

Real Property Law Section NEWSLETTER

State Bar of Georgia

A Publication for Real Property Lawyers

Spring 2000

Chair's Message

*By Carol V. Clark, Section Chair
McCalla, Raymer, Padrick, Cobb, Nichols & Clark*

I owe you all a great debt of gratitude for your support during this exciting year. One major goal of the Executive Committee was to connect with our members throughout the state. The "Real Estate Road Show" was our new launch which took a seminar with your officers and others to three communities: Tifton in October, Rome in January and Augusta in March. If you missed Len Horton's IOLTA presentation, take a few minutes to read Standard 65 in its entirety (pages 44-H through 44-J in your current Bar handbook). Make certain your own accounts are in order by proper labeling (Standard 65.2), by confirming that you are not deducting unauthorized charges (wire transfer fees, for example), and that you are periodically auditing your account with your bank to make sure funds are properly transmitted. State Bar General Counsel, Bill Smith, enlivened the Rome meeting. Three members of our committee took the lead in rolling out the Road Shows, and I hope you'll pass along your personal thanks when you see them at the Institute in May: John Carlton from Moultrie (Tifton), Tom Minor from Dalton (Rome), and Roy Tritt in Augusta.

The title insurance bill once again popped up its head, but is unlikely to resurface in its present form. Special thanks is due to the State Bar Executive Committee for allowing Bill Dodson and me to make an unscheduled presentation to seek the Bar's support in opposing the bill. Your entire Executive Committee studied the bill, and felt that the present incarnation left the public vulnerable to various evils associated with the unauthorized practice of law. The State Bar voted unanimously to support of our opposition.

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Editor's Farewell

By Kim Roberson, Editor

The publication of this issue of The Real Property Law Section Newsletter is my final act as a member of the Executive Committee. Marvin Fentress, Esq., of Oliver, Maner and Gray, LLP in Savannah is the incoming editor. The Executive Committee is very pleased that Marvin has agreed to edit the newsletter and is confident that he will be an excellent editor. I hope that you will offer Marvin your support by submitting articles for publication. Marvin can be reached at:

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I have so enjoyed working on the Executive Committee and being a part of the Real Property Bar. It is peopled with talented, diligent, committed attorneys and it was an honor to be associated with such an auspicious group. If you are not a member, join the Real Property Law Section. If you are already a member, get involved with our many laudable projects!

As some of you may know, I am a native Oklahoman. Although I have lived in Atlanta for fifteen (15) years, my family and I have made the decision to relocate to Tulsa, Oklahoma. While we will miss our many friends and colleagues in Georgia, we

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PUBLIC RELATIONS AND PROFESSIONALISM COMMITTEE

M. Todd Westfall, Chairperson

"Whatever you are, be a good one."

- Abraham Lincoln

To be a "good" lawyer demands more than a mastery of the law, it also demands a continued commitment to professionalism. Professionalism in the practice of law is a topic about which many articles and publications have been written, but how many of us take the time out of our busy schedules to actually reflect on the meaning of professionalism in our day-to-day practice? In a time when the public perception of lawyers is that self-interest rather than public interest is the motivation for our profession, we can hardly afford to put off any longer our renewed commitment to professionalism lest our perception by the public, and even ourselves, decline even further.

Lawyers have been granted a somewhat unique status in American society in that we are afforded the considerable task of regulating and maintaining our ethical and professional conduct by self-governance, whether through the courts or a bar association. However, true professionalism in the practice of law cannot be left to these devices or to legislation, rather, it must come from within the profession in the form a continued and sustained commitment to professionalism by each individual member of the bar. Only by making a daily commitment to the honorable principles and ideals upon which the legal profession was founded can we hope to regain some of the loss of professionalism for which we are all at fault.

To this end, the Real Property Law Section has established the Public Relations and Professionalism Committee in an effort to explore different means by which we, as lawyers, can enhance the public's perception of our profession while at the same time increase our own awareness and commitment to the basic tenets of professionalism in the practice of law. We suggest that that these two goals can

be accomplished simultaneously and with a modicum of effort simply by adhering to the following three (3) simple principles:

- (i) Treat other counsel and parties in the same way that we would want to be treated.
- (ii) Conduct the practice of law with integrity, respect and consideration for others and the objectives of the legal system.
- (iii) Be civil and courteous in dealings with other counsel or parties.

