

# Title Wave

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## Amy Niesen – 2013 Title Person of the Year

Each year, the Dixie Land Title Association recognizes one individual for his or her outstanding insurance industry. The recipient of the Title Person of the Year Award is a person who is identified as a credit to his or her profession and to the industry.

Amy Niesen was honored at the annual convention of Dixie Land Title Association as its 2013 Title Person of the Year. The award was presented at a morning brunch on the last day of the convention by last year's recipient, Diane Calloway.

Amy serves as Vice President and In-House Counsel of Land Title Co. of Alabama in Birmingham, Alabama. She has served on the Board of Directors of DLTA for several years, and will serve as its President this year. She



*Past recipients of the Title Person of the Year joined Amy in a photo at the 2013 Convention – (front row) Amy Niesen and Diane Calloway (back row) Larry Giardina, Anna Batten, Rebecca Turner and Bill Kahalley*

has made invaluable contributions to numerous DLTA committees and served as Co-Convention Chair of the 2013 Convention. Amy was instrumental in coordinating the passage of the Legislative Act to require licensure of all title agents in Alabama in 2011, and worked with other members of the Alabama Legislative Committee to insure its implementation.



## ALTA Convention in Palm Beach



Amy Niesen, Charlie Gray, Linda Alwood, John Alwood, Bobby Burgess, Roy Perilloux and Bonnie Perilloux all attended the ALTA Annual Convention in Palm Beach last month. Everyone agreed this was one of the best conventions ever, and came home with lots of knowledge, contacts, and new ideas.

## Message from the President

When the moon hits your eye like a big pizza pie, that's amore.... when the world seems to shine like you've had too much wine, that's Dixie Land Title Association Annual Convention 2013!

Yes, a fantastic time was had by all at the 47th Annual DLTA Convention in Orlando at the Portofino Bay Resort over the Labor Day weekend! Good friends, beautiful accommodations, the best speakers ever, savvy sponsors, great parties, rollercoasters and a healthy dose of SEC football (not to mention all that pasta) - we were all definitely living "La Dolce Vita"! One of the many highlights of the convention was ALTA President, Frank Pellegrini, swearing in the new DLTA Board of Directors for the 2013-14 year - it's an exceptional group of talented leaders and I'm honored to work with each of them. A special "thank you" to Charlie, Tammy, Linda and the rest of the Convention Committee for a job well done - it was a huge success!

*"... our tomorrows may  
not even closely  
resemble our  
yesterdays."*

In October, Charlie and I were honored to represent DLTA at the ALTA Annual Convention at The Breakers in beautiful Palm Beach, Florida. It was definitely something special. We bonded easily with new title friends from all over the nation who carry the same passion for our industry that we do. As we listened intently to the messages, predictions and data presented in each of the sessions, there were plenty of topics for us all to discuss as state leaders, agents, underwriters... and at the end of the week, as comrades on a mission. ALTA's valiant efforts to establish and implement its Best Practices Framework as a proactive response to the CFPB's pending final rule is a testament to their dedication to true professionalism and its belief in all of us.

The message I carried home from Orlando and Palm Beach is that our tomorrows may not even closely resemble our yesterdays. This is due primarily to the impact that the CFPB's regulations are bound to have on our day-to-day business operations. While the future remains fraught with uncertainty, I find it so humbling and fulfilling to observe title people from every corner of the nation - whether they be agents or underwriters, from the North, South, East or West, top executives or just common title folks - all standing together to defend the honor of our profession, our integrity as service providers, and our collective value as a key puzzle piece of the American Dream. It's just what we do in times of crisis - we stand together.

In closing, thank you to the Board of Directors for your loyal commitment and your leadership of our fine group. Also, we extend a big welcome to our newest DLTA members - we are pleased to have you all aboard and are here to help in any way. Our various DLTA committees are already hard at work, and are planning lots of exciting things for the coming year. I am honored to stand side by side with each of you and I look forward to charting the course of our own destiny together.

Here's to the good life!

Amy Niesen  
DLTA President

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# 2013 Convention Photos

Members of Dixie Land Title Association enjoyed an outstanding annual convention in Orlando in late August. The convention was held at the beautiful Portofino Bay Resort in Universal Orlando.



*Charlie Gray pictured with Michelle Korsmo, CEO of American Land Title Association*



*Having lots of fun – Toni Carroll, Angie Phillips, Laura Bryan, Kristin Hunstein and Michael Webber*



*Speakers at this year's convention included Malcolm Morris of Stewart Title Guaranty Company and Frank Pellegrini, ALTA President*



*Larry Giardina enjoys buffet at Jimmy Buffet's Margaritaville*



*Amy Niesen gives acceptance speech as new President of Dixie Land Title Association*



*DLTA Board of Directors held their meeting in the Board Room used by Donald Trump in his TV Show The Apprentice*



*Pat Smith and Michael Webber hanging out.*



*CLE and CE Workshops at Annual Convention*

# Clear vs. Insured Title – Mortgage Lien Release

*Release Tracking Services as a Best Practices Solution to consumer expectations*

By Daniel R. Morris, Esq

Laws, regulations and contractual duties provide the mortgage servicer and title insurer with the minimum guidelines to comply with the mortgage lien release. They do not, however, fulfill the reasonable expectation of the consumer that their paid off mortgage at closing will clear the mortgage lien from their recorded title.

