



INSIDE THIS ISSUE:

<i>Message from President</i>	2
<i>Message from the Executive Director</i>	2
<i>Disaster Relief Fund</i>	3
<i>ALTA Convention</i>	3
<i>Changing of Guard</i>	4
<i>2006 Convention</i>	5
<i>Article by Warren Laird</i>	6-11
<i>Mid Year Meeting</i>	12

## DLTA MEMBERS HAD FUN!

Members of Dixie Land Title Association enjoyed lots of fun and sun at the Perdido Beach Resort during the Annual 2005 Convention. Everyone took advantage of the beautiful weather to enjoy everything from a low country boil on the deck of the resort overlooking the Gulf, to a night of karaoke songs and dancing at a tropical luau. The fishermen (and women) caught lots of fish; and the golfers came back with smiles on their faces, so they must have played well.

You might think all we did was eat, sing, dance and have fun, but we took care of business as well. Participants earned up to 2 CLE credits by attending courses on Ethics and Professionalism the first day; and members participated in meetings to discuss everything from emerging trends in the title insurance industry to schemes, scams and fraud in the industry.

Our hat goes off to Anna Batten, the convention chairman for this year. Despite multiple hurricanes that hit the Gulf Coast prior to the convention, everything went smoothly. We all enjoyed ourselves and had a great time!



## A MESSAGE FROM THE PRESIDENT

*“A very challenging year is before us in the title industry.”*

Congratulations to Don Wade and his convention chair, Anna Batten, for putting on a wonderful convention. They battled through a horrible year of weather and related adversity, finally culminating in something called “Karaoke Night”. Seriously, I had no idea we had such a talented membership. Nevertheless, I believe a few of them should hang on to their day jobs.

Larry Giardina is diligently exploring the possibilities of having the convention in Las Vegas. Of course, we will keep you informed as more information becomes available. A very challenging year is before us in the title industry. The big news at the ALTA convention this year is still about the new

RESPA regulations. There is some suspicion that HUD is simply giving lip service to the industry at the various round table meetings being held around the country, and all the while, they have a bill prepared to spring on us when they feel the time is right.

I would like to urge all of our members to get involved in the business of acquiring new members. Growth will make for a better organization, and I am sure the states membership directors would appreciate your efforts.

In addition, Robert Maddox would like to enlist all your help for articles or suggestions you may have for the *Title Wave*. The success of this publication is solely dependent on our contributions.

Finally, let us not forget the commitment that your organization has made to our members who were affected by Hurricane Katrina. Contributions should be made to: DLTA, P O Box 14806, Baton Rouge, LA 70898. Be sure to include on the memo of your check “Disaster Relief Fund”.

Thank you for the confidence you have expressed in me by naming me as President of your organization. I am very excited about this year and with your help, we can make it another great one for DLTA.

Bill Kahalley,  
President

## EXECUTIVE DIRECTOR

This past year with Dixie Land Title Association has been filled with one learning curve after another. My thanks go to Don Wade for his patience and understanding as I “figured it all out”. Also, special thanks to Rita Paris, Don’s chief assistant, for her help throughout the year. If it hadn’t been for Anna Batten, and members of the Strategic Planning Committee, I’m not sure I could have made it. Finally, I greatly appreciate the assistance of Pam Dunlap for her efforts to make this a smooth transition.

2006 should be must easier. I’ve got a timeline now, and I think I understand all the players who do such a wonderful job of volunteering to make the

work of DLTA look so effortless.

My goal for this year is to try to increase communications to all DLTA members through our website and our newsletter, the *Title Wave*. I believe we’ve made a good start with the website, but I still need input from each of you. If you have a picture from a recent title school, news of a big change within your company, or pictures from the Atlanta luncheons, please forward them to me. I would love to keep the website fresh and up-to-date, so that it is a vital communication tool for the membership.

Please keep me informed as to address and phone number changes. I’ll do my best to keep that information current



so that you can go to the website to find contact information on all our members.

Finally, as 2005 comes to a close, I know you join me as we extend our best wishes and prayers for those who are still recovering from Hurricane Katrina’s devastation. This holiday season will be particularly special to all of us, as we remember our many, many blessings.

