

Kentucky Land Times

News & Updates of the Kentucky Land Title Association

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ANNUAL MEETING

KYLTA will have their annual meeting Monday, November 10, 2014 at 10:00 a.m. EST. Meeting will be held in the lower level conference room located at 9510 Ormsby Station Road, Louisville, KY 40223. Formal notice and an agenda has been sent out so please let us know if you did not receive it.

Agenda consist of election of directors, continuing education and discuss legislative agenda for the coming year.

All current members in good standing as of November 10, 2014 are eligible to vote and I encourage everyone to put this date on their calendar and make plans to attend! If you cannot attend you may either fill out and send in a proxy and/or participate via conference call: (605) 477-2100, code 1030767#.



DON'T BE HAUNTED BY THE PRIVATE FAMILY CEMETERY

With Halloween fast approaching, it is an appropriate time to discuss the dark side of real estate: the private family cemetery. According to the Kentucky Department for Local Government, there are over 13,000 identified cemeteries in Kentucky. Our rural landscape is scattered with both well-tended and long neglected private family cemeteries, and the rights associated with those private cemeteries can haunt the living decades later.

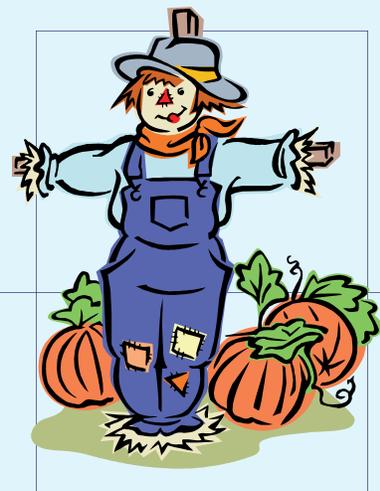
Courts have found that family cemetery rights are created as a license, privilege or easement depending upon the scope of the rights. Most purchasers have a title examination of the land run prior to closing, which would disclose any reservation of family cemetery rights in a recorded deed or plat. Unfortunately, there is rarely such a reservation found in a deed or plat signifying the existence of a family cemetery on the land. In that case, the Courts have consistently found that cemetery rights are implied, and the relatives of the deceased may have the right to visit, of access over adjacent land from and to, and to bury in the family cemetery. As long as the relatives' use and purpose is reasonable, the purchaser has little recourse to prohibit those perpetual rights after the closing.

It behooves the purchaser to act with extra due diligence to ward off the possibility of locating a family cemetery after closing. First, the purchaser may physically search the land for a family cemetery, and the purchaser may request an affirmative representation from the seller that none exist. Second, the Kentucky Historical Society maintains a database of cemeteries in Kentucky, including identified family cemeteries, <http://www.kyhistory.com/cdm/ref/collection/LIB/id/493>, and the purchaser is able to search that website by county to locate any family cemeteries on, or in the vicinity of, the land. Third, some counties have cemetery preservation boards, which should maintain a list of cemeteries in the county. Fourth, the purchaser may obtain a survey of the land which meets the American Land Title Association (ALTA) minimum details for an ALTA/ACSM Land Title Survey, which would show all family cemeteries disclosed in the public records supplied to the surveyor or located during the process of conducting the survey.

Regardless, Purchasers need to ward off the possibility of private family cemetery issues prior to closing to avoid possibly being haunted for decades.

Article By: P. Branden Gross of Morgan & Pottinger, P.S.C.

“Courts have found that family cemetery rights are created as a license, privilege or easement depending upon the scope of the rights.”



ARE YOU READY?

Times have certainly changed regarding how closings are conducted. More importantly, we as title agents are changing what type of funds we require from Purchasers, and now often times Sellers, to close. As fraud becomes more prevalent in our society, the manner in which funds are delivered to us at closing, and what we accept, becomes more important.

In my earlier years of practice a cashier's check was the gold standard and no one considered that the check could be fraudulent. Often local title companies would accept checks drawn on other local firms or title companies' escrow accounts. Today, we need funds available for disbursement at the time of closing. As such checks are not an option. Further, in today's technology filled world, even cashier's checks become less attractive as they are counterfeited easily. I, of course, learned this the hard way. I have received counterfeit checks from customers trying to pay cash for property. I have been presented checks that the bank official simply forgot to sign. I have received checks from alleged accountants of the Purchaser that were drawn on foreign banks that were counterfeit (the accountant was also a fake). Luckily each time, I discovered the issue before any funds disbursed. Although the closing may have fallen apart and folks were angry on all sides, my firm and others did not incur a loss.

When we are preparing for a closing and sharing the Settlement Statements with Purchasers and Sellers, it is often a difficult conversation to discuss how the funds are being delivered. Frequently, Purchasers and Sellers don't want to go to the trouble or expense to wire funds into your account or are offended when you call an institution to verify the validity of the check and availability of funds. Often there is pressure from parties that the title company disburse when the funds have been wired, but not yet received. All of these factors result in undo stress being exerted on all parties, including the closing agent. We all want to keep our clients happy and provide excellent service. Fortunately with ALTA'S Best Practices Guide we now have the ability to share with our clients the standard that our industry is expecting of us. By adopting these practices and reducing them to writing, we have the ability to advise all parties as to our expectation in advance of the closing date. These procedures will protect our clients, our own interest and that of our business by reducing the opportunity for fraud or error in funding the transaction. Although transitioning to this practice may be met with resistance and takes a bit of adjustment in our business, in the end if you choose to implement this simple practice you, like me, will sleep better at night.

By: Michelle Foley Turner, Arnzen, Molloy, Storm & Turner, PSC



TITLE ACTION NETWORK

As you know, the Title Action Network is in the middle of a large membership drive as we are **#TakingTANto10k**.

It is a **FREE** no obligation nationwide network of title professionals designed to strengthen the industry's voice and advocacy power in Kentucky and Washington, DC.

For example, if there is a particular piece of legislation that is being considered that would affect the title industry, TAN sends out a notice to you and

asks you (no obligation) to voice your opinion.

Ask yourself: Does your elected official know more than you about your real estate business? Then seize the opportunity to make your voice heard when there are important issues affecting you. With all the changes going on and coming down the pike, CFPB, Best Practices, new settlement statements, etc., you really need to join TAN.

It's **free**, sends you free info and keeps you informed of moving issues and is easy to join (via online). Below is the web link to join and general information. As

leaders, we need to be as informed and on the forefront as possible. Plus, get all of your staff and colleagues to join because the squeaky wheel gets heard!

You can participate as much or as little as you like, and it helps keep you informed on what is changing. <http://www.titleactionnetwork.com/>

**DOES
YOUR
OFFICE LIKE
PIZZA?**

**RECRUIT
YOUR
ENTIRE
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PIZZA
PARTY
FOR YOUR
OFFICE!**