Third-party release tracking services have been and currently are the “best practices” solution to the consumer for paid or satisfied mortgage liens. The service provides an inexpensive solution to landowners who typically expect that mortgage liens are cleared from One Hundred Percent (100%) of all properties shortly after closing by either the title company or the lender being paid at the closing. However, in reality, this is not the case and the deviation of reality from the expectation often results in higher costs to mortgage servicers and title companies. With the increasing pressure being placed on servicers and title companies by regulatory agencies such as the Office of the Comptroller of Currency (OCC) and Consumer Financial Protection Bureau (CFPB), and heightened standards such as National Mortgage Settlement Standards to provide the consumer with greater understanding of the transaction and protection from risks associated with the transaction, it is apparent that one of the “best practices” of a closing is assuring that the previous lien on property is removed within a reasonable amount of time after the closing on that property.

It is no secret that mortgages that have been paid but remain unreleased lurk behind numerous title insurance claims in the United States. Whether a mortgage is released or not depends on who is asking the question.

To most mortgage servicers the obligation to release the mortgage derives from the mortgagee's contractual duties in the mortgage, and from their State statutory duties where the collateralized property is located. These obligations vary from mortgage to mortgage and State to State. Therefore, to the mortgagee, “minimum full compliance” with their obligation to release the lien may be fulfilled if, instead of recording, they deliver the release to the borrower or to the borrower's settlement agent. This minimum compliance, however, fails, in a large number of cases, to actually result in that release being filed in the land records.

The title industry's practices also appear to follow this path of least resistance. The underwriting requirements under Schedule 2 B of most title commitments typically require the payment or satisfaction of the mortgage, and the release of the associated recorded lien as a condition to issue the final title policy. However, obtaining that recorded release information becomes problematic especially if the paid mortgagee elects to “comply” with their duty to release the lien by sending the release document to their borrower. Because the title policy by its terms does not promise “clear title” to the insured, there is no duty to the title underwriter to obtain the recorded mortgage lien release information. The policy promises “insurable title” which promises the insured that any monetary loss or damage associated with an unreleased mortgage will be defended and where applicable paid under the policy terms.<sup>1</sup> And, if the new owner failed to purchase an individual title insurance policy, he or she has no coverage assuring even insurable title.

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To the consumer or landowner whose title to the property on which a mortgage was paid or satisfied, there is a logical expectation that "mortgage release" means that the title on his or her property is clear of any mortgage lien when paid or satisfied at a closing. In other words, the new owner in a purchase and sale, or the current owner in a refinance, believes that someone has undertaken the duty to assure that, without a doubt, the mortgage lien release is being recorded in the land title records and removed from the real property.

Bottom line – increasing regulation and self-imposed best practices are pushing the entire industry to meet or exceed the expectations of landowners in dealing with the purchase and sale, or refinancing of real property. One of those expectations is that the current owner of the property is left with "clear and marketable title" not merely "good title". Clear and marketable title requires someone engaging in the process of *assuring* that the prior lien on the property is actually released and recorded. Consumers can rely on release tracking services to satisfy their expectation to obtain "clear title" – not just "insurable title" after they close on a loan.

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<sup>1</sup>See 2006 ALTA policy jacket Exclusion 3. (c) ". . . The following matters are expressly excluded from the coverage of this policy, and the Company will not pay loss or damage, costs, attorneys' fees, or expenses that arise by reason of . . . 3. Defects, liens, encumbrances, adverse claims, or other matters: . . . (c) Resulting in no loss or damage to the Insured Claimant. . ."

## Title Action Network Passes Membership Milestone

The Title Action Network (TAN), the premier grassroots organization promoting the value of the land title industry, announced that it has recruited more than 5,000 members. The organization was launched in 2012 and currently has 5,845 members.

TAN is an affiliated organization with ALTA.

"We are extremely pleased with the growth and participation in TAN this year," said Michelle Korsmo, ALTA's chief executive officer. "TAN members continue to recruit land title professionals from around the country to help promote the value of the industry to legislators and regulators."

TAN is also pleased to announce partnership with 36 state land title associations. State association partners include: Alaska, Arkansas, Arizona, California, Colorado, Dixie Land (Georgia, Mississippi, Alabama), Idaho, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maryland, Michigan, Minnesota, Missouri, Montana, Nebraska, Nevada, New England (Connecticut, Maine, Massachusetts, Rhode Island, Vermont, & New Hampshire), New Jersey, New Mexico, New York, North Carolina, North Dakota, Ohio, Oklahoma, Oregon, Pennsylvania, South Dakota, Utah, Virginia, Washington, Wisconsin and Wyoming.