Linda Alwood

## DISASTER RELIEF FUND FOR DLTA MEMBERS

It's been only three months since Hurricane Katrina hit the Gulf Coast and left a wake of destruction in Mississippi and Alabama. Members of DLTA struggled with the question of whether to go on with the 2005 Convention scheduled to begin September 15th, in light of the number of members affected by the storm. Finally, the Board of Directors decided to move forward and hold the convention. However, those members affected were never far from our thoughts.

In an effort to assist those members most affected by the storm, the Board of Directors has established a Disaster Relief Fund. Donations can be made as follows:

Check Payable to:  
DLTA  
P O Box 14806  
Baton Rouge, LA 70898  
Memo: "Disaster Relief Fund"

Dixie Land Title Association will match the members' donations up to \$10,000.

If you know of a member who is in need of help to reestablish their business due to Hurricane Katrina, please contact the DLTA office at 225-291-2806, or contact our DLTA President, Bill Kahalley.

*"DLTA to match the members' donations up to \$10,000."*

## AMERICAN LAND TITLE ASSOCIATION CONVENTION IN NEW YORK CITY



DLTA President Bill Kahalley, President-Elect Diane Calloway (not pictured), DLTA Executive Director Linda Alwood, and Larry Giardina recently attended the national convention for American Land Title Association in New York City. Title professionals from across the country met to discuss vital issues currently facing the title industry. Participants heard presentations on a number of topics, and received up-to-date

information to bring back to their members.

Our Executive Director, Linda Alwood, had the opportunity to meet the Executive Directors from twelve other states. Each shared information relative to current trends to develop membership, establish successful sponsorship programs, and they learned new revenue producing programs for the state associations.

She found it very valuable to talk with the vendors at the ALTA convention to promote their attendance at the DLTA convention in 2006.

Perhaps the highlight of this year's convention was an address by former Mayor Rudy Giuliani of New York. Giuliani received a standing ovation for his inspirational address.

## CHANGING OF THE GUARD 2005-2006 BOARD OF DIRECTORS



Bill Kahalley accepts position as President of DLTA

*“Congratulations to  
newly elected officers &  
directors”*

Congratulations to the following newly elected officers and directors of Dixie Land Title Association:

### **President**

Bill Kahalley  
Surety Land Title, Inc.  
5909 Airport Blvd.  
Mobile, AL 36608  
Phone 251-343-4200

### **President-Elect**

Diane S. Calloway  
Specialized Title Services, Inc.  
6133 Peachtree Dunwoody  
Rd., N.E.  
Atlanta, GA 30328  
Phone: 770-698-2020

### **Vice President**

Christopher S. Bobo  
Alabama Land Services, Inc.  
110 South Pine Street  
Florence, AL 256-764-2141

### **Secretary**

Linda Reeves  
Reeves Title, Inc.  
8477 Hwy. 431 South  
Albertville, AL 35950  
Phone: 256-878-4648

### **Treasurer**

Rebecca Manasco  
Ticor Title Insurance Co.  
925 Sharit Avenue, Ste. 207  
Gardendale, AL 35071  
Phone 205-418-1060

### **Director—Alabama**

Cass R. Tinsley  
Fidelity National Title Insurance  
Co.  
One Perimeter Park South,  
Suite 100N  
Birmingham, AL 35243  
Phone: 205-970-6038

### **Director—Georgia**

Kathy Stewart  
Lawyers Title Insurance Corp.  
Six Concourse Pkway, Ste 1500  
Atlanta, GA 30328  
Phone: 404-256-6260

### **Director—Mississippi**

Kenneth Jones  
Gulf Title Co., Inc.  
P O Box 280  
Gulfport, MS 39502  
Phone: 228-865-0011

### **Director at Large**

Jeffrey R. Lees  
First American Title Insurance  
Co.  
300 Office Park Drive  
Birmingham, AL 35223  
Phone: 205-879-01818

### **Past President**

Don A. Wade  
Stewart Title Guaranty Company  
5901-B Peachtree Dunwoody  
Rd. #200  
Atlanta, GA 30328  
Phone: 770-395-0690

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## FRED WILBANKS— TITLE PERSON OF THE YEAR



Bill Dillard presents trophy to Fred Wilbanks,  
2005 Title Person of the Year

*“Fred Wilbanks is  
honored”*

William V. “Bill” Dillard held the audience in anticipation as he described the many life long achievements of the 2005 Title Person of the Year. Finally, it was apparent he could only be describing one person—Fred Wilbanks of Surety Land Title, Inc. in Mobile, Alabama.