Although the aforementioned principles appear simplistic and commonsensical, in the daily practice of law it is easy to lose sight of these principles. We suggest that each and every member of the bar make a daily commitment to these tenets of professionalism by abiding by and endeavoring to uphold the three (3) simple principles listed above. For those of you who are seasoned veterans it is never to late to make such a commitment, and likewise, for those of you who are new to the practice of law it is never to soon to do the same. We believe that adherence to these principles by all can make our professional practices and our personal lives more rewarding and satisfying, which in turn, will lead to an enhancement of the public's perception of lawyers and the practice of law.

To do its part, over the coming months the Public Relations and Professionalism Committee will be actively pursuing various strategies to increase the awareness and practice of professionalism by and among lawyers. One strategy currently under consideration is the adoption of a professionalism pledge in connection with membership in the Real Property Law Section. We welcome your comments and suggestions regarding a professional pledge and/or any other ideas or comments with respect to enhancing professionalism among members of the bar.

LEGAL OPINION REPORT AVAILABLE ON THE WEB

The Report on Legal Opinions to Third parties in Real Estate Secured Transactions is now easily downloadable from the Real Property Law Section's web page and no longer requires the use of a a password. To access, go to www.gabar.org and select successively **Sections, Section Web Pages, Real Property Law Section, Section Publications.**

Rome Road Show Update

By Tom Minor

On Tuesday, January 25, 2000 the Real Property Section took its Real Estate Road Show to Rome. The Rome, Georgia Road Show was the second in a series of provocative seminars designed to stimulate local interest in current issues facing Real Estate.

The first Real Estate Road Show was held in Tifton, Georgia on October 28th. The Rome Road Show was held at the Coosa Valley Country Club. Committee Chairperson Carol Clark, together with Bill Dodson and Aasia Mustakeem were joined by Len Horton, Executive Director of the Georgia Bar Foundation and Bill Smith, General Counsel to the State Bar of Georgia. Executive

Committee member Tom Minor helped coordinate the event which was attended by approximately 23 persons from the northwest Georgia area. There was a great deal of discussion by the panel as it relates to various aspects of IOLTA accounts. For those in attendance it was a good opportunity to find out what types of accounts qualify as an IOLTA account and what projects are funded by the Georgia Bar Foundation. The panel members also discussed relevant topics such as "witness only" closings, unauthorized practice of law and the Zaleon case. Seminar attendees received two hours of CLE credit.



Augusta Road Show Update

By Roy Tritt

The Real Property Section Road Show came to Augusta on March 23, 2000. Visiting from Atlanta were section leaders Carol Clark and Bill Dodson. Roy Tritt, a member of the Executive Committee of the section from Augusta, served as moderator of the meeting. Over twenty (20) lawyers were in attendance.

The first speaker was Len Horton of the State Bar of Georgia. Mr. Horton talked about IOLTA, where the money it received was spent and the compliance issues that affect the real estate practitioner. The lawyers attending the Seminar were surprised to learn that fifty (50%) of the IOLTA income is disbursed by the Speaker

of the House of Representatives of the State of Georgia. After a short break, a general discussion ensued on issues of interest to the section leadership and the Augusta Bar Association. These issues included compliance matters (in light of recent Georgia Supreme Court rulings), the status of certain disciplinary matters, the problems that the Clerk of the Superior Court of Richmond County is having with its new computer system, and the status of legislation in the recent session of the General Assembly.

At the conclusion of the meeting, a wine and cheese reception was held.

Chair Comments Cont'd.

Please thank Eldon Basham, Legislative Chair, for his tireless hours of poring over the fine print, rushing to emergency hearings, and sending up the red flag when needed.

