

ALTA 2008 Annual Convention
State Regulatory and Legislative Affairs Committee (SLRAC)
Reports
John Dozier, Chairman
October 15, 2008
Koloa, Hawaii

Alabama

Alaska

Legislative

Consumer Protection: HB65- personal information, credit report and credit scoring which included confidentiality of social security numbers, identity theft and record disposal. Concerns by the Recorder's office that they would not be able to provide documents to the public if a social security number existed on a document was addressed and the bill was later amended to allow those documents to be part of the public record. Passed into law. ALTA supported the amended bill.

Eminent Domain & Dedication: HB175- eminent domain bill to prevent the taking of prime recreation properties for tourism purposes and also included access to fishing waterways. First obtain access along Montana Creek and along the Anchor and Deep Creek rivers for fisherman to get to their fish. Did not pass.. ALTA took no position

Foreclosures: HB163- foreclosure bill introduced on behalf of Stephen Routh. It had been amended several times and in the last committee, Senate Judicial, amended to exclude the requirement for web postings and the requirement that the borrower cure 3 – 5 days prior to the sale. Did not pass. ALTA and many in the legal community opposed portions of the bill, although we all agree we do need to update our foreclosure statutes. The web postings killed the bill.

Easements: HB25- relating to landowner immunity for allowing use of land without charge for recreational purposes and protects land owners from liability for that use. It allows for a recording of a trail easement for public recreational use. The easement form is created by statute. It can protect land owner from adverse possession and prescriptive easements. Contains tort immunity. Passed. Statute AS 34.17 and AS 09.65.202

Regulatory

Agents/Abstracter Licensing: The State of Alaska, Division of Insurance deleted the necessity for continued education for title insurance limited producers. A licensing test is still required. Title Insurance is considered a limited line of insurance falling under same section as bail bonds. Apparently the NAIC felt that a limited line of insurance did not need continued education.

Recording Requirements: In 2001 AS40.17.030 was passed into law setting out some stringent recording requirements pertaining to margins, legibility and font. The State did nothing about the statute until this summer when they suddenly said they were going to enforce it. Needless to say we are all scrambling to meet those requirements. There can be NOTHING in the 1 inch margin sides and bottom, not even the name of an attorney, title company order number nor part of a signature or a notary seal. First page must have 2 inches at top, no writing, and 1 inch at top of other pages. There are proposed regulations to allow for these documents to be recorded for an additional cost of \$50.00 but we have not seen or heard if that regulation will be put into effect.

Arizona

Arkansas

California

Agents/Abstracter Licensing AB 2323 (Huff); Chapter 262 – Licensure of Escrow Agents

AB 2323 expands the escrow agent license – or Fidelity Corporation Certificate -- application procedure to require a summary of criminal history from the FBI. The law also allows escrow agents to submit fingerprint data to the Commissioner of Corporations electronically, as opposed to only being able to submit such data via certified mail.

Acknowledgment/Notary AB 2452 (Davis); Chapter 67 – Identification of Witnesses to Instrument Execution

AB 2452 adds certain governmental employee identification cards as an allowable form of ID for a credible witness in order to prove the identity of an individual that executes a written instrument. The law also deletes a provision that previously allowed a witness that was personally known to the officer, and whom witnessed the officer's ID, to serve as evidence for an acknowledgement.

Attachments AB 2604 (Torrico); Chapter 246 – Collection of Developer Fees

AB 2604 allows local agencies to defer the collection of any fees imposed on a residential development up to the close of escrow on the development. Previously, an agreed-upon time frame for the collection of the fees, via contract, was required as a condition for the issuance of a building permit.

Attachments AB 2846 (Feuer); Chapter 502 – Challenging of Assessments by Separate Interest Owners

AB 2846 allows the owner of a separate interest to pay under protest a disputed charge levied by a homeowners' association and, if allowed within the jurisdictional limits, commence an action against the charge in small claims court.

Deceptive Trade Practices/Anti-Kickback Laws SB 133 (Aanestad); Chapter 280 – Title Insurance Marketing Reform

SB 133 establishes a registration procedure for title marketing representatives, and allows – after an administrative hearing – the Department of Insurance to either levy a personal fine on, or revoke the license of, a title marketing representative in the event of a violation of the law. Representatives without a

license would not be able to engage in the marketing of title insurance. The act also creates a zero expenditures on incentives rule for marketing representatives, including food, beverages, and entertainment. Marketing representatives are also prohibited from providing seminars to prospective clients that offer continuing education credits.

Subdivisions SB 1185 (Lowenthal); Chapter 124 – Subdivision Map Act Extensions

SB 1185 extends the expiration date of any tentative map or vesting tentative map that is due to expire before January 1, 2011 by 12 months. The bill also extends the extension period a subdivider can procure through the filing of an application with the pertinent legislative body from a maximum of five years to six years.

Recording Fees SB 1396 (Cox); Chapter 405 – Recording Fee Increases

SB 1396 allows a county board of supervisors to charge \$3 for the recording of real estate instruments, paper, or notices; the previous maximum amount allowed under existing law had been \$2. The act defines real estate instruments as the following: a deed of trust, an assignment deed of trust, a reconveyance, a request for notice, a notice of default, a substitution of trustee, a notice of trustee sale, and a notice of rescission of declaration of default.

Easements SB 1431 (Wiggins); Chapter 135 –Acquisition of Conservation Easements

SB 1431 allows the California Department of Parks and Recreation to acquire conservation easements if the Department determines that the easement is necessary to protect a unit of the state park system from an incompatible use, or to preserve and enhance the natural resource, cultural, or historic value of the state park unit. The act also authorizes the Department to make grants to government agencies or nonprofit land trust organizations to purchase the aforementioned easements. Written policies regarding these provisions must be adopted and posted by July 1, 2009, on the Department's web site.

Sale of Municipal Lands SB 1681 (Battin); Chapter 532 – Sales of Surplus State Real Property

SB 1681 requires that the state now first offer surplus state real property to local agencies, followed by nonprofit affordable housing sponsors, before offering the property to private entities.

Governor Signs Aanestad Title Insurance Legislation
California Political Desk
California Chronicle
September 25, 2008

SACRAMENTO: SB 133, authored by Senator Sam Aanestad (R-Grass Valley) is now law in California after receiving the signature of Governor Schwarzenegger today. The Aanestad measure will require representatives of title marketing firms to obtain a license from the California Department of Insurance (CDI) and is designed to put an end to payoffs that often raise the cost of title insurance for new homeowners.

"Investigations by state regulators have shown that representatives from title insurance firms take advantage of the fact that most people do not shop around for title insurance, as they would shop for the best deal on a new car or television," said Senator Aanestad. "Instead, what has developed over time is a business practice by some in the industry that involves payoffs and other inducements to real estate agents, lenders and homebuilders to obtain the homeowner's business. Those costs are then passed on to the unsuspecting homeowner."

Senator Aanestad's legislation addresses this problem by creating a formal registration process for title marketing representatives and requiring title insurance companies to provide training to their marketing representatives on the illegal rebate statutes.

SB 133 furthermore authorizes the CDI to take enforcement actions against individual title marketing representative and discipline those who violate the law by suspension, restriction, and revocation of their certificate of registration. This would be a change from existing law that presently allows actions to be taken against title companies but allows the representative to move to another company.

Colorado

Connecticut

Legislative

Wetlands: Public Act 08-38, An Act Concerning Inland Wetlands Agency Reports

This act amends Conn. Gen. Stat. §§ 8-3(g) and 8-26, concerning the actions of zoning boards and planning boards, respectively, to provide that in making decisions such boards shall "give due consideration" to the report of the inland wetlands agency. In 2007 the words "give due consideration" were removed from the statutes and replaced with a requirement that the boards "consider" the inland wetlands report. This new act thus restores the previous wording of the statutes. The summary of the act prepared by the General Assembly's Office of Legislative Research, and appended to the act, states that to "consider" is to think with care upon a matter, while Black's Law Dictionary defines "due consideration" as "the degree of attention properly paid to something, as the circumstances merit." Effective May 7, 2008.

