed was deceased. The Supreme Court determined that when a grantor, or other person entitled to notice, is deceased, notice of the foreclosure must be served on their personal representative. The Supreme Court held:

Idaho Code § 45-1506(3) requires that when a person entitled to notice of the sale has died, the notice must be mailed to the personal representative of the person's estate. That requirement cannot be avoided simply because no personal representative has yet been appointed. Obviously, mailing notice to someone who is deceased does not provide notice.

The Court went on to state that a creditor would have to institute probate proceedings and have a personal representative appointed upon whom they could serve notice.

IDAHO LAND TITLE ASSOCIATION  
JUDICIARY COMMITTEE REPORT

(Continued)

**Chandler v. Hayden**, 215 P.3d 485 (Idaho 2009)

In this case the district court declined to uphold the trial court's judgment enforcing an indemnity agreement that was signed by a general contractor. The Supreme Court remanded the case back to the district court on evidentiary issues.

Plaintiff Chandler was a general contractor who was hired to build a new home in Sun Valley by Defendant Hayden. Construction began before the construction loan was recorded. First American insured the construction loan and the policy included mechanic's lien protection. First American required Plaintiff Chandler to sign an indemnity agreement indemnifying them against unfiled mechanic's and materialmen's liens.

Defendant didn't use the construction loan proceeds to pay the Plaintiff Chandler. Plaintiff Chandler filed a \$1.4 million mechanic's lien on the property and filed a suit to foreclose the lien. First American filed a separate suit seeking enforcement of the terms of the indemnity release of Chandler's lien. The district court refused. However, the district court did reform the indemnity agreement and subordinate Chandler's lien to the construction loan and awarded First American a substantial portion of its attorneys fees. The Supreme Court vacated the district court's decision and remanded the case on evidentiary issues.

After remand, the case was dismissed by agreement of the parties. However, the fact that the district court refused to enforce an indemnity agreement is alarming. In addition to indemnity agreements, it now may be prudent to obtain subordination agreements from general contractors as well.

***Save The Date!!***

***2010 Pacific Northwest***

***Land Title Convention***

***August 5—7, 2010***

***Sun Valley, Idaho***

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

## ALTA Convention Recap

By John Holt

*The ALTA Convention showed off the energy and enthusiasm of its new regime. Leadership is organized with a focused agenda. The areas that stand out for me are their relationship building and grass roots with federal legislators; the connectivity and relationship building they have forged with the individual state associations; TIPAC fundraising to be a recognized party at the table with legislators; and, their communications. The energy and enthusiasm is building value in membership. The convention itself was another example. The speakers and topics reflected energy and positivity even in a down economy.*

*First, a highlight was keynote speaker, Hernando de Soto, world renowned economist. De Soto validated the importance of the title industry as a key in the development and establishment of wealth. From his studies de Soto concludes record keeping systems that document ownership, with particular emphasis on real property, is what sets the United States apart from the rest of the world. This information configured in a detailed documented system creates a basis of trust and identity from which we are able to develop wealth and prosperity. Trust is built around the services the title insurance and settlement services industry provides to the real estate transaction. And it is this trust in the information, record keeping and identity that gives security to a transaction. Trust and security in real property is the foundation upon which further wealth and prosperity is developed. De Soto's book, *The Mystery of Capital*, discusses his theories.*

*Second, was the general theme of the meeting - "old school" and getting "back to basics". An underwriter panel underscored this as they all noted that claims are a significant source of loss to the industry. One third of all claims are derived from poor search and exam. Fraud/forgery/embezzlement claims comprise the largest component of claim dollar losses. The underwriters stressed the importance for all to understand how these scenarios arise and to learn what to watch for. The trend of three year tail on claims is changing. New information indicated one third of claims are from policies in their first year. While the underwriters seemed to be in unison on getting back to basics and claims trends they showed they are all different in other respects. Their thoughts on the recovery of the economy varied from one to three years and their strategies to survive and thrive differed somewhat as to downsizing, mergers, agent retention/cancelation.*