The quality and quantity of our seminars continues to soar, the result of incredible effort by your energetic Executive Committee members. Roy Tritt started off the year solidly in September with the Title Standards seminar. Rachel Iverson is already working on the September 2000 edition if you have topics to suggest. The fall Commercial Seminar had a seamless, sleek one-day debut courtesy of Aasia Mustakeem. The spring Residential seminar chaired by John Carlton and Liz Thompson and aired by satellite in February set a new attendance record. Catch the video replay if you missed it. Todd Westfall brought a new Foreclosure seminar to the section in April, which he chaired beautifully. Bill Dodson, your chair-elect, has put together a terrific program for the May Real Property Institute including special surprises. If this flurry of a synergy still escapes you, join us in June at the annual State Bar meeting which will feature our section in two ways. First, we are participating in the section reception on June 14th. Second, we were honored to be asked to chair a seminar on Thursday, June 15 which Jim Fleming graciously coordinated. The dates for the State Bar meeting are June 14-18 at the new Hutchinson Island property in Savannah. Rudolph Patterson, Bar President, is going all out to make it a family friendly program. Come!

Kim Roberson's meaty newsletter has been exceptional. We will miss Kim, since she is moving to Oklahoma to start a new career in real estate. Your new editor, Marvin Fentress from Savannah, welcomes your ideas and articles for next year. Doug Selph continues to work toward more information for our web page, Joe Myers is expanding our membership, Danny Bailey is keeping tabs on the clerks and the recording issues for you, and John Carlton, Bruce Cohen and others are earnestly monitoring the unauthorized practice problems.

Every member has "Transcended the Everyday through Service" in countless hours of service to the Section. I am honored to have served as your Chair, and look forward to great plans ahead with Bill Dodson .

Carol

Editor's Farewell Cont'd.

will be much closer to family. As this goes to press, I do not have a Tulsa address to share with you. If anyone needs to contact me please call Ms. LaWanna Dimmerling, Legal Assistant, at Scoggins & Goodman, P.C. at 404-659-1000.

Thank you for the opportunity to serve as Editor.

Kim

**Just A Reminder...**

**When Your
State Bar
of Georgia
Dues Notice
Comes In
The Mail
Be Sure To
Rejoin
The Real
Property
Law Section**

Residential Seminar Exceeds Expectations

By Liz Thompson

The Real Property Law Section sponsored its annual Residential Real Estate Seminar, traditionally held in the spring of each year, on February 11, 2000. At that time, for the second year in a row, the Seminar was broadcast live from the television studio of Georgia Public Television, and was simulcast around the state to thirty locations, representing complete coverage around the State of Georgia.

This year's focus was "Back to Basics." Faculty members were asked to make presentations geared toward the "Beginner" closing attorney. Eleven speakers spoke eloquently on putting together a professional and complete closing. Forms were strongly encouraged of the faculty, and the resulting materials are a must-have for all offices

with rookie closing attorneys. The materials would also be useful for closing secretaries. Additional copies may be obtained from ICLE.

Following the resounding success of the initial seminar, at which 360 attendees learned about closings, a satellite replay to twenty-three locations reached an additional 206 attendees, making this the most attended seminar ever.

Co-chairing this event were Liz Thompson of Harrison & Thompson in Macon and John Carlton of Whelchel, Whelchel & Carlton in Moultrie, both members of the Executive Committee of this Section.

Practice Pointer

Conveyance Of Real Estate By LLC

By Marvin Fentress

The increasing popularity of limited liability companies as the holder of title to real estate means that everyone is encountering conveyances by these entities. LLCs combine the best of partnership and corporate benefits, offering favorable pass-through tax attributes (like a partnership), insulation from personal liability (like a corporation), and both flexibility and ease of formation and operation. The catch? For the real estate practitioner, there can be a lack of certainty as to who is authorized to sign a deed conveying property of the LLC.

LLCs are formed by filing Articles of Organization with the Secretary of State. The requirements for the Articles are minimal, little more than the name of the LLC and its address. While a more extensive Operating Agreement may be prepared to govern the affairs of the LLC, oral Operating Agreements are expressly recognized by statute, and the complete lack of an agreement is common.