Later, as Bill Kahalley gave his acceptance speech as DLTA’s incoming President, he added to Dillard’s comments, and personally thanked Fred Wilbanks for his support during his career with the same company.

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## 2006 CONVENTION LOCATION

2006 was to be the year Dixie Land traveled to the Beau Rivage in Biloxi, Mississippi for our convention. However, the Beau Rivage Hotel had extensive damage from Hurricane Katrina, and will not be available. Larry Giardina is working hard to find a new location for the convention, and we will keep you advised of his progress. Until then, will it be Las Vegas, Birmingham, or some other exciting city?



# The Alabama Uniform Residential Mortgage Satisfaction Act

BY: WARREN LAIRD, CHICAGO TITLE INSURANCE CO.

## I. INTRODUCTION

For decades, borrowers in Alabama have experienced difficulty obtaining the timely release of mortgages encumbering their land. Some time around the turn of the twentieth century, the legislature responded to the problem as it then existed by imposing a \$200.00 penalty payable to the mortgagor by the mortgagee who fails to timely acknowledge satisfaction of the debt by recording a release. Code of Alabama (1975) Section 35-10-30. This penalty provision has gone unchanged. It is interesting to note that, from the perspective of purchasing power, it would take more than \$4300 in today's dollars to purchase what \$200 would purchase when the penalty provision was enacted. That is an indication of the how serious the legislature considered the issue one hundred years ago.

The penalty provision imposed by Section 35-10-30 has become meaningless with the passage of time for two primary reasons: 1) the lack of knowledge on the part of mortgagors as to the availability of the penalty; and 2) the cost associated with collecting the penalty.

In an effort to obtain some relief from the mounting problem of unreleased mortgages, Representative Ken Guin introduced legislation during the 2004

Regular Session, HB 404, a "self help" mortgage satisfaction bill. In those instances in which a mortgagee had failed to timely record a release, this bill would have permitted attorneys, title insurance companies and agents who actually closed a transaction to place of record an affidavit, supported by evidence of the satisfaction of the mortgage, after giving due notice to the mortgagee of the action about to be taken. This recording of the affidavit and supporting documents would have had the same force and effect as a mortgage release executed by the mortgagee. It also imposed criminal penalties for knowingly recording an affidavit of release when the debt secured by the mortgage had not been paid.

The Alabama section of DLTA's Legislative Committee was a strong proponent of HB 404. Unfortunately, HB 404 was met with opposition from the banking lobby. The house committee to which the bill was assigned never took action and, as a result, HB 404 experienced a quiet demise.

While HB 404 was pending, a committee within the National Conference of Commissioners on Uniform State Laws (NCCUSL) was finalizing its own model mortgage satisfaction act. Alabama's

Bob McCurley, director of the Alabama Law Institute (ALI), served on the drafting committee. The model act will do more than provide an alternative means to the release of mortgages. In fact, it creates two regimes, one for the manner in which payoff statements are obtained, communicated and relied upon, and a second regime for satisfying mortgages, including a self-help method of releasing a mortgage.

To begin its review of the model act, ALI created a Real Estate Standby Committee (Committee) composed of representatives from the legislature, bench and bar as well as the banking and title insurance industries. The committee began its work during the fall of 2004. It has met regularly since. It has been a pleasure to represent the title insurance industry in the committee's endeavors.

## II. THE ALABAMA UNIFORM ACT

### A. Where It Comes From

The Alabama Uniform Residential Mortgage Satisfaction Act ("the Act"), so designated by Section 101, is derived from the NCCUSL Uniform Residential Mortgage Satisfaction Act.