*Third, the breakout classes were good and varied from topics ranging on County charges for electronic images; surveying; and, trends in litigation. I can advise that our battles with the County Recorders on charges per electronic image are not isolated to Idaho. There are battles being waged across the States with varying results. However, Idaho appears to be on a good course of amicably working toward a resolution with the Counties on a legislative solution versus litigious battles. Litigation, however, is increasing on many fronts as parties seem apt to find an attorney who will sue. Family transfer and divorce issues affecting real property; flip transactions; earnest money disputes; forgery; class action lawsuits on junk fees and proper discounts; and, Department of Insurance actions are trends on the rise across the nation.*

*Fourth, another highlight was keynote speaker Don Yaeger, of Sports Illustrated and book writing fame. Yaeger has been exposed to the greatest athletes in the world. From his studies he has developed a list of characteristics that are repeatedly exhibited by athletes/coaches who have achieved greatness - many of which are transferrable to business and every day life. At the top of the list is "rubbing elbows" and understanding the value of association.*

*In summary, this year's convention **validated** the importance and relevance of the title industry; showed that we need to get **back to basics** to protect what has been created; and, that we need to understand the **value of our associations** if we want to achieve greatness.*

## Liaison, Convention and Other News

By John Holt

In September the Liaison Committee makeup and structure was amended. Members of the Liaison Committee are John Holt, Stewart Title Guaranty Company Eagle, Chair; Bo Davies, TitleOne Boise; Dale Freeman, Department of Insurance; Dana Divin, Stewart Title Boise; Jay Williams, First American Blackfoot; Kelly Mann, Fidelity National Boise; Kris Ellis, Benton Ellis (lobbyist); Larry Benton, Benton Ellis (lobbyist); Larry Roberts, Land Title & Escrow Burley; Michelle Fink, North Idaho Title Coeur d' Alene; Richard Flory, First American Title Insurance Company Boise; Brian Stone, Alliance Title Sandpoint; Bob Rice, Westcor Land Title Insurance Company Boise; and Clarence Stark, Washington County Title Weiser. The Board Members (Ric Eborall, Dave Kiblen, Sonja Monson, Jesse Hamilton and Marilyn Fife) also attend the Liaison meetings. The structure of the meeting changed to be open for all members to attend. An RSVP by return e-mail is requested if you are not a member of the committee but plan to attend so we can prepare the facility. Minutes are now distributed to all members.

Major issues that are being discussed include legislation. A full slate of bills to monitor is already cropping up (i.e. Health & Welfare, potential tax bills to generate revenue) and we plan to have a full agenda for bills we plan to sponsor (i.e. amendments to clarify foreclosure issues). The litigation in Bonner County regarding the charge per electronic images was settled. However, that did not complete the issue. Our Legislative Committee and Board are now working with the Idaho Association of Counties on joint legislation that will fully address the charge. There is monthly discussion with Dale Freeman, of the Department of Insurance. Recent issues Dale has reported on are the DOI legislation to clean up examination reports and clarify what is confidential information. The DOI is also working with the Department of Finance and Real Estate Commission who have expressed some concern with short sales and fraud and misuse.

Of interest is the Board review of the By-Laws. Clean up amendments will be presented to members for approval. The Board is targeting notice of the meeting to go out in January with a vote to be held at the Winter Education Seminar March 4-5, 2009 at the Red Lion Downtowner.

Mark your calendars. The 2010 convention will be a five state meeting we are dubbing the "Pacific Northwest Land Title Convention". Participating with Idaho will be Montana, Oregon, Utah and Washington. The convention will be August 5-7, 2010 at the Sun Valley Resort on a Thursday thru Saturday format. The draft agenda right now 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. We are looking to schedule at least 15 one hour classes 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:**

**Year to date Revenues: \$76,202.78**

**Year to date Expenses: \$59,238.63**

**Year to date Income: \$16,964.15**