LLCs must be either member-managed or manager-managed. As the terms imply, the former is managed by its members (the term for the "owners"), while the latter has designated managers to act for the LLC. If no choice is made in the Articles of Organization or in the Operating

Agreement (remember this is unrecorded), the LLC is member-managed.

Any member in a member-managed LLC or any manager in a manager-managed LLC may execute a document "apparently carrying on in the usual way" the business of the LLC. Since no document, recorded or otherwise, is required to state the "usual business" of the LLC, there may be some risk in assuming a single member or manager can convey real estate. Where an activity of the LLC is not "usual," the act must be authorized "in accordance with a written Operating Agreement." Thus, as a practical matter, there is also some risk in dealing with the LLC that has no Operating Agreement, even though this is specifically authorized by statute.

Some comfort may be drawn from a statute specifically dealing with LLC real estate, O.C.G.A. § 14-11-302. This code section provides that any limitation contained in the Articles of Organization on the authority of a member or manager to convey real estate of the LLC will be binding on the grantee of a deed if the certified Articles are recorded in the county where the real estate is located. It could therefore be argued that restrictions will not be binding

absent such recording. At present, however, this would seem to be an argument, not necessarily the law.

What should be done when examining a conveyance from such entities? At a minimum, a check should be made with the Secretary of State to make sure the LLC exists (this can be instantly done on the web at www.sos.state.ga.us/corporations). A certified copy of the Articles of Organization can also be ordered at the same time with use of a credit card. If the Articles indicate whether the LLC is member- or manager-managed, the web site will so indicate.

A minimal check must also include an examination of the county partnership records where the real estate is located for certified Articles of Organization. Although this is somewhat duplicative of the materials obtained from the Secretary of State, it is possible that the more extensive Operating Agreement is filed in the county (although the statute speaks only of filing the more spartan Articles).

Finally, the seller should be asked to provide a copy of both the Articles of Organization and Operating Agreement. The LLC that has no Operating Agreement presents a problem, as there is no written record of the identity of the

members or managers or of the "usual" activity of the LLC. In such a case, you can either trust the person you are dealing with (perhaps not always a bad choice, especially where an affidavit is obtained) or insist that an Operating Agreement be drafted (certainly safer, if less popular).

Once the Articles of Organization and Operating Agreement are in hand, they must actually be read to determine who has authority to bind the LLC. At closing, all members or managers should certify the correctness of the copies delivered.

Unfortunately, there is no statute similar to that for corporations (the helpful president-vice president/secretary-assistant secretary statute) to create a presumption that a deed is properly executed by the LLC. Thus, even when all these steps are taken, the comfort level obtained does not appear in the chain of title. While an affidavit could be recorded to create a record of these efforts, this is not common practice. Instead, the trend seems to be to assume (not unjustifiably) that any limitation on authority that does not appear in the county records will not be binding. While ample room exists for this argument, the issue does not appear completely settled.



www.gabar.org/rplaw.htm

April 2000 Legislative Report

Eldon L. Basham
Chair, Legislative Committee

This was the second year of the 1999-2000 session of the General Assembly. This means that all bills introduced in 1999 carried over to this year but that any bills which did not pass this year are dead and will not be carried over to next session. As you have probably read, education issues, rather than real property issues, dominated the session. Nonetheless, some legislation which should be of interest to members of the Real Property Section did pass. A brief summary of legislation relating to real property follows. If you desire to read the entire bill, you can locate the full text and status on the GeorgiaNet Website. We do not know at the time of this article whether all of these bills will become law as many have not yet reached the Governor Barnes' office for signature.

HB151-This bill requires counties and municipalities to accept inspection reports from professional engineers if the county or municipality cannot get the required inspections performed within two days of receipt of a valid written request.

HB597-This is the Real Property Law Section's proposal to require the Superior Court Clerk to make available printed real estate indices. This bill passed the House last year, but we were unable to get it through the Senate in time. It came up before Senate subcommittee having previously received no opposition nor comment. The morning the bill was on the Judiciary Committee calendar, the Clerk's lobbyist objected to the use of the word "current" in the bill in spite of the fact that word had been in the bill from the beginning and no previous objection had been raised. We deleted the word "current" and provide that the printed copies of the real estate grantor and grantee indices would be updated regularly instead of using the word "current" in order to get the bill through Committee. The bill passed the Senate with that revision, the House agreed to the revision and the bill is now waiting signature by the Governor.