Statutory Liens, Attachments: Public Act 08-43, An Act Concerning Continuation of Water Liens. This act amends Conn. Gen. Stat. § 7-239 to extend from one to two years the time that a lien for delinquent municipal water rates and charges runs before it must be continued by the filing of a certificate with the town clerk. This change makes the continuation of water liens identical to the continuation of sewer liens (Conn. Gen. Stat. § 7-254). Effective October 1, 2008.

Insurance/Business Issues, Electronic Transactions: Public Act 08-56, An Act Adopting the Uniform Real Property Electronic Recording Act. This act adopts the Uniform Real Property Electronic Recording Act, a product of the National Conference of Commissioners on Uniform State Laws. The act provides that the State Librarian shall establish a Real Property Electronic Recording Advisory Committee, in accordance with the standards of membership set forth in the act. Included among the membership shall be three attorneys experienced in real estate law, three town clerks representing municipalities of varying sizes, an individual experienced in mortgage banking, an individual experienced in the business of title insurance, a title searcher and a licensed real estate broker.

The State Librarian, in consultation with the Public Records Administrator and the Advisory Committee, shall adopt regulations implementing the act's provisions. In adopting these regulations the State Librarian shall consider certain specified criteria, including security measures to ensure that electronic documents are accurate, authentic, adequately preserved and resistant to tampering. The act provides that a town clerk who implements electronic recording shall do so in accordance with any such regulations.

A town clerk who implements electronic recording must continue to accept paper documents as authorized by state law and shall place entries for both types of documents in the same index. Effective October 1, 2009.

Deeds and Security Interests, Financing Statements: Public Act 08-58, An Act Concerning Reinstatement Payment Statements. This act amends Conn. Gen. Stat. § 49-10a, concerning payoff statements, by extending the statute to cover reinstatement payment statements, defined as "a statement setting forth the total sum owed by a mortgagor to a mortgagee, which, if paid, will cause the loan to be reinstated, provided any other contractual conditions for reinstatement are satisfied."

The statute is also revised to shorten the time frame for providing the statement, from ten business days to seven business days. The statute continues to provide that there shall be no fee or charge assessed for the first statement requested within a calendar year, unless the mortgagor or authorized agent requests expedited delivery of the statement and agrees to pay an additional fee for such expedited delivery.

The act specifies that it does not create an obligation on the part of the mortgagee to provide a reinstatement payment statement if a right to cure the payment default and reinstate the mortgage loan does not exist under the mortgage loan documents or at law. Effective October 1, 2008.

Environmental Issues, Hazardous Waste: Public Act 08-173, An Act Concerning the Permitting of Solid Waste Facilities Located Near Housing Developments and the Sale of Certain Housing. Section 1 of this act provides that the Commissioner of Environmental Protection shall not issue a permit for the construction or operation of a solid waste facility located or proposed to be constructed on a parcel of real property, the boundary of which is located within 150 feet of a parcel of property containing a housing development owned by a housing authority, unless the Commissioner determines that there is no threat to the environment of the surrounding geographic area or to public safety. The new

provision shall not apply to a permit issued on or before September 30, 2008, or to the renewal of such a permit.

Section 2 of the act appears to be a legislative response to a particular constituent's need. The Section provides that notwithstanding any provision of the General Statutes, or any condominium bylaws, or any affordable housing deed restriction limiting the sales price of housing, an owner who purchased such housing on or after July 1, 2004, but before July 15, 2004, for an amount exceeding the amount specified in such provision or restriction, may sell such housing for an amount not exceeding the amount such owner paid to purchase the housing. Effective October 1, 2008, except that Section 2 is effective June 12, 2008.

Foreclosures: Public Act 08-176, An Act Concerning Responsible Lending and Economic Security. This lengthy act addresses the growing number of mortgages which are under foreclosure, or at risk of being foreclosed. The material set forth below briefly summarizes the provisions of the act. The first four Sections of the act concern various programs run by the Connecticut Housing Finance Authority (CHFA), expanding its CT Families Program, creating a new loan program titled "Homeowner's Equity Recovery Opportunity" (HERO), revising the limitations placed on uninsured CHFA mortgages, and authorizing the development of a program to purchase foreclosed property and turn it into supportive and affordable housing.

The act requires the Chief Court Administrator to establish a foreclosure mediation program in each Judicial District, by July 1, 2008. The program is available to owner-occupants of one-to-four family residential property located in Connecticut, which property is encumbered by a mortgage, with the owner-occupants the borrowers under the loan secured by said mortgage. If a foreclosure action is brought against such property by the lender who holds the mortgage, with a return date on or after July 1, 2008, the complaint must include a copy of the notice of the availability of foreclosure mediation, and a foreclosure mediation request form, both forms to be as prescribed by the Chief Court Administrator. If the property owner requests mediation, the Court will notify all appearing parties. No judgment of foreclosure may be entered if a borrower has submitted a timely request for mediation and the mediation period has not expired. The mediation shall be conducted by foreclosure mediators, who may refer mortgagors to community-based resources, when appropriate, and to the various mortgage assistance programs that are available. The foreclosure mediation program will expire on July 1, 2010.

The act also amends the existing statutes providing emergency mortgage assistance, Conn. Gen. Stat. §§ 8-265cc, et seq. The program is expanded to accommodate one-to-four family owner-occupied homes (specifically including single-family units in a common interest community), rather than just one-to-two family homes. Standards for determining whether the borrower is facing financial hardship are expanded to include borrowers facing a significant increase in the periodic payments for a mortgage, or facing other circumstances such as a divorce, loss of support payments, uninsured damage to the home, or incurred medical or burial expenses. The statutes are further amended to give the borrower sixty days notice (rather than thirty) of the right to have a conference with the lender, or a meeting with a credit counseling agency, to attempt to resolve the default.

Sections 21 through 30, inclusive, establish a number of requirements for mortgage loans, especially nonprime loans, and for mortgage professionals making those loans. These provisions apply to mortgage applications received on or after August 1, 2008. "Nonprime" loans are defined as follows: any loan or extension of credit, excluding an open-end line of credit or reverse mortgage transaction, where the borrower is a natural person; the proceeds are to be used primarily for personal family or household purposes; the loan is secured by a mortgage on a one-to-four family owner-occupied residence; the principal amount of the loan does not exceed the amounts set forth in the act; the loan is not a CHFA loan; and the interest rate charged falls within the mathematical formula set forth in the act. Lenders making nonprime loans must follow the parameters set forth in the act, including a requirement that the lender must reasonably believe, at the time when the loan is consummated, that the borrower will be able to make the scheduled payments and pay the related taxes and insurance. The act also alters substantive rights and obligations of the parties with respect to loan terms and litigation rights.

The act requires mortgage brokers to make reasonable good faith efforts to secure a mortgage that is in the borrower's reasonable best interests, considering all of the circumstances, such as rates, points, charges, costs and product type. This provision of the act applies to all first and second mortgages on one-to-four family owner-occupied residential property, regardless of whether the loan is or is not a nonprime loan. Other matters covered by the act include the licensing requirements imposed on mortgage brokers, bonding and recordkeeping requirements for brokers and lenders, mortgage trigger leads, and prepaid finance charges in secondary loans.

The act establishes a Commission on Nontraditional Loans and Home Equity Lines of Credit. The Commission is charged with gathering certain specified statistical information concerning the mortgage lending market in Connecticut, focusing on nontraditional loans and home equity lines of credit that pose a high risk of default or foreclosure. The Commission shall submit a report to the General Assembly's Banks Committee, setting forth its findings and recommendations.

Sections 81 and 82 concern undue influence placed on real estate appraisals by mortgage brokers, real estate brokers and real estate salespersons. Examples of undue influence include failing to pay an appraiser for an appraisal that reflects a fair market value estimate that is less than the sale contract price; refusing or failing to utilize an appraiser or refer an appraiser; and encouraging others not to utilize an appraiser, all based solely on the fact that the appraiser provided such an appraisal. Violations shall be subject to the actions and penalties set forth

Delaware

Florida

Dissolutions

DISSOLUTION OF MARRIAGE
SESSION LAW CH. 2008-46 (SB 1474)

EFFECTIVE JUL. 1, 2008

SB 1474 amends Sec. 61.075, F.S. Partial distribution of marital assets and liabilities can be made by interim order after proper motion. All personal property titled jointed by the parties as tenants by the entirety shall be presumed to be a marital asset. The most notable part of this law is that special equity is abolished and must be asserted now as a claim for unequal distribution of marital property and resolved by other factors.