"The participation from the state land title association has been exceptional," said Frank Pellegrini, ALTA's president. "Through the use of TAN, several states including Colorado, Indiana, Minnesota and New York have already seen legislative victories on industry issues. The continued growth of TAN depends heavily on the continued use by our state partners. We are grateful for their support."

For a current map of TAN membership, please click [here](#). For more information on TAN, click [here](#).

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### Do You Care About the New HUD-1?

If so, click [here](#) to join the Title Action Network

## New Alabama Decision Addresses 'Marketable Title'

By: Amy K. Steindorff, Partner, Balch and Bingham LLP

The recently issued *M&F Bank v. First American Title Insurance Company* (Case Nos. 1111525 and 1111568 (CV-08-903787, Jeff. Co.)), opinion is important in its limitation of negligence and breach of contract claims, as well as its treatment of "marketable title."

M&F sued FATIC for negligence, breach of contract and bad faith relating to a loan policy issued as part of M&F's loan to an Auburn property developer. The dispute has a long history spanning proceedings in various arenas, and involves a plat for the Old Towne Station subdivision, recorded in Lee County Probate. The plat showed lots numbered 1-94. The Shoppes at Old Towne Station, LLC executed a note in favor of M&F, secured by a mortgage on lot 95. M&F's loan policy also insured M&F's interest as mortgagee of lot 95. M&F made a claim with FATIC, FATIC filed a reformation action and, unsatisfied, M&F filed suit.

After an extended saga in bankruptcy court, competing motions for summary judgment were filed by both parties. The trial court granted FATIC's motion, holding that the terms of the policy: a) limited M&F's recovery, and b) authorized FATIC to cure defects before paying damages under the policy. The court also held that FATIC did cure the defect by recording additional documents with Lee County Probate.

On appeal, M&F argued its recovery was not limited to the policy, because it never received the policy jacket, containing the specific § 14(b) language pertaining to limitation of recovery. The Court rejected this argument, holding that because counsel knew of the entire policy, this knowledge was legally imputed to M&F, and also that, by asserting breach of contract M&F was "implicitly conceding that this insuring provision was part of the contract."

Additionally, the Court implicitly rejected

prior Alabama law upholding the viability of negligence claims in the title context (see *Soutullo v. Commonwealth Land Title Insurance Co.*, 646 So. 2d 1352, 1355 (Ala. 1994)), stating § 14(b) precludes M&F's negligence claim against both the insurer and its abstractor, whose search was performed solely for the agent's benefit "and was not to be relied upon by any other party. . . ."

The Court also disposed of M&F's breach of contract and bad faith claims, based upon § 8(a). Because FATIC made lot 95 marketable, it fulfilled its responsibilities under the policy. The Court concluded that providing marketable title "does not require a title absolutely free from all suspicion or possible defect," but rather "title which a reasonable purchaser . . . would, in the exercise of that prudence which business men ordinarily bring to bear . . . be willing to accept and ought to accept."

### Welcome New DLTA Members

Anders, Boyett & Brady, P.C., Mobile, AL  
 Ball, Ball, Matthews & Norah, P.A., Montgomery, AL  
 Barrett Jaffin Frappier Levine & Block, LLP, Atlanta, GA  
 Closers' Choice, Jacksonville, FL  
 Cornerstone Property Services, LLC, Norcross, GA  
 Estes, Sanders & Williams, LLC, Vestavia Hills, AL  
 Guaranty Title, Inc., Tuscaloosa, AL  
 Investors Title Insurance Company, Columbia, SC  
 Irby & Heard, P.C., Fairhope, AL  
 Jones and Milwee, LLC, Guntersville, AL  
 Leitman, Siegal, Payne & Campbell, P.C., Birmingham, AL  
 Liberty Title Company, LLC, Vestavia Hills, AL  
 McDonnell and Associates, P.A., Columbia, SC  
 McManamy Jackson, PC, Savannah, GA  
 Nowlin & Associates, LLC, Decatur, AL  
 Old Republic Title Insurance, Alpharetta, GA  
 The Parker Law Firm, LLC, Birmingham, AL  
 Redstone Title Services, Huntsville, AL  
 Rubin Lubin, LLC, Norcross, GA  
 Sasser, Sefton, Brown, Tipton & Davis, PC, Montgomery, AL  
 Southern Abstracting, Bethlehem, GA  
 Title Insurance Services of Alabama, Birmingham, AL  
 Westcor Land Title Insurance Company, Clearwater, FL



*Participants at recent Alabama Title Schools earned up to 6.0 CLE and CE credits by attending the workshops held throughout the state. This year, Alabama Land Title Schools were taught in Birmingham, Huntsville and Mobile.*



*Maria Cobb coordinated the first DLTA Mississippi Land Title School on the Gulf Coast in October. The conference was a real success, and we hope to repeat this next year. Participants earned up to 6.0 CLE credits.*



*Attendees at the Mississippi Land Title School enjoyed outstanding continuing education presentations and an opportunity to network with their peers.*



*George Calloway and Marcus Calloway made a presentation at the Fall Georgia Land Title School*



*Missy Ford and Jeanne Weiss help register attendees at the Fall Georgia Land Title School*