HB656- This is a bill which was originally designed to remove the limitations on banks selling insurance, which limitation previously prevented banks from selling insurance unless they were in a municipality which had a population of less than 5,000. Speaker Murphy added an amendment that would prevent banks from

selling title insurance when the bill passed the House. In the Senate, the bill was amended to provide that banks could sell title insurance if they were in the business on or before January 1, 2001. The bill that passed both Houses finally provided that banks would be prohibited from selling title insurance unless they were in the business of selling title insurance on or before April 1, 2000.

HB837 - This bill provides an action for damage to a dwelling resulting from water infiltration due to the negligent design, manufacture, or installation of a synthetic exterior siding shall be brought within four years after the damage is discovered, but in any event, shall be brought within the time limit set forth in Code Section 9-3-51. 9-3-51 is the 8 year statute of repose requiring that an action be brought within 8 years after substantial completion. This bill has been signed by the Governor and was effective March 28, 2000.

HB1084- This is the Title Insurance bill. It was never brought up in committee and therefore is dead.

HB1204- This bill would provide that upon the death of an intestate decedent who is the owner of any interest in real property, the title to any such interest which survives the intestate decedent, shall vest immediately in the decedent's heirs at law, subject to divestment by the appointment of an administrator of the estate. This bill was presented by Speaker Murphy to avoid the requirement of probate. As written, it would appear to allow divestment of the property on behalf of the administrator for an unlimited period of time. The bill passed the House and we provided a letter to the Senate Judiciary Committee requesting that a 3 year limitation be placed on the administrator's right to recover the property. We were supported in that request by Bill Linkous, Chairman of the Probate Code Revision Committee of the Fiduciary Law Section. Nonetheless, the bill passed unchanged and awaits the Governor's signature.

HB1601- This is a bill to prohibit the filing of nonconforming liens. Nonconforming liens are defined as all liens which are not provided for by federal or state statutes, county, municipal, or consolidated government ordinance, or specifically established in a written declaration or covenant which runs with the land. It would

allow any party against whom a nonconforming lien has been filed to petition for an order removing the nonconforming lien ex parte. It would also allow any official or employee of a government to file an ex parte affidavit requiring the clerk to cancel a nonconforming lien. This bill has passed the House and the Senate.

SB176- This bill provides that no judgment shall be filed with the clerk or effective for any purpose until the completion and filing of a disposition information form with the clerk of the court. It went through numerous revisions, but it has passed the House and Senate. It would appear that a judgment does not become a lien on real property until the completion and filing of the disposition information form, but I'm sure we will see this issue

brought before the courts in the future and we will find out for sure.

SB425- This bill makes numerous changes to the Brokerage Relationships in Real Estate Transactions Act. Many of the changes are technical in nature but it does provide in several instances that violations of the Act shall not create liability on the part of the broker absent a finding of fraud on the part of the broker. It also adds the definition for a "Transaction Broker" which means a broker who has not entered into a client relationship with any of the parties to a particular transaction and who performs only ministerial acts on behalf of one or more of the parties. It has passed the House and Senate.

Practice Pointer

The New "Enhanced" Owner's Title Insurance

By Lynn M. Wilson

For members of the Real Property Section of the Bar whose practice includes residential closings, title insurance is a necessary and critical component of our practice. The manner in which a closing office handles the owner's title insurance policy affects the operation of the office. First, from a firm management perspective the question of how and when the owner's title policy is actually issued to the purchasers often becomes an issue. In addition, the issuance of title insurance provides a financial benefit to the closing office; therefore how the policy is marketed to purchasers is important. There are new products being offered by the major title insurance companies that will have a significant impact on how a closing office handles owners title insurance.