Escrow Funding

ESCROW AGENTS
SESSION LAW CH. 2008-200 (HB 1037)
EFFECTIVE JUL. 1, 2008

HB 1037 creates Sec. 877.101, F.S., which prohibits certain actions by unauthorized escrow agents. No person can act as escrow agent except in connection with the purchase and sale of real property. The new law does not affect attorneys, title agents or banks holding money in connection with real estate transactions but is designed to prevent unauthorized persons from acting as escrow agents otherwise. Any person who willfully violates this section commits a misdemeanor of the first degree.

Forms/Rates Regulation/Fees/Commission Splits

TITLE INSURANCE
SESSION LAW CH. 2008-198 (HB 937)
EFFECTIVE JUN. 17, 2008

HB 937 creates the Florida 2008 Title Insurance Study Advisory Council and has the potential to enable many changes to title insurance law. The new law provides for responsibilities of the council and directs who will make up the council members. The advisory council's goal is to undertake a comprehensive examination of the title insurance delivery system in order to make recommendations for legislation in promoting the safety of real property transfers. The council will be comprised of 21 members. The Governor shall have a designee that will serve as chair; Florida's Chief Financial Officer, or her designee shall serve as vice chair. One senator and one representative will serve as members. One member will be the Insurance Consumer Advocate appointed pursuant to Sec. 627.0613, F.S., one member will be the Commissioner of Insurance Regulation or his designee, and one member will be the Commissioner of the Office of Financial Regulation or his designee. There will be three representatives of title insurers appointed by the President of the Senate and there will be four representatives appointed by the Speaker of the House. Additionally, there will be two independent licensed title insurance agents appointed by the President of the Senate and one independent licensed title insurance agent appointed by the Speaker of the House; two members of the Real Property, Probate and Trust Law Section of the Florida Bar who are practicing real estate attorneys not employed by a title insurer; one member of

the banking industry; and a member of the real estate industry such as a real estate agent.

The council will examine the title insurance delivery system by considering the history of title insurance industry and the current regulatory structure.

Tallahassee will host the initial meeting no later than Aug. 1, 2008, and the council has until Dec. 31, 2009, to submit a final report to the Governor, President of the Senate, and Speaker of the House.

This bill was supported by the Florida Land Title Association.

INSURANCE

SESSION LAW CH. 2008-220 (SB 2012)

EFFECTIVE 7-1-08

Ch. 2008-220 allows for title insurers to petition for a rate deviation as provided by Section 627.783, Florida Statutes, for a Uniform Commercial Code insurance product. The Office of Insurance shall be guided by standards for national rates for the product currently being offered in other states.

Limited Liability Companies

BUSINESS ENTITIES

SESSION LAW CH. 2008-187 (HB 419)

EFFECTIVE JUL. 1, 2008

EXCEPT AS EXPRESSLY PROVIDED

HB 419 amends and adds various statute sections relating to business entities. Secs. 607.1109(3), 607.1113, 608.4382, 608.4403, 617.1108, 620.2104, 620.2108, 620.8914, and 620.8918, F.S., were added to eliminate duplicative filing requirements for business entities either merging or converting to other business entities.

Sec. 608.439, F.S., is amended to include corporations as one of the business entities that can convert to a limited liability company and to require that the certificate of conversion must be executed by the other business entity as well as those authorized under Sec. 608.408, F.S.

Sec. 617.1108(3), F.S., is added to provide that a copy of the articles of merger or certificate of merger, certified to the Department of State, may be filed in the recording office of each county in which real property of a party to the merger, other than the surviving entity, is situated.

Sec. 620.1406, F.S., is amended to require that in addition to all general partners, all of the other limited partners also must consent to the expulsion of a limited partner.

Sec. 620.2104(1)(b)(2.), F.S., is amended to require that in a conversion in which the converting organization is not a limited partnership, the certificate of conversion delivered to the Department of State for filing must be signed by each general partner listed in the certificate of limited partnership and by the converting organization.

Sec. 620.8105(4), F.S., is amended to provide that a certificate of conversion or merger may be filed with the Department of State only if the partnership has filed a registration statement pursuant to Sec. 620.8105(1), F.S.

Sec. 620.8914(1)(b)(2.), F.S., is amended to require that in a conversion where the converting organization is a partnership, the certificate of conversion delivered to the Department of State for filing must be signed by a general partner of the partnership and by the converting organization.

Sec. 620.8914(2)(b), F.S., is amended to provide that a certificate of conversion acts as a cancellation of any registration statement for a converting partnership for purposes of Sec. 620.8105, F.S., and the cancellation shall be deemed filed upon the effective date of the conversion.

Sec. 620.8918, F.S., is amended to provide that each constituent partnership in a merger shall also file a registration statement in accordance with Section Sec. 620.8105, F.S., if it does not have a currently effective registration statement filed with the Department of State.

Sec. 620.2204(3)(c), F.S., is amended to correct a clerical oversight in prior legislation by changing the date from Jul. 1, 2005, to Jan. 1, 2006.

Sec. 621.06, F.S., relates to limitations on the rendition of professional services and is amended to delete the words "within this state" and thereby remove the requirement that only persons licensed or legally authorized in Florida to render professional services may render such services on behalf of professional corporations and limited liability companies.

Sec. 621.10, F.S., is amended to delete the words "within this state" and thereby provide that any person rendering professional service on behalf of a professional corporation or limited liability company must sever employment with, and financial interests in, the organization if the person has become legally disqualified to render such professional services.

Sec. 621.13, F.S., is amended so that a Florida professional corporation or limited liability company is not prohibited from merger with an out-of-state professional corporation or limited liability company.

Deceptive Trade Practices/Anti-Kickback Laws

FORECLOSURE FRAUD
SESSION LAW CH. 2008-79 (HB 643)
EFFECTIVE OCT. 1, 2008

HB 643 creates Sec. 501.1377, F.S., relating to the regulation of mortgage rescue companies and prevention of mortgage fraud. It requires mortgage rescue companies to make certain disclosures to homeowners and gives the homeowners a three-day right to cancel the transaction. The disclosures must state the true nature of the transaction such as notice that the owner is giving up ownership in the property and must specifically state what terms are used for any lease back option. It also requires a warning to the owner that he/she is giving up any equity in the property. If the owner has a right to repurchase, the monthly payment must not exceed 60 percent of the borrower's monthly income. All costs, and who pays for them, must be disclosed to the owner. The law also provides for penalties for violation of the act of \$15,000 per violation. By this law, Sec. 501.2078, F.S., is repealed.

Taxes – Real Estate

MORTGAGE FRAUD
SESSION LAW CH. 2008-80 (HB 743)
EFFECTIVE JUL. 1, 2008

Sec. 193.133, F.S., is created by HB 743. When there is a finding of probable cause for mortgage fraud, as defined in Sec. 817.545, F.S., or any other fraud involving real property that has or could have artificially inflated the value of the property, the arresting agency must notify the property appraiser, and the property appraiser may adjust the assessment.

Sec. 817.545, F.S., regarding mortgage fraud is amended to state that any person who commits mortgage fraud and the loan value exceeds \$100,000 commits a second degree felony.

PROPERTY TAXATION
SESSION LAW CH. 2008-173 (SB 1588)
EFFECTIVE JUN. 17, 2008
EXCEPT AS OTHERWISE PROVIDED

Florida caps the increase of assessed value for homestead property. SB 1588 permits a homeowner to transfer the reduction in assessed value to a new homestead. This law applies to 2008 and subsequent tax years.

AD VALOREM TAXATION
SESSION LAW CH. 2008-197 (HB 909)
EFFECTIVE SEP. 1, 2008

Sec. 193.011, F.S., is amended by HB 909 to clarify factors that a property appraiser must consider in deriving just valuation. In determining the highest and best use of the property, the property appraiser must consider the legally permissible use, zoning changes, concurrency requirements, as well as other factors that may affect the highest and best use of the property. This law also amends Secs. 194.035 and 194.037, F.S., specifying requirement for the Department of Revenue in relation to the value adjustment board and also amends sections in Ch. 195, F.S..