### B. Scope

By its title and by similar reference in various definitions, the scope of the act is limited in its

*"The Alabama section of DLTA's Legislative Committee was a strong proponent of HB 404."*

application to “residential real property, i.e. property...which is used primarily for personal, family or household purposes and is improved by one to four dwelling units” Section 102(13).

The Act applies to the manner in which payoff statements are obtained as well as contents of payoff statements. It establishes a basis upon which one may rely on payoff statements. The Act further provides for the release of mortgages and a “self-help” method of releasing a mortgage when a mortgagee fails to do so on a timely basis.

C. Definitions

Besides those already mentioned, Section 102 of the Act establishes definitions for seventeen additional terms and phrases used throughout the Act. Among these, several are noteworthy.

1. Address For Giving Notification

The Act establishes instances for which a notice is required. For instance, to secure a payoff, a mortgagee must receive a “notification.” Furthermore, to record an affidavit establishing the release of a mortgage, the mortgagee must receive notice of the proposed action. To clarify where notice is to be sent, Subsection (1) defines “address for giving a notification” as “...the most recent address provided in a document relating to the secured obligation by the intended recipient of the notification to the person giving the notification, unless the person giving the notification knows of a more accurate

address, in which case the terms means that address.”

Therefore, if the most recent address you have for a mortgagee is the address on the mortgage, then that would constitute the “address for giving a notification.” However, if, for instance, you have been supplied with a payoff statement from the mortgagee with a different or more current address, then the address shown on the payoff statement would constitute the “address for giving a notification.”

2. Good Faith

Subsection 102(6), for clarity and uniformity sake, retains the definition of “good faith” used in the revised UCC as adopted in Alabama.

3. Recording Data

With the advent of electronic storage of documents, Alabama counties are not uniform in the manner in which documents are recorded in the real property records. Some counties continue to use a “volume and page” method while others use “instrument numbers” or “document numbers.” The purpose of Subsection 102(12) is to clarify, at least for the purposes of the Act, that whatever method employed by the various counties is sufficient and nothing about the Act should be construed to require a change in that regard.

D. Notice

Section 103 provides for the manner of giving “notification” (hereinafter referred to more often as “notice) required by the Act. The electronic transmission of any required notification by facsimile or by electronic mail is permissible only “if the recipient agreed to receive notification in that manner.” Otherwise, notice must be delivered by U.S. Mail or some other “commercially reasonable delivery service” such as Federal Express, UPS, etc. Subsection (a)(3) further permits notice to be furnished by hand delivery.

If notice is furnished through overnight delivery, it is effective the day after it is deposited with the carrier. When notice is provided through U. S. Mail, it is effective three days after it is deposited with the postal service. If the mortgagee has consented to facsimile or email transmission of notice, it is effective the day it is given. When hand delivery is utilized as the method of delivering a notification required by the act, notice is effective the day it is received.

If the provisions of the Act or notice provided pursuant to the Act requires performance on or by a certain day, “if the last day is Sunday, or a legal holiday...or a day on which the office in which the act must be done shall close as per-

*“The Act establishes instances for which a notice is required.”*

mitted by any law of this state, the last day... must be excluded, and the next preceding secular or working day shall be counted as the last day within which the act may be done." Code of Alabama (1975) Section 1-1-4.

Section 103 of the Act does not require proof of receipt. Be aware, however, that certain provisions do require notice be given in a manner that provides proof of receipt. For instance, Section 203(c), which imposes potential sanctions upon a mortgagee that fails to timely record a release after having received notification and an opportunity to cure its failure, requires the landowner to give notice to the mortgagee utilizing a Section 103 method "that provides proof of receipt." Furthermore, when utilizing the self-help method to obtain release of a mortgage, Section 302(b) requires proof of service of the landowner's intent to record an affidavit of satisfaction.

E. Rescinding a Release or an Affidavit of Satisfaction Erroneously Recorded

Mortgagees do, from time to time, mistakenly or erroneously record mortgage releases. Unless the rights of innocent intervening third parties will be affected, under current Alabama law there are three basic ways to correct the mistake: (1) record a new properly executed mortgage; (2) record a properly executed agreement between the mortgagor and mortgagee that reinstates and otherwise ratifies the erroneously released mortgage; or (3)

file a declaratory judgment action, obtain and subsequently record an order expunging the release from the record and reinstating the mortgage. Taylor v. Jones, 280, Ala. 329, 194 So. 2d 80 (1967).