Since 1992, most closing attorneys in Georgia have been using the ALTA approved long form "Owner's Title Insurance Policy". There have been no major changes in owner's title insurance policies since that time. However, during the 1990's members of the American Land Title Association perceived a need to make changes to the current owner's policy of title insurance. Over the course of the past eight years, ALTA has been developing forms for both a "Short Form Owner's Title Policy" and a product that has been designated the "Homeowners Policy of Title Insurance". Both policies

are now available in Georgia and are being marketed by the major title insurance companies.

For those practitioners also involved to some extent in firm management, you are all too familiar with the inherent problems in the way owner's policies have historically been prepared. Each policy required an individually typed Schedule B that included specific exceptions to title such as a security deed, easements of record, and restrictive covenants. Furthermore, the policy could not be issued until such time as the vesting deed was recorded and returned. As a result many offices are faced with a backlog of policies to be issued. For many closing offices the change in the language of the effective date of closing has already facilitated an improvement in efforts to keep the number of policies waiting to be issued from increasing. Until this past year, a policy could not be issued until the vesting deed was recorded and the actual date of recording could be identified as the effective date of the policy. In counties in which months pass before the vesting deed is returned the policy would languish in the file until such time as the actual date of recording could be identified on the policy. It is only within the last year that the title insurance companies allowed the Effective Date to be identified as simply as the "Date of Recording". This has been

a significant change for offices that handle volume closings. It enables the office to prepare an owner's policy at the same time the closing package is being prepared. Furthermore, the policy is presented to the purchasers at the closing table. This is an effective marketing tool for title agents.

While this has affected the volume of the backlog, no doubt there are still policies waiting to be issued. The short form owner's policy now being offered by at least two of the major title insurance companies will be of great assistance in efforts to eliminate this backlog. This policy allows the practitioner to provide owner's coverage to a purchaser with only having to do the same amount of work we would do in preparation of a short form lender's policy. The short form requires the inclusion of pre-printed short form Schedules A and B and when necessary an Addendum. Schedule A identifies the time and date of closing as the effective date (this provides automatic affirmative gap coverage), in addition, the policy amount includes language indicating that the policy amount will increase by ten percent (10%) a year during the first five (5) years after the policy is issued. Schedule A requires an identification of the street address of the property. A complete legal description of the property does not have to be attached; the short form requires only a description of the land insured by reference to the deed by which the insured acquires the property. Schedule B is a pre-printed exception list containing the standard exceptions to title found in the long form. Included within the body of the policy are pre-printed provisions, which allow the deletion of certain exceptions; for example if a survey has been obtained, then the survey exception can be deleted.

The short form assumes that if there are not any additional exceptions to title, such as prior mortgages, judgments or liens which, were imposed upon, consented to, created by or actually known to the insured. If there is such an exception then an Addendum must be added to the policy taking exception to such matters. In addition, there is no exception for matters revealed by the title examination, and which the purchaser has no knowledge of. The assumption being that these matters will be cleared up at closing. If they are not, then an exception to title must be included by Addendum.

The most significant change in owner's title insurance is the product being currently offered which is known as the homeowner's policy. The policy is available in long form and also available in a short form version from the

title insurance companies. The product is being marketed as providing additional coverage for the insured as well as providing increased revenue to the agent as a result of the additional revenue generated by the homeowner's policy. The general underwriting requirements for the policy include the following: usual and customary title search, the purchaser must be a natural person who intends to reside on the land, the seller(s) must execute a seller/owners affidavit (preferably an affidavit that specifically includes language pertaining to the covered risks in the homeowner's policy); and the property must be located in a "professionally" platted subdivision, the land must not exceed twenty-five (25) acres, and also be improved by new construction or previously owned 1-4 family residential dwelling or condominium unit.

One of the most interesting components of the homeowner's policy and certainly one of the most beneficial aspects for the purchaser is in the area of covered risks. In the traditional owner's title policy, the insured is only covered for risks that occurred prior to the insured taking title, but that were not known on the policy date. The homeowner's policy provides protection for certain covered risks after the date of the policy. For example, the insured would be covered even if three (3) years after closing the insured discovered that someone else had a lien on the title such as a mortgage, discovered a judgment, state or federal tax lien, a charge was assessed by a homeowners association or condo association, or a materialmen's lien was filed after the policy date for labor and materials that occurred before the policy date. In addition, if the insured's existing structure was damaged because of the exercise of a right to maintain an easement, even if the easement was excepted on Schedule B, the insured would be covered. Furthermore, if the insured was forced to remove an existing structure which encroached onto an easement or over a building set back line, even if the easement or set back line was excepted on Schedule B, the insured would be covered under the policy.