Eminent Domain & Dedication

CEMETERY LANDS
SESSION LAW CH. 2008-834 (HB 853)
EFFECTIVE JUL. 1, 2008

HB 853 prohibits the taking of cemetery land by eminent domain if the area is equal or greater than 1 contiguous acre except for road system or rights-of-way purposes. It amends Sec. 497.270, F.S.

LAND ACQUISITION AND MANAGEMENT
SESSION LAW CH. 2008-229 (SB 542)
EFFECTIVE 7-1-08

Ch. 2008-229 amends various sections in Chapters 201, 253, 259, 343, 373 concerning management, conservation, use, sale, and acquisition of state lands. By this law, the Florida Forever state land-buying program has been extended to 2020.

Covenants, Conditions & Restrictions

REAL ESTATE CONVEYANCES
SESSION LAW CH. 2008-35 (SB 464)
EFFECTIVE JUL. 1, 2008

SB 464 creates Sec. 689.28, F.S., dealing with transfer fee covenants. Transfer fee covenants placed in a recorded instrument of conveyance impose a fee or charge payable upon every subsequent transfer of an interest in the real property and payable to the prior owner or at the prior owner's direction. Under new Sec. 689.28(3), F.S., transfer fee covenants recorded on or after Jul. 1, 2008 will not run with the title to real property or be binding on or enforceable against any subsequent owner, purchaser, or mortgagee. Any liens purporting to secure the payment of a transfer fee under a transfer fee covenant recorded on or after Jul. 1, 2008 are void and unenforceable. Transfer fee covenants or liens recorded prior to Jul. 1, 2008, however, are not necessarily presumed valid and enforceable through the new law. The act contains exclusions for condominium and homeowner associations.

HOMEOWNERS' ASSOCIATION LIENS
SESSION LAW CH. 2008-175 (SB 1986)
EFFECTIVE JUL. 1, 2008

Ch. 2008-175 makes a number of alterations to Sec. 720.3085, F.S., which became effective in 2007. Many of the changes are designed to bring the statute more in line with the analogous provisions of the Condominium Act, Ch. 718, F.S.

Sec. 720.3085(1), F.S., was amended to indicate that, when authorized by the governing documents, the HOA has a lien on each parcel to secure the payment of assessments. The lien is effective from and relates back to the recording of the original declaration of the community. However, with respect to first mortgages of record, the HOA's lien is effective only from and after the recording of a claim of lien in the public records. These provisions are not designed to afford any lien or mortgage of record as of Jul. 1, 2008, or HOA assessment lien any priority that such lien did not have before that date.

Subsection (1) was also amended to include provisions for the procedure to contest an HOA assessment lien and to supply a sample form for a Notice of contest of Lien.

Sec. 720.3085(2), F.S., was supplemented with terms limiting the exposure (for prior unpaid HOA assessments) of a first mortgagee who has taken title to a parcel through foreclosure or deed in lieu of foreclosure. That exposure is limited

to the lesser of unpaid assessments for the 12 months preceding acquisition of title or one percent of the original mortgage debt, provided that the HOA was joined as a defendant in the mortgage foreclosure action.

Sec. 720.3085(6), F.S., was supplemented with provisions dealing with the "Qualifying Offer," available to be made by a parcel owner to stay an HOA lien foreclosure action. The revised statute now provides a suggested form for the Qualifying Offer.

Condominiums

COMMUNITY ASSOCIATIONS
SESSION LAW CH. 2008-28-HJ 01820 (HB 995)
EFFECTIVE OCT. 1, 2008

HB 995 adds various provisions to Secs. 718.113 and 718.115, F.S., regarding the allocation of responsibility for installation, maintenance, repair, and replacement of hurricane shutters or other such protection.

Sec. 718.121(4), F.S., is created to provide that, except as otherwise provided in Ch. 718, F.S., the condominium association may not record a claim of lien for unpaid assessments until 30 days after a notice of intent to file a lien has been delivered to the delinquent unit owner by certified mail, return receipt requested and by first class U.S. Mail at the last known address of the owner per the records of the association.

Sec. 718.1224, F.S., is created to prohibit "SLAPP" suits, which is litigation against association members arising out of appearances by association members before governmental entities on matters related to condominium associations.

Sec. 718.1265, F.S., is created to grant specific emergency powers to the condominium association, including without limitation implementation of disaster plans, agreements with local governments regarding debris removal, and required evacuation of the condominium property.

Sec. 718.503(2), F.S., is amended to require that on and after Jan. 1, 2009, a prospective purchaser of a condominium unit from a non-developer seller is also entitled to receive from the seller a "governance form." The content of this form will be provided by the Division of Florida Land Sales, Condominiums, and Mobile Homes of the Department of Business and Professional Regulation prior to January 2009 and will include a description of the role of the board of directors in conducting the day to day affairs of the association, the rights of owners to speak at board meetings, and the responsibilities of the owners to pay assessments and otherwise abide by the condominium documents.

COMMUNITY ASSOCIATIONS
SESSION LAW CH. 2008-202 (HB 1105)
EFFECTIVE JUL. 1, 2008

HB 1105 amends the Condominium Act, Ch. 718, F.S., and also makes analogous amendments to the Cooperative Act, Ch. 719, F.S.

Sec. 718.1124, F.S., is amended to add provisions dealing with the appointment of a receiver to manage the affairs of a condominium unit. A form is provided for a unit owner's notice of intent to apply for a receivership when

vacancies on the condominium board have not been filled sufficiently to comprise a quorum.

Sec. 718.117(7), F.S., is amended and Sec. 718.127, F.S., is created to require a receiver to provide written notice of his/her appointment to all unit owners within 10 days of appointment.

Sec.718.121(4), F.S., is created to indicate that a condominium association may not file a claim of lien for unpaid assessments until 30 days after notice of intent to file a lien has been delivered to the affected unit owner. The notice must be sent by registered mail or certified mail, return receipt requested and by first class U.S. mail to the last known address for the owner as reflected in the records of the association.

DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION
SESSION LAW 2008-28 (HB 601)
EFFECTIVE 7-1-08
EXCEPT AS EXPRESSLY PROVIDED

Ch. 2008-28 is a comprehensive law dealing with many different subjects pertaining to DBPR (Department of Business and Professional Regulation). Of particular note are amendments to Section 718.111, Florida Statutes. This act, however, will prevail over any conflicting amendments that pertain to the aforementioned statute section contained in HB 995 , now Session Law Ch. 2008 –HJ-01820, and enacted during the 2008 regular session.

The law amends Chapter 718 by requiring adequate hazard insurance, regardless of any requirement in the declaration of condominium, based on the replacement cost. Certain expenses regarding fire safety and sewer service, regardless of what the declaration of condominium states, will be considered common expenses.

It also amends Chapter 720 regarding estoppel certificates. Estoppel certificates must be provided within 15 days of the request and there may be a charge associated with such request. If the sale does not take place, the estoppel fee shall be refunded within 30 days upon request.

This law changes the name of the Division of Land Sales, Condominiums, and Mobile Homes within DBPR. The new name is Division of Condominiums, Timeshares, and Mobile Homes.

Trusts

TRUST ADMINISTRATION
SESSION LAW CH. 2008-76 (HB 435)
EFFECTIVE JUL. 1, 2008

HB 435 amends certain sections of Ch. 736, F.S., dealing with trust administration. Sec. 736.0703, F.S., is amended to allow one trustee of several co-trustees to do specified acts if the trust instrument directs. The excluded trustees do not have obligation to review, inquire, make recommendations or evaluations of the trustee with the power.

Sec. 736.0802, F.S., is amended concerning defenses based upon a breach of trust of a trustee and allows the qualified beneficiaries to prevent trust assets from being used to pay for attorney's fees and costs for such claim and defense.

Sec. 736.1008, F.S., is amended to clarify the limitations of actions by a beneficiary against a trustee but is based on claims and actions after Jul. 1, 2008.

Foreclosures

JUDICIAL SALES
SESSION LAW CH. 2008-194 (HB 773)
EFFECTIVE JUL. 1, 2008

HB 773 amends Sec. 45.031, F.S., to allow the clerk of the court to use electronic means to conduct sales, require an advance deposit by bidders using electronic means to bind, and to accept electronic payments and deposits related to the sales. The clerk is allowed now to charge \$60 for conducting the electronic sale pursuant to amendment of Sec. 45.035, F.S. Sec. 197.542, F.S., is amended to allow the clerk of the court to do similar procedures electronically with tax deed sales.