Section 104 would permit a mortgagee who mistakenly releases a mortgage or, in the self-help release regime, a "satisfaction agent" who mistakenly records an affidavit of satisfaction, to execute and record a "document of rescission." Once recorded, the erroneously released mortgage is reinstated.

There are three caveats to utilizing this section when enacted. First of all, title to the property must still be held by the mortgagor(s). This is a departure from NCCUSL's Model Act. Under the latter, it is immaterial how title is vested at the time of recording a rescission document. Under the Alabama approach, if ownership of the land has changed since the recordation of the erroneous release or affidavit of satisfaction, presumably something akin to a Taylor action must be brought to reinstate the mortgage. Secondly, a recorded "document of rescission" will not affect the rights of innocent third persons (subsequent purchasers, lien creditors) who acquire an interest in the real property after the erroneous release is recorded. However, a purchaser or subsequent lien holder having knowledge that the mortgage was released in error would not have the protection of this provision. Thirdly, a mortgagee or

satisfaction agent recording a document of rescission should determine by an examination of the real property records that the mortgagor has not conveyed all or a portion of the interest in the land and that intervening liens have not been recorded.

Subsection (d) establishes what may be considered as a new cause of action. A person who erroneously or wrongfully records a rescission document is "liable to any person injured thereby for the actual damages caused by the recording and reasonable attorney's fees and costs."

F. Payoff Statements

A mortgagee must supply the mortgagor, or the mortgagor's authorized agent, with a payoff statement within 10 days from the effective date of a written request for a payoff statement (Section 201). Subsection (a) sets forth the minimum requirements for a payoff request. If the mortgage for which the payoff statement is requested secures an equity line or revolving credit note that is to be released, the request ("notification") to the mortgagee must include statement directing the mortgagee to close the line of credit.

If a payoff statement is requested from a mortgagee who has assigned its interest in the mortgage to another lender, the assignor need only provide the name and address of the assignee in response.

Subsection (d) establishes the minimum requirements for information contained within a payoff statement. A mortgagee is prohibited from qualifying a payoff statement unless the

*"Mortgagees do, from time to time, mistakenly or erroneously record mortgage releases."*

payoff statement "provides information sufficient to permit the entitled person or the person's authorized agent to request an updated payoff amount at no charge AND to obtain that updated payoff amount...on the payoff date or the immediately preceding business day" (emphasis added).

A mortgagee's failure to timely respond to a payoff request is liable to the mortgagor for the latter's actual damages, plus \$500. Punitive damages are not recoverable. If the mortgagee fails to remit damages within 30 days after receipt of the mortgagor's demand, the mortgagee will also be liable for the reasonable attorney's fees and costs associated with collecting the damages. Section 205, however, does establish a relatively deep safe harbor for an offending mortgagee to seek refuge from the storm created by its non-compliance with this provision.

In order for a mortgagee to avoid liability for the penalties and damages imposed by Section 201, it must have: (1) established a procedure to achieve compliance with the payoff statement requirements; (2) complied with its procedure; and (3) experienced failure due to circumstances beyond its control or as a result of a bona fide error.

#### G. Erroneous Payoff Statements

In the event a mortgagee provides a payoff statement that is incorrect, Section 202 permits the lender to

send a corrected payoff statement. A mortgagee cannot deny the accuracy of an erroneous payoff statement when another has relied upon it to his or her detriment, although the mortgagor may be liable for any sum not included in the payoff statement.

#### H. Satisfaction of Mortgages (203)

Section 203 requires a mortgagee to submit for recording a mortgage satisfaction or release within 30 days from the date it receives full payment. Where equity line mortgages are concerned, payment must also be accompanied with a request to terminate the credit line and/or future advance feature of the underlying debt. Failure to timely record a mortgage release may expose the mortgagee to liability for the landowner's actual damages, a penalty of \$1000, plus reasonable attorney fees and costs, if after a second 30-day "notification," the mortgagee fails to record a release within 30 days after receipt of the second request. The second "notification" must be sent by a method allowing for proof of receipt. Actions to recover penalties must be brought in the country where the mortgage was recorded.

