

Newsletter

Kentucky Land Title Association, Inc.

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Special points of interest:

Best Practices Highlight

1. Establish and maintain current license(s) as required to conduct the business of title insurance and settlement services.

* There are a total of 7 Best Practices - can you name all of them?

KYLTA Update!



KYLTA Serving the Needs of the Kentucky Land Title Insurance Industry

The KYLTA continues to be busy, working for you and the title industry. We continue to have monthly meetings and have formed both Membership and Legislative Committees. There is always room for more input and new members so please contact us if you want to help shape the industry.

Also, we made a "Title 101" Presentation to

William C. Stambaugh, President

the Kentucky Department of Insurance (see the article on page 2). The IRS 501(a) Application for Tax Exempt Status has been filed and we will be monitoring what is happening with the KY 2014 Legislative Session.

Most of you are aware of the new CFPB rules, disclosures and timeframes, and we hope to help you stay up to date. KYLTA also has plans to develop an outreach plan which will include marketing materials and highlight the benefits of the KYLTA membership for the Kentucky Bar, Bankers' and Realtors' Associations. We also are planning on holding a Best Practices Webinar for our members and the various Association members as well as a webinar on the CFPB's final Rule.

The important thing is that we want to represent you, help you and promote the title industry. Please make sure you renew your membership, provide updated contact information and provide input and suggestions.

New Year's Resolutions Article by: Madeleine Nagy, Executive Director

On a conference call yesterday I was asked what my 2014 New Year's resolutions were, which got me thinking about goals for the KYLTA for the coming year. I understand that there are a number of different forces pulling at the industry these days and that is why everyone at KYLTA is committed to working together with its members, regulators and stakeholders on issues that impact us to ensure that we have a strong and healthy title industry in Kentucky. We want to make

sure that all of our members understand and find value in the association and that KYLTA is seen within Kentucky as the leading expert for the title industry. In order for us to achieve both we need and want to hear from all of you on what we can do to assist you on strengthening your business and what are the issues you are facing that are a concern. Two of the current areas that KYLTA along with ALTA are working on are: 1) Having the lending community come out in support of the Best Practices, and

2) Integrated Mortgage Disclosures Rule. Regulatory overload for the lenders offers a valuable opportunity for the title industry. The new disclosures rule will require settlement companies and lenders to work more closely together than ever on implementation, and the industry will have a great opportunity to define the way that we will integrate with the lenders and showcase the value of ALTA's Best Practices. KYLTA is committed to making the title industry strong, that is our resolution!

Title 101 Presentation to Kentucky Department of Insurance

On October 29, 2013, the Kentucky Land Title Association presented a “Title 101” Seminar at the Kentucky Department of Insurance in Frankfort. The Seminar was well attended by both the Department of Insurance, KYLTA and other title industry members. The two hour seminar focused on the basics of the title insurance industry. Consultant Anne Anastasi led the presentation, which was based on the American Land Title Association’s Title 101 Seminar and has been presented nationally to various Departments of Insurance over the past several years. The Seminar focuses on assisting Insurance Regulators in understanding our industry and our insurance policies. Several local title agents and title underwriters also

spoke during the seminar.

The seminar began with a distinction between property and casualty insurance as opposed to title insurance. Our title insurance policies insure past events, contrary to most insurance policies insuring a future event. The seminar addressed how real property title examinations are conducted, including explanations of what is revealed in a title exam. Explanations of various title matters were provided along with details of how title agents clear and cure these matters in order to insure real property as part of a closing. The actual real estate closing process was also described – providing the step by step process of what title agents and underwriters complete in order to be able to issue

title insurance policies.

The seminar was also an opportunity to explain to the Department of Insurance how claims are made against title insurance policies and what coverage these policies provide to policyholders. Statistics were provided on title premiums, losses, claims and expenses.

The final portion of the seminar focused on protecting policyholders. This included explanations of the audit process of title insurance agents conducted by their underwriters. Additionally, the new Best Practices as formulated by ALTA were discussed. The seminar concluded with a national perspective on the public benefits of title insurance, including actual numbers of collected delinquent taxes, corrections to public records,

and dollars spent with local municipalities in connection with title examinations.

The opportunity to speak before the Kentucky Department of Insurance was incredibly beneficial to our industry. The fast-paced seminar succinctly summarized our industry; including the detailed work provided by title agents and underwriters in issuing each policy and the public benefit of title insurance. Feedback from the Kentucky Department of Insurance has been positive. Future seminars may be planned to address further questions or areas of interest, as requested.

Article by:
Linday H. Hinton, Esq.,
Reynolds, Johnston, Hinton & Pepper, LLP

The KYLTA Needs YOU

Thank you to those you have contacted us AND have sent in your renewal. But we still have a long way to go. There is strength not only in numbers, but the old saying of “two heads are better than one” applies here too. We need your input, ideas and support. The more members and the more voices we have, the more attention we will garner.

Also, you can be our best advertising. If you have colleagues in the industry and they are not members, let them know about us and what we do. Or, just give us the information and we’ll be glad to contact them.

We’re excited about this next year. A new website is being developed, seminars and webinars are being planned, we’ll be monitoring the 2014 Kentucky Legislative Session, the CFPB and Federal legislation and equipping you with the tools to manage all the changes. Don’t wait - join or renew now!