Recording Requirements

REAL PROPERTY TRANSFER RETURNS
SESSION LAW CH. 2008-24-HJ 00790 (HB 7019)
EFFECTIVE JUN. 1, 2008

HB 7019 deleted the requirement to complete a DR -219 Form and submit it to the clerk of court when recording a deed. The DR-219 identified the consideration paid for the transaction. At this time, there is also no requirement to disclose the full consideration on the deed. County clerks should be contacted to determine what they will accept for evidence of consideration for documentary stamp purposes.

Georgia

Hawaii

Idaho

Illinois

Indiana

The following is a “nuts and bolts” summary of bills passed in the 2008 legislative session that ILTA was involved in.

HB 1111-Recording of Copy

This bill was initiated by ILTA to mandate recorders to accept a copy of a document for recording. Prior law allowed recorders to exercise discretion in whether or not to accept a copy of a document for recording. The bill provides

that a copy of a document submitted for recording must comply with other statutory recording requirements, must be a clear and unobstructed copy and must be marked as a copy in order to be accepted for recording. This bill also provides that a recorded copy will have the same effect as if the original document was presented for recording.

Last year, legislation was passed at the initiative of ILTA providing that mortgages recorded with defective acknowledgments were still constructive notice of the recording of the mortgage. At the beginning of the 2008 session, ILTA became aware of attorneys and bankruptcy trustees arguing that the legislation passed year was not applicable to mortgages recorded prior to July 1, 2007, the effective date of last year's legislation. HB 1111 became a vehicle for addressing this issue by adding language that a recorded mortgage not meeting certain statutory requirements (i.e defective acknowledgments) constitutes constructive notice regardless of when the mortgage was recorded.

HB 1359 Mortgage Fraud Legislation

The mortgage fraud legislation containing provisions affecting closing agents appeared or was proposed to appear in at least five different bills before it found its final home in HB 1359. In its original form, the legislation created many additional obligations and burdens on closing agents with respect to filing property exemptions and the sales disclosure form on behalf of borrowers. It also contained provisions that would require closing agents to provide borrowers with closing documents 48 hours in advance of closing and required closing agents to collect the names and license numbers of all the professionals involved in a real estate transaction for submission to an electronic database. In the end, the 48 hour in advance closing document requirement was stripped from the bill. ILTA's lobbyist, Charlie Hiltunen, set up several meetings with ILTA and the authors of this bill to discuss ILTA's concerns. Most of ILTA's suggestions were incorporated in the final bill. ILTA was also successful in keeping the additional licensing information off the deed and sales disclosure form which would have risked additional delays in the recording of deeds and mortgages. HB 1359 also addresses increased regulation of mortgage brokers, the creation of a mortgage fraud task force and a toll free hotline for reporting fraudulent residential real estate transactions to be operated or sponsored by the Office of the Attorney General. The following is a summary of the relevant bill provisions affecting closing agents.

- For single family residential purchase money mortgage or refinancing transactions closing after December 31, 2009, closing agent is required to submit the names and license numbers of certain real estate professionals involved in the transaction to an electronic database on a form to be created by the Indiana Department of Insurance (DOI)
- The form prescribed by the DOI shall allow for the closing agent to input information to identify the subject property and respond to the following questions: "On what date did you receive the closing instructions from the creditor in the transaction?" and "On what date did the transaction close?"

- The following persons involved in a real estate transaction are required to provide their legal names and licensing information to the closing agent prior to closing or face a \$100 penalty enforceable by the applicable regulatory authority:
 - Any loan brokerage business
 - Originator
 - Principal broker
 - Salesperson or Broker-Salesperson
 - Title insurance underwriter
 - Title insurance agency
 - Closing agent
 - Appraiser
 - Mortgagee
- Lenders and brokers are required to report the names and licensing numbers for any appraisers involved in the transaction
- Realtors may report the name and licensing number for any principal broker involved in the transaction
- Closing agent is not liable for failure to report the parties' information if information cannot be determined or certain parties are not involved in the transaction
- Closing agent is not liable to any customer for failure to submit the information to the DOI database
- The DOI, closing agent, and enforcement authorities that have access to the database information shall exercise all necessary caution to avoid disclosure of any information except as authorized by federal or state law
- The DOI is authorized to adopt rules to implement these requirements and to establish and collect an administrative fee to cover the DOI's expenses in creating and maintaining the electronic database.
- Any fee established by the DOI shall be paid by the borrower and collected by the closing agent.
- The DOI may authorize the closing agent to retain a portion of the fee to cover the closing agent's costs to input and submit the information. The remainder of the fee is to be deposited in the title insurance enforcement fund.
- The purposes of the title insurance enforcement fund are expanded and clarified to include funding of investigations and enforcement actions pertaining to title insurance transactions in Indiana including investigation and enforcement activities involving title insurance transactions brought by other federal, state and local law enforcement agencies and funding for educational materials to provide information to consumers about residential title insurance.

HB 1293-Sales Disclosure Form

This bill originally proposed modifying the sales disclosure form to constitute an application for homestead and other property tax deductions and extending the deadline for filing the same. The final bill incorporated the recommendations of the summer advisory committee on sales disclosures which ILTA participated in. ILTA had dissented to the recommendation in the summer study report requiring the filing of a separate sales disclosure form with a separate purchase price for

each parcel when multiple contiguous parcels were being conveyed as part of the same transaction. The final bill contains a compromise negotiated by ILTA requiring the filing of one sales disclosure form disclosing an aggregate sales price for conveyances involving multiple contiguous parcels located in the same taxing district. The following is a summary of the relevant provisions of this bill:

- For purposes of determining which conveyance transactions require the filing of the sales disclosure form (SDF), a conveyance now includes a transfer to charity and any transfer as a result of foreclosure, express threat of foreclosure (deed in lieu), divorce, court order, condemnation, probate or partition of land
- One party to a transaction may sign an SDF on behalf of multiple parties
- A separate SDF is required for each parcel conveyed, except that only one form (with a single combined sales price) is required for the conveyance under a single conveyance document of two or more contiguous parcels in a single taxing district
- A permanent filing fee of \$10 is established except no fee is due if transfer is to a charity or if the transfer is under a conveyance document arising out of foreclosure, express threat of foreclosure, divorce, court order, condemnation, probate or partition of land
- Fee revenue is to be split equally between the county sales disclosure fund and the state assessment training fund
- The SDF shall be revised by the Department of Local Government Finance (DLGF) by July 1, 2008 to incorporate newly required information including the address if the parcel is improved, a legal description for each parcel, the key number of each parcel conveyed, an estimate of the value of any personal property included in the transfer and with respect to each parcel, whether the entire parcel is being conveyed.
- The SDF shall also be revised to provide whether the transferee is using the form to claim the homestead credit and whether transferee owns or is buying residential real property in any other county and township
- The SDF may not be rejected (and the deed rejected for recording) if the SDF does not contain the information with respect to whether the transferee is using the form to claim a homestead credit or other property deductions or other information required by the DLGF not specifically set forth in the statute
- The county recorder may record a conveyance document only if a SDF is approved by the county assessor
- The criminal penalty for knowingly and intentionally falsifying or omitting information on a SDF is increased to a Class C Felony
- If party to a conveyance files an SDF that contains inaccurate information and receives written notice from the assessor of the problems and fails to correct the SDF within thirty (30) days after the date of the notice, the party is subject to a monetary penalty
- A paper or electronic SDF may be used with respect to a homestead assessed as real property to also apply for the homestead credit and property tax deductions for solar heating or cooling systems, wind power devices, hydroelectric power devices and geothermal heating and cooling devices

- Filing of statements to claim the homestead credit and property tax deductions is allowed any time during a calendar year with respect to real property, or any time during the designated 12 month filing period with respect to mobile homes and manufactured homes not assessed as real property.
- A taxpayer that files for the homestead credit or a property tax deduction must be the owner or contract buyer only on the filing date, and not on the assessment date to which the credit or deduction applies.
- Regardless of a change of ownership, the homestead credit or a property tax deduction applies automatically in a year if: (1) the credit or deduction applied in the immediately preceding year; and (2) the current title holder or contract buyer is eligible for the credit or deduction.
- A county auditor may reduce the assessed value used to set tax rates to take into account deductions resulting from applications filed late in the year.
- The DLGF is required to adopt rules to establish guidelines to enforce the application of the homestead credit only to an individual's principal place of residence by January 1, 2009.

HB 1061 (Landlord/Tenant) and SB 62 (Foreclosure Sale)

HB 1061 bill concerned the application of landlord/tenant statutes. The builder's association and an attorney representing homeowners' associations filed an amendment that would have reversed many of the provisions concerning the perfection and priority of homeowner's association liens set forth in the Homeowners Association Lien Act set forth at IC 32-28 etc. that was passed at the initiative of ILTA last year. After ILTA's testimony at committee hearing, the amendment was not voted upon and not included in the bill. However, ILTA continued to work with the Builder's Association of Greater Indiana on a mutually satisfactory compromise involving the duration of the homeowner's association.

SB 62 concerning notices of foreclosure sale looked to be the vehicle for revising the statute of limitations for homeowner's association liens from one (1) year to ten (10) years. In the end, SB 62 passed without changing the Homeowners Association Lien Act. SB 62 eliminates the requirement that a sheriff post notice of a foreclosure sale in at least three public places in each township where the real estate is located. ILTA will continue to work with the Builder's Association on the statute of limitations issue and the issue of whether to pursue an amendment to the lien provisions of the condominium association statute to mirror the lien provisions set forth with the Homeowner's Association Lien Act will be discussed by the ILTA legislative committee and Board this summer.

SB 257-Mechanics Liens

This bill provided for the creation of an electronic database for filing notices of commencement, notices of completion, preliminary notices and notices of mechanics liens. ILTA objected to the filing and perfection of mechanics liens in a separate electronic registry rather than the recorder's office. This bill is being assigned to an interim or a statutory committee to discuss the topic of modernizing the system for filing mechanic's liens through incorporation of a

statewide online registry for mechanic's liens. ILTA will participate in this summer study committee.

SB 0046-Environmental Restrictive Covenants

Effective Date-July 1, 2008

For determinations of marketable record title after June 20, 2008, marketable record title to real property is subject to all interests of the Department of Environmental management arising from the recording of a restrictive covenant under the environmental laws regardless of whether the recording occurred before July 1, 2008.

SB 0078-Probate and Trust Matters

Effective Date-July 1, 2008 (property tax exemption and credit provisions are effective upon passage and apply to property taxes due and payable after December 31, 2008)

Specifies that a qualified personal residence trust is entitled to certain property tax deductions and the homestead credit during the period in which the grantor of the trust is entitled to occupy the residence rent free under the terms of the trust and is otherwise eligible for the deduction or credit... Specifies the order in which beneficiary interests in a trust must be abated if the trust property is insufficient to fully satisfy the interests of all beneficiaries. Permits a power of attorney to be signed at the principal's direction. (Current law requires a power of attorney to be signed by the principal to be valid.) Provides that if a power of attorney is signed at the direction of the principal, the notary must state that the individual who signed the power of attorney did so at the principal's direction. Provides that if a parent was convicted of causing the death of the other parent by murder, voluntary manslaughter, or another criminal act, and the death does not result from the operation of a vehicle, the parent may not receive an intestate share of the child's estate.

A complete copy of these bills and other bills passed this year is available at <http://www.in.gov/apps/lsa/session/billwatch/billinfo>

Iowa

Kansas

Civil Actions: Appeals See attached Court Case Labeled "Exhibit A"

Civil Actions: Estates and Probate Senate Bill 431 - Passed and Signed. An ACT concerning the probate code; relating to the increase in allowances for spouses and minor children; amending K.S.A. 59-403, 59-6a215 and 59-2287 and K.S.A. 2007 Supp. 59-1507b and repealing the existing sections.

Increased minimum dollar amounts in certain probate matters:

- 1) Increased allowance of real and personal property to surviving spouse and minor children from \$35,000 to \$50,000.
- 2) Increased homestead allowance to surviving spouse from \$35,000 to \$50,000.

Insurance / Business Issues SubHB2505 - Passed and Signed An ACT concerning title insurance; pertaining to unearned premium reserves; amending K.S.A. 40-234c and repealing the existing section.

The bill removes a requirement that a foreign title insurance company maintain unearned premium reserves in an amount no less than the amount that would be required of a domestic title insurance company. The law now will be that the laws of the domicile of the insurance company will govern the amounts the company maintains as unearned premium reserve bringing Kansas in line with most other state insurance laws.

Real Property Interests House Bill 2656 - Passed and Signed. An ACT relating to cemetery corporations; authorizing certain cemetery corporations to convey real estate not platted into cemetery lots free from trust restrictions.

Deeds and Security Interests: Financing Statements Senate Bill 449 - Passed, Pending Signature An ACT amending the uniform commercial code; relating to secured transactions; amending K.S.A. 2007 Supp. 84-9-521 and repealing the existing section.

SB 449 would amend the Uniform Commercial Code (UCC) to eliminate from statute the forms for financing statements. The bill also would authorize the Kansas Secretary of State to prescribe the forms to be used when filing a financing statement pursuant to the UCC. In addition, the bill would provide that all rules and regulations of the Secretary, in existence on June 30, 2007, would continue to be effective and deemed to be duly adopted until revised, amended, revoked or nullified.

Deeds and Security Interests: Financing Statements Senate Bill 467 - Passed and Signed
An ACT relating to manufactured housing; concerning the filing of notice of security interest; amending K.S.A. 2007 Supp. 58-4204 and repealing the existing section.

Extends the filing deadline to file a notice of a security interest on the title to a manufactured or mobile home from 10 days to 30 days in those cases where the UCC grants a purchase money security interest.

Kentucky

Louisiana

Maine

Maryland

Massachusetts

Real Property Interests: Condominiums

Chapter 13 of the Acts of 2008, An Act Relative to the Transfer of Title to Condominium Units

This act repeals the last paragraph of c. 183A, Section 9, which stated that the first deed out of the developer for a condominium unit shall have attached thereto a copy of the portion or portions of the plans setting forth the layout of the unit and details as to its dimensions, etc. This new legislation was promoted by the Real Estate Bar Association (REBA), which argued that the requirement was redundant and had little practical benefit, in that a full set of plans is already recorded with the Master Deed to the condominium project. The legislation became effective April 24, 2008, and is applicable to all condominium unit deeds, whether recorded prior to, on or after the effective date of the act.

Chapter 182 of the Acts of 2008, An Act Making Appropriations for the Fiscal Year 2009 for the Maintenance of the Departments, Boards, Commissions, Institutions and Certain Activities of the Commonwealth, for Interest, Sinking Fund and Serial Bond Requirements and for Certain Permanent Improvements

A portion of this law affects the recording fee assessed when a document includes "multiple references" to a document or instrument, intending to assign, discharge, release or subordinate such multiple interests. [See Sections 13 and 74 of the Act.] The new law amends G.L. Chapter 262, Section 38 and Chapter 44B, Section 8 to provide that each reference shall be separately indexed and separately assessed an additional recording fee. The revisions to the statutes are effective retroactively, to March 5, 2003.

The new legislation effectively overrides a recent Appeals Court case, Patriot Resorts Corporation v. Register of Deeds for the County of Berkshire, Northern District, wherein the plaintiff submitted for recording an instrument of assignment assigning to Liberty Bank a collateral security interest in 169 mortgages. The register treated the document as constituting 169 separate assignments, and assessed a recording fee of \$10 and a separate surcharge of \$20 for each of the 169 items. The Appeals Court determined that the register erred in interpreting the language of G.L. c. 262, § 38, and that the correct fee was a basic recording fee of \$10, a Community Preservation Act surcharge of \$20, an additional \$4 for each page by which the instrument exceeded four pages, and an additional \$168 for the number of additional marginal references necessitated by the instrument.

Michigan

Minnesota

Mississippi

Missouri

Montana

A. Policy Updates:

#1 – August, 2007:

MLTA worked with Department of Justice Motor Vehicle Division and issued

a new policy to help De-Title a Manufactured Home When the MCO Cannot Be Produced. This new procedure should only be used when the original MCO cannot be found for a manufactured home situated on real property in Montana on or after January 1, 1977 and the owner/agent cannot obtain a replacement (duplicate) MCO from the manufacturer of the home because (a) the manufacturer is no longer in business; or (b) the manufacturer will not issue a replacement MCO.

#2- November, 2007:

MLTA worked with Montana Department of Revenue who then issued a clarification statement to their local offices to help answer reoccurring questions about property transactions that involve a foreign person. An excerpt from the statement the department sent out is illustrated below.

"We will not be determining when a taxpayer has to apply for the ITIN, the title companies, attorneys, mortgage companies, etc. identify the need to the taxpayer for this process. The IRS does not require foreign nationals to make an application if it has been determined that an ITIN will not be required. If a foreign national is involved in a transfer of property, and does not provide an ITIN, you may contact the preparer of the RTC and request the ITIN, and if they indicate the foreign national is not required to have an ITIN because it is not a taxable event, you should transfer the property.

Montana continued:

B. Legislative:

#1 – MLTA attended interim committee meetings of the Montana Legislature. In April of 2008 President Mark Josephson appeared before the Revenue and Transportation Interim Committee to express our concern about the department's "RTC Review Project." At the hearing Mark presented information he had found after reviewing documents from Wheatland County and emphasized MLTA believes a withholding tax is unnecessary. Instead the department should require that 1099 forms be sent to them so they can carry out tax enforcement actions when necessary.

#2 – MLTA is currently preparing for the 2009 Legislative Session which begins on January 5th, 2009. We anticipate an active session and specifically we anticipate the Montana Department of Revenue will attempt another bill to impose a "withholding tax." Our association has worked with others to successfully defeat this type of legislation in the 2005 and 2007 sessions.

#3- MLTA tracked numerous bills in the 2007 session which are listed below. Many of these same bills will be reintroduced in 2009.

MLTA LEGISLATIVE BILL TRACKING LIST

From 2007 Session in Montana

M = Monitor O= Oppose S = Support

| Bill Type - Number | Position | Primary Sponsor | Status | Status Date | Short Title |
|-----------------------|----------|--------------------|--------|----------------|-------------|
|-----------------------|----------|--------------------|--------|----------------|-------------|

2007 Regular Session

| Bill Type - Number | Position | Primary Sponsor | Status | Status Date | Short Title |
|------------------------|----------|-----------------------|---|----------------|---|
| HB 14 | M | Brady Wiseman | (H) Died in Standing Committee* | 04/27/2007 | Appropriation for information technology projects |
| HB 20 | M | Walter McNutt | Chapter Number Assigned | 03/27/2007 | Clarify injunctive relief availability for water right enforcement |
| HB 39 | SA | Walter McNutt | Chapter Number Assigned | 05/03/2007 | Ownership update for water rights |
| HB 94 | M | Kendall Van Dyk | Chapter Number Assigned | 03/27/2007 | Revise underground storage tank penalty factors |
| HB 149 | M | Mike Jopek | Chapter Number Assigned | 03/30/2007 | Increase homestead debt protection |
| HB 177 | M | Scott Boggio | Chapter Number Assigned | 04/05/2007 | Repeal the Montana Electronic Transactions With State Agencies... Act |
| HB 256 | M | Bob Lake | (S) Died in Standing Committee* | 04/27/2007 | Revise realty laws regarding tenancies in common |
| HB 257 | M | Bob Lake | Chapter Number Assigned | 05/03/2007 | Revise taxpayer bill of rights |
| HB 304 | M | Kevin T Furey | Chapter Number Assigned | 05/08/2007 | Create interim water policy committee |
| HB 310 | O | Ernie Dutton | Chapter Number Assigned | 04/26/2007 | Authorize beneficiary deeds |
| HB 319 | M | Bill E Glaser | Chapter Number Assigned | 04/26/2007 | Revise law on construction and highway contracts |
| HB 425 | SA | Jon C Sesso | Chapter Number Assigned | 04/30/2007 | Revise subdivision and platting act |
| HB 473 | M | John (Jack) W Ross | Chapter Number Assigned | 04/30/2007 | Eliminate water adjudication fee |
| HB 501 | O | Jill Cohenour | (H) Died in Standing Committee* | 04/27/2007 | Revise assessment and taxation of certain property improvements |
| HB 522 | M | John Sinrud | (H) Veto Override Vote Mail Poll in Progress | 05/07/2007 | Revise definition of present law for budgeting purposes |
| HB 552 | O | Ron Erickson | (H) Died in Standing Committee* | 04/27/2007 | Real estate transfer tax |
| HB 579 | M | Alan Olson | Chapter Number Assigned | 04/06/2007 | Revise law on excess proceeds from trustee sale |
| HB 623 | M | Alan Olson | Chapter Number Assigned | 03/30/2007 | Revise tax lien sale law |
| HB 657 | M | Bob Ebinger | Chapter Number Assigned | 04/17/2007 | Allow owner to post bond within 30 days of action to foreclose |

| | | | | | |
|------------------------|---|-----------------------|--|------------|--|
| HB 749 | M | Jill Cohenour | (H) Died in Standing Committee* | 04/27/2007 | Government storage, display of social security numbers |
| HB 799 | O | Ken Peterson | (H) Died in Standing Committee* | 04/27/2007 | Impose real property transfer tax |
| HB 829 | M | Llew Jones | Chapter Number Assigned | 05/14/2007 | Blackfeet Tribe - State water compact implementation |
| HB 831 | M | Walter McNutt | Chapter Number Assigned | 05/03/2007 | Revise water use laws in closed basins |
| HB 833 | O | Wayne Stahl | (H) Died in Process* | 04/27/2007 | 20-20 tax plan -- school mills income tax credit and increase exemption amount |
| HB 844 | M | Debby Barrett | (H) Died in Process* | 04/27/2007 | Revise closed basin laws |
| HJ 9 | S | Ken Peterson | (S) Died in Standing Committee* | 04/27/2007 | Interim study of laws relating to recording of easements |
| HJ 45 | M | Bill Thomas | (H) Filed with Secretary of State | 04/16/2007 | Study to examine options for state document systems to reflect actual names |
| SB 8 | M | Jim Shockley | (S) Veto Override Vote Mail Poll Letter Being Prepared | 05/17/2007 | Independent staff for Board of Land Commissioners |
| SB 26 | O | Dan Weinberg | (S) Died in Standing Committee* | 04/27/2007 | Severed mineral rights registry law |
| SB 33 | M | Donald J Steinbeisser | (H) Died in Standing Committee* | 04/27/2007 | Procedures governing social security numbers and computer security breaches |
| SB 41 | M | Jim Elliott | Chapter Number Assigned | 05/08/2007 | Narrow uses for eminent domain |
| SB 43 | M | Mitch Tropila | Chapter Number Assigned | 03/27/2007 | Revise licensing requirements of petroleum measuring device if ownership changes |
| SB 73 | M | Dan McGee | Chapter Number Assigned | 03/27/2007 | Notice to debtor of intended removal of lien filing with state |
| SB 92 | S | Donald J Steinbeisser | Chapter Number Assigned | 05/16/2007 | Revise mortgage broker and loan origination licensing act |
| SB 114 | M | Lane L Larson | Chapter Number Assigned | 04/26/2007 | Revise construction lien laws |
| SB 120 | M | Jim Elliott | (S) Died in Standing Committee* | 04/27/2007 | Revise tax treatment of income and dividends of real estate investment trusts |
| SB 121 | M | Jim Elliott | Chapter Number Assigned | 05/08/2007 | Prohibit sale of tax information |
| SB 131 | M | John Cobb | Chapter Number Assigned | 05/03/2007 | Revise land banking laws |
| SB 138 | M | David E Wanzenried | (H) Died in Standing Committee* | 04/27/2007 | Prevent corporations from channeling income to insurance subsidiary |
| SB 150 | M | Kim Gillan | Chapter Number Assigned | 04/17/2007 | Exclude property contributions from qualified endowment credit and extend credit |
| SB 174 | M | Jim Elliott | (H) Died in Standing Committee* | 04/27/2007 | Revise laws on revenue administration |
| SB 201 | M | Rick Laible | Chapter Number | 05/08/2007 | Revise subdivision laws |

| | | | Assigned | | | |
|------------------------|----|--------------------|---------------------------------|------------|--|--|
| SB 220 | O | Jim Elliott | (H) Died in Process* | 04/27/2007 | Revising tax laws relating to income taxes, certain property, and energy | |
| SB 242 | M | Jim Elliott | (H) Died in Standing Committee* | 04/27/2007 | Revise confidentiality of tax records of publicly held corporations | |
| SB 269 | SA | Lane L Larson | Chapter Number Assigned | 04/30/2007 | Revise standards for recorded documents | |
| SB 282 | M | Greg Lind | Chapter Number Assigned | 04/17/2007 | Revise law on implied consent for recording of conversations | |
| SB 316 | M | Jim Elliott | Chapter Number Assigned | 05/16/2007 | Clarify taxation of agricultural parcels reduced by public use by government | |
| SB 317 | M | Dave Lewis | Chapter Number Assigned | 04/30/2007 | Restrict land trust merger of title | |
| SB 319 | M | Vicki Cocchiarella | Chapter Number Assigned | 04/03/2007 | Allow real estate agent to represent multiple sellers or buyers | |
| SB 347 | M | Jim Shockley | (H) Died in Standing Committee* | 04/27/2007 | Conservation easement enforcement | |
| SB 363 | M | Christine Kaufmann | Chapter Number Assigned | 05/16/2007 | Revise eminent domain law | |
| SB 370 | M | Bill Tash | Chapter Number Assigned | 04/30/2007 | Revise law on water right abandonment | |
| SB 378 | M | Kim Gillan | Chapter Number Assigned | 04/17/2007 | Use of comparable federal tax definitions | |
| SB 383 | O | Jesse Laslovich | (H) Died in Standing Committee* | 04/27/2007 | Revise property laws | |
| SB 391 | M | Dan Weinberg | (H) Died in Process* | 04/27/2007 | Conservation easements on state land | |
| SB 416 | M | Christine Kaufmann | (H) Died in Standing Committee* | 04/27/2007 | Secretary of state - department of revenue taxpayer identification | |
| SB 430 | M | Jim Elliott | (H) Died in Standing Committee* | 04/27/2007 | Allow out-of-state revenue collections | |
| SB 439 | M | Jim Elliott | Chapter Number Assigned | 05/08/2007 | Withholding for natural resource royalty payments | |
| SB 464 | M | Dan Weinberg | (S) Died in Standing Committee* | 04/27/2007 | Property tax relief - local option realty transfer tax | |
| SB 476 | O | Jerry O'Neil | (S) Died in Standing Committee* | 04/27/2007 | Making unauthorized practice of law a crime | |
| SB 487 | S | Bob Story | (H) Died in Standing Committee* | 04/27/2007 | Require tax information agents report certain real estate transactions | |
| SB 527 | M | Kim Gillan | Chapter Number Assigned | 04/17/2007 | Revise condominium exemption for subdivision review | |
| SB 536 | M | Gary L Perry | Chapter Number Assigned | 04/11/2007 | Revise eminent domain laws | |
| SB 539 | M | David E Wanzenried | (H) Died in Standing Committee* | 04/27/2007 | Revise property tax appeal and create property tax protest reserve fund | |

Nebraska

Thank you for your email. Unfortunately, due to economic constraints, I will not be joining you at the Annual 2008 ALTA Convention in Hawaii.

Please let me explain the workings of the State of Nebraska.

First, we are the only state in the Union that has a Unicameral; one house. Our balance of power lies within the petition power of the people, the Senators, and our Governor.

The various committees are led by a chairperson who is a Senator and made up of various other Senators serving on the committee. They preside over the following committees:

- Executive Board
- Committee on Committees
- Committee on Judiciary
- Committee on Government, Military and Veterans Affairs
- Committee on Appropriations
- Committee on Revenue
- Committee on Education
- Committee on Banking, Commerce and Insurance
- Committee on Natural Resources
- Committee on Agriculture
- Committee on Health and Human Services
- Committee on General Affairs
- Committee on Business and Labor
- Committee on Urban Affairs
- Committee on Transportation and Telecommunications

Our legislature works on a two-year rotation, meaning that every two years we have 1-2000 bills come out at the beginning of January. We just finished the second year of the bills introduced in 2007 for 2007-2008. Therefore, we will start with a fresh slate this coming January.

Because of this, I have no news to report on what is coming. I can only report what has been past in the last two years.

Our association managed, with the help of our lobbyist, Kim Robak, to get the bill through that we drafted called the "Certificate of Satisfaction" bill. It was known as L.B. 386. It was passed in May and became effective July 18, 2008. The new laws allows for title agencies who have handled the title insurance and closing of a transaction, and also handled the payoff of the existing mortgages or deeds of trust of the Seller to file a Certificate of Satisfaction if the paid-off lender fails to issue a release. Of course, there are rules and procedures before an agent can file the Certificate. If anyone is interested, I would encourage them to look up the bill on the Nebraska Legislature's website at <http://uniweb.legislature.ne.gov>

I do not anticipate I will have anything to report until the month of January. If anyone has any questions, please do not hesitate to call me.

Kindest Regards,

Becky McKittrick
President, Nebraska Land Title Association

Nevada

New Hampshire

2008 New Hampshire Legislation Submitted by Carol Durgy Brooks, Esq., Title Counsel CATIC, 1750 Elm Street, Suite 605, Manchester, NH 03104

New Hampshire state legislation affecting real property, title insurance business requirements are highlighted below by bill number, sponsor, and current bill status.

The text of bills can be found by bill number at:
<http://www.gencourt.state.nh.us/ie/>

Several bills of interest in the 2008 session include laws relative to regulating mooring permits, septic system repairs before sale, revisions to the civil union law and to limiting new future interests and rights of reverter and restricting existing future interests.

Environmental Issues: Public Trust/Riparian Rights Senate Bill 358, An Act Relative to Mooring Permits. Effective 8/31/08

Taxes: Real Estate Senate Bill 367, An Act Relative to the Date of the Final Property Tax Bill in Municipalities that Bill Quarterly. Effective 7/11/08.

Real Property Interests: Husband & Wife/Community Property Senate Bill 373, An Act Relative to Definitions for and the Application of the Civil Unions Law to the Retirement System. Signed by the Governor On 07/07/08; Effective Date 01/01/08 at 12:01 a.m. The civil union law shall not apply to the extent that such application will violate the Internal Revenue Code of 1986, as amended, or other federal law.

Environmental Issues: Hazardous Waste Senate Bill 384, An Act Relative to the Repair of Septic Systems Prior to the Sale of Waterfront Property. Signed by the Governor On 07/07/08; Effective date 01/01/09.

Public Entities: Sale of Municipal Lands Senate Bill 398, An Act Establishing a Committee to Study Municipal Boundaries and the Laws Pertaining to These Boundaries. Signed by the Governor On 05/28/08; Effective date 05/28/08.

Real Property Interests: Subdivisions Senate Bill 407, An Act Establishing a Committee to Study the Right of Entry Upon Lands for Purposes of Conducting a Land Survey. Signed by the Governor On 05/28/08; Effective Date 05/28/08.

Real Property Interests: Covenants, Conditions & Restrictions Senate Bill 409, An Act Relative to Conservation and Preservation Restrictions. Signed By

the Governor On 06/03/08, Effective Date 08/02/08. Recording required for certain restrictions by revisions to 477:47 Interests in Real Estate. Conservation, preservation, and agricultural preservation restrictions are interests in real estate and a document creating such a restriction shall be deemed a conveyance of real estate for purposes of RSA 477:3 and RSA 477:3-a relating to execution and recording.

Recording: Recording Requirements Senate Bill 461, An Act Relative to Accessibility of Genealogical Records to the Public. Signed by Governor 5/12/08 effective 5/12/08. Act clarifies the statutes governing access to vital records for birth, death, marriage and divorce.

Real Property Interests: Trusts Senate Bill 465, An Act Relative to the Laws Regulating Trusts and Trust Companies in New Hampshire. Signed by Governor 7/11/08 Effective 9/9/08. Numerous revisions and new RSA 564-D "Qualified Dispositions in Trust Act" added.

Civil Actions: Courts Senate Bill 