#### I. Form and Effect of Satisfaction

Section 204 provides for the minimum content required of a mortgage satisfaction or release. It also provides for the conditions upon which a Probate Judge can accept the form for recording.

The Alabama version of Section 204 is a departure from the NCCUSL version. The latter requires that the legal description of the land also be inserted. The Alabama version does not make that requirement, although it most certainly would be necessary to insert the legal description of the parcel being released in a partial release.

#### J. Satisfaction by Affidavit

##### 1. Satisfaction Agents

Section 301 introduces a new term to the body of law comprising real property, i.e. "satisfaction agent." Title insurance companies, as defined in Ala. Code Section 27-25-3, and attorneys who are licensed and in good standing with the Alabama bar may serve as satisfaction agents.

Neither title insurers nor members of the bar are required to serve as satisfaction agents.

##### 2. Notice of Intent to File a Satisfaction Affidavit

If a mortgagee has not submitted for recording a mortgage release within "30 days after the creditor received full payment of performance of the secured obligation" (Section 203(a)), the satisfaction agent, acting on behalf of the landowner, must give notice to the mortgagee that he or she intends to submit for recording an affidavit of satisfaction of the mortgage (Section 302). The notice must conform to the minimum standards set forth in Subsection 302(a).

One important requirement of the Notice of Intent is a state-

*"Neither title insurers nor members of the bar are required to serve as satisfaction agents."*

ment concerning the classification of the land. The satisfaction agent must have reasonable grounds to believe that the real property was devoted to residential purposes at the time of the mortgage. If the use of the land has changed from a residential use to a commercial use since recording of the outstanding mortgage, satisfaction by affidavit is still available.

Also required is a statement in the Notice of Intent that "a satisfaction of the mortgage does not appear of record in the chain of title."

The notice must be sent by a method authorized by Section 103 allowing for proof of delivery to the same address as the mortgagee uses to receive payoff requests. If that address cannot be ascertained, then the notice must be sent to the address used by the mortgagee for "notification for any other purpose."

3. Authority to Submit Affidavit of Satisfaction for Recording

Pursuant to Section 303, a satisfaction agent may execute and record a satisfaction affidavit under two circumstances: (1) if the satisfaction agent has given the mortgagee proper notice of the intent to file a satisfaction affidavit and the mortgagee has failed to reply within 30 days from the effective date of the notification; and (2) the mortgagee authorizes the satisfaction agent to proceed with filing the satisfaction affidavit.

If the mortgagee responds to the satisfaction agent by objecting to the satisfaction affidavit on the basis that the underlying debt remains unpaid, the satisfaction agent must not proceed with filing the satisfaction affidavit. A mortgagee that is legally obligated to record a satisfaction, but fails to do so in a timely manner, may be subject to damages as provided under Section 203 for wrongfully hindering the satisfaction process.

This section also contemplates those situations in which a mortgage is assigned, but someone fails to record the assignment. If a mortgage has been assigned, the mortgagee must respond by indicating that it has been assigned, also providing the name and address of the assignee. The satisfaction agent must begin the process again by providing the assignee with the requisite 302(a) notice and an additional 30 days within which to respond.

4. Contents of Satisfaction Affidavit

The requisite contents of a satisfaction affidavit are found in Section 304. Of significance is the requisite statement that the affiant has reasonable grounds to believe that the property was used for residential purposes at the time the mortgage was recorded. Of further significance is the required statement concerning the lapse of time since providing the notice of intent and lack of response from the mortgagee. The affidavit must be sworn to, executed and acknowledged in the same manner as other conveyances of land in Alabama.

cut and acknowledged in the same manner as other conveyances of land in Alabama.

5. Effect of a Satisfaction Affidavit

A satisfaction affidavit will have the similar effect of a mortgage release, i.e. termination of the lien. It will not extinguish the borrower's liability for payment of any outstanding balance on the debt.

6. Liability of Satisfaction Agents

A satisfaction agent executing a satisfaction affidavit with knowledge that the statements contained therein are false is liable to the mortgagee for actual damages caused by the recording of the affidavit, as well as punitive damages, attorney's fees and costs. A satisfaction agent knowingly recording an affidavit containing false statements may also be subject to criminal prosecution.

A satisfaction agent recording an affidavit erroneously (i.e., "without knowledge") will not be liable so long as the mortgagee did not respond in the prescribed manner.

III. HB 404 AND THE ALABAMA UNIFORM RESIDENTIAL MORTGAGE SATISFACTION ACT: A BRIEF COMPARISON

Absent from the 2004 legislation was the payoff regime and the statutory basis for actual reliance on a payoff statement supplied by a mortgagee. The two measures share the self-

*"A satisfaction agent recording an affidavit erroneously will not be liable so long as the mortgagee did not respond in the prescribed manner."*

*“Assuming passage, the extent of the Act’s impact on the title industry, at least in the near term, will be mixed.”*

help mortgage satisfaction regime, but with major differences.

HB 404 would have permitted all of the following to serve as “satisfaction agent.”

- A. an authorized officer of a title insurer properly authorized to transact business as a title insurer in Alabama which made the payment to the mortgagee;
- B. a title agent for whom a certificate of authority has been issued by the Commissioner of Insurance which made the payment to the mortgagee; and
- C. an attorney licensed to practice law in Alabama who made the payment to the mortgagee.

The Act only authorizes title insurers and attorneys licensed to practice law in Alabama and in good standing with the bar to serve as “satisfaction agent.” The limitation contained in HB 404, requiring the satisfaction agent to have actually made the payment to the mortgagee, is absent from the Act.

#### IV. CONCLUSION

Many hours have been invested by many people in the review and revisions of the Model Act. Depending on your perspective, the Act could be broader and more punitive, or it could be more restrictive and less punitive. Assuming passage, the extent of the Act’s impact on the title industry, at least in the near term, will be mixed. There will be significant benefit from the payoff statement regime of the Act. But, as with any new process, there is al-

ways reluctance to change a standard of practice.

There will be reluctance to place a great deal of weight on a satisfaction affidavit, especially if the satisfaction agent is a stranger to the transaction from which the mortgage was paid. Some speculate that the Act will give birth to a cottage industry of lawyers willing to assume the liability and risk of undertaking the self-help process of mortgage release, while others speculate that only a lawyer who actually closed the transaction and remitted payoff funds on behalf of the mortgagor will be willing to take on that kind of risk. Some speculate that title insurers will flood the Probate Judge’s offices with satisfaction affidavits, while others speculate that title insurers will be reluctant to assume the additional risk without complete and unimpeachable information concerning the transaction from which the unreleased mortgage was paid.

Even with the near-term transitional concerns, both regimes of the Act are worthy of the time spent as well as the future effort that will be required to secure passage. What can you do as a real estate practitioner and a member of the title insurance industry to assist with the passage of this long needed legislation? Talk with your legislators now. Discuss with them the problems you encounter in securing payoff statements, being able to rely on payoff statements, obtaining mortgage satisfactions, and how these unre-

leased liens work against homeowners. You may have to educate your legislators about the legal ramifications encountered when:

- A. you cannot obtain a payoff statement;
- B. you are informed post closing that the payoff statement was incorrect and, therefore, your payoff check is insufficient and will not be accepted;
- C. a mortgagee fails to timely record a satisfaction of a mortgage;
- D. you encounter a mortgage that should have been released but no release is recorded.

Your efforts will go along way toward enacting The Alabama Uniform Residential Mortgage Satisfaction Act.

Dixie Land Title  
Association

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**We're on the Web!**  
**WWW.DLTA.net**

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## MID YEAR MEETING

While plans for the location of the 2006 Convention are still being finalized, we have scheduled our Mid Year Meeting to be held at the beautiful Renaissance Ross Bridge Golf Resort and Spa in Birmingham, Alabama. This meeting will be held as follows:

**March 17-18, 2006**  
**Renaissance Ross Bridge Golf Resort and Spa**  
**Birmingham, AL**