Finally, with respect to taxes, if a taxing authority assesses supplemental real estate taxes, not previously assessed against the land for any prior year(s) before the policy date, because of construction, change of ownership or use that occurred before the policy date, then the insured would be covered. For example, if the insured renovated his home three (3) years prior, resulting in a significant increase in value, at such time the insured

received the supplemental tax bill for those previous years, the claim for additional taxes would be covered under the homeowner's policy. In addition, in the event a homebuyer purchased property that was in a conservation tax status, and a breach of the conservation covenant had occurred prior to the policy date, the supplemental tax due as a result of the breach would be a covered risk.

One other area that this policy differs from the traditional owners title policy is expansion of the circumstances under which coverage continues. The policy insures the insured forever, even after the insured no longer has title, and the policy also insures anyone who inherits the property as a result of the insured's death, a spouse who receives title because of dissolution of marriage, or a trustee or to whom the insured transfers title to the property after the policy date, and finally beneficiaries of the insured's trust upon the insured's death.

At first glance, the additional risks assumed by the title insurance company are difficult to envision. However, it appears that the industry has been thorough in reviewing claims and the cost thereof, and has determined that there are some risks for which the title insurance company will impose both a deductible and a limit of liability. The covered risks that fall within this category include violation of a subdivision law or regulating affecting the land that facilitates the insured being unable to obtain a building permit, or the insured being forced to remove the violation. In addition, any claim made relating to marketability of the title has both a deductible and limit of liability. If the insured is forced to remove or remedy the existing structure (other than boundary walls or fences) because any portion was built without obtaining a building permit, or there is a violation of an existing zoning law or regulation, it is a covered risk with a deductible of \$5,000.00 and a limit on liability of \$25,000.00. While these covered risks do include a deductible and limit of liability they are also risks that traditional owner's title insurance did not cover. Finally, at least two of the major title insurance companies are not requiring a survey with the homeowner's policy. The no-survey requirement applies only to the homeowner's policy. It does not apply to regular 1992 ALTA short form owner's policies where the existing requirement for a survey remains unchanged if the

insured wants survey coverage. I would imagine that most closing attorneys reading this are thinking the homeowner's policy cannot be as "enhanced" as it is represented. Historically, title insurance has been underwritten based upon a concept of risk elimination, rather than the assumption of risk or liability. The limitation of liability section must be read carefully before the policy is used because the limitations provide built-in exclusions and limitations that will affect any title that is not virtually perfect.

Along with enhanced coverage of the homeowner's policy comes an enhanced premium. The increase in premium costs run from a minimum of ten percent (10%) to as high as twenty percent (20%) over the traditional owner's policy. To agents this raises the likelihood of increased revenue. According to the title insurance company representations, the fact that the homeowner's policy includes a higher premium probably will not be a deterrent to its use because the benefits of the policy to the homeowner outweigh the higher cost.

Based upon this information closing offices have available two products that will impact the rate of issuance of owner's title insurance and also streamline the issuance of such policies. From a marketing perspective, agents and closing attorneys arguably will find it easier to "sell" a homeowner's policy to a purchaser, based upon the expansion of coverage. From a firm-management perspective, the short form owner's and short form homeowner's policy will make the issuance of policies at closing much more efficient. In writing this article the author spoke with a number of underwriters about these new products, and although the movement toward these policies is somewhat slow, more and more closing offices are making the transition to the new policies. Having said this however, from a practical standpoint it will be prudent for a volume closing office to elect to only offer one product at closing. Explaining the merits of owner's title insurance to a purchaser can often be difficult and compounding this with an attempt to explain the nuances between a traditional owner's policy and a homeowner's policy would be a waste of precious closing time. These new products are worth further investigation to determine whether they will be advantageous to the operation of the closing office.