Statutory/Case Law Update

KRS 382.365 Does Not Apply to Erroneously Filed Liens

The Kentucky Supreme Court has made clear that it will strictly construe the provisions of KRS 382.365, which governs the obligations of lienholders to release liens following their “satisfaction.” KRS 382.365(1) states in pertinent part that “[a] holder of a lien on real property, including a lien provided for in KRS 376.010, shall release the lien in the county clerk’s office where the lien is recorded within thirty (30) days from the date of satisfaction.” In a unanimous decision rendered December 19, 2013, the Court found that the statute applies only to mortgages that have been “satisfied,” not to those that may have been erroneously filed against property.

In *Bratton v. CitiFinancial, Inc.*, the plaintiff landowners sold one of three parcels they owned in a transaction financed by Citi, which then erroneously applied the mortgage to all three parcels described therein (as opposed to just the one parcel that Citi’s borrowers purchased). Despite “actual notice” to Citi of the problem in numerous communications with plaintiffs’ counsel, formal notice by certified mail or personal delivery (as dictated by the statute) was never provided to Citi.

The Court of Appeals ruled that the formal notice requirements of KRS 382.365 are mandatory, and that the failure to comply with those requirements was fatal to plaintiffs’ claim for failure-to-release damages under the statute.

On review, the Kentucky Supreme Court affirmed the conclusion that plaintiffs had no claim under the statute, but for an entirely different – and important – reason. More specifically, the Court ruled that KRS 382.365 does not even apply when a “satisfaction of a lien” has not transpired. It reached this conclusion after looking at the unambiguous “date of satisfaction” language referenced throughout KRS 382.365. Under the facts of *Bratton*, Citi did not fail to release its lien following an alleged “satisfaction” of the same but instead failed to release after erroneously taking and recording a mortgage against two parcels of property never sold to, and thus never owned by, its borrowers.

In closing, the Kentucky Supreme Court emphasized that its ruling did not necessarily deprive plaintiffs of a remedy. “[O]ur interpretation of KRS 382.365 does not foreclose a property owner from seeking relief through other legal avenues for the erroneous filing of a lien. It only forecloses the [damages and attorney-fee] relief provided by KRS 382.365.” For example, nothing would presumably prevent plaintiffs from filing an action to quiet title.

Had the Kentucky Supreme Court reached the issue of formal notice requirements under KRS 382.365, it in all likelihood would have ruled thereon in the same manner as the Court of Appeals; the Commonwealth’s highest court, as currently constituted, has signaled on numerous occasions – and now in *Bratton* as well – that statutory provisions are to be strictly construed as being the final say of the General Assembly on what was intended.

Article by: Eric M. Jensen and P. Branden Gross, Morgan & Pottinger, P.S.C.



Want to Stay Informed?

Join the Title Action Network (TAN). It is the premier grassroots organization that promotes the value of the land title industry.

Here are a few points to encourage your colleague(s) to join TAN today:

- TAN is free & takes only 90 seconds to join!
- TAN promotes the value of the title industry to state and federal policymakers.
- Provides brief action alerts impacting you and your business.
- We focus on issues that are important to you and your business.

For more information go to: <http://www.titleactionnetwork.com/>

Kentucky Land Title Association

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Upcoming Events:

2014 Business Strategies Conference
March 12 - 14, 2014
Nashville, TN
<http://www.alta.org/>
-Educational conference to learn effective management strategies and techniques through professional educational sessions, roundtable discussions and networking opportunities.

WHO ARE YOUR LEGISLATORS?

Do you know who is representing your interests? While the KYLTA is striving to represent the interests of the Kentucky land title industry, it is important to know who your local legislator is. Below are links and contact information.

Find out who your legislators are: [Http://votesmart.org/](http://votesmart.org/)

To call your legislator: 1-502-564-8100

Legislative message line: 1-800-372-7181

Bill Status Line: 1-866-840-2835

Legislative Research Commission: www.lrc.ky.gov

Calendar-Committee Meetings Line: 1-800-633-9650

2014 Kentucky Legislature Convenes

Article by: Capitol Solutions

The Kentucky General Assembly convened on January 7 for its 60 (business) day session amid the usual backdrop of money and politics. Money because lawmakers must pass the 2014-16 biennial budget and there seems to never be enough money to meet the demand of state programs, citizens and special interest groups and politics, and because 119 of the 138 lawmakers are up for re-elections, and everyone knows you have to save your seat before you can save the world.

First, the biennial budget. Lawmakers have to decide where to spend the almost \$20 billion in general fund dollars (almost \$500 million more than the current biennial budget) and over \$63 billion in total dollars. For most folks an additional \$500 million sounds like a lot of money but all of that sum plus more will be consumed by necessary spending for the state employees' underfunded pension program, increased cost for state employees health care cost and growth in Medicaid spending. Some lawmakers say we need to cut spending more (though the Governor has reduced spending \$1.6 billion since 2007). Others say more revenue is needed. Tax reform? Not likely, Casino gambling? Possibly. Lawmakers want more revenue to spend but few (at least not a majority thus far) want to cast the votes necessary to generate additional revenue.

Which brings us to politics. The state senate is in solid republican control with 23 republicans, 14 democrats and 1 independent. The state house has 54 democrats and 46 republicans. Add to that the US Senate race and all six congressional seats on the ballot and you have a political environment in Frankfort where almost every vote will be considered in the context of its impact on the November elections. In addition, there are over 650 corporations, associations (including KYLTA) and others with registered lobbyists to protect their interest.

As a KYLTA member, it is easy for you to stay engaged with your lawmakers. (See the above contact information) Most are home on the weekends but you can also email or call them during the week and stay informed of meetings, etc. Remember, politics is not a spectator sport. You can either become actively engaged and participate with your lawmakers on policy decisions so those decisions have a positive impact on your business and family OR you can choose to watch silently from the sidelines and allow others to decide those issues for you. It's your choice. Let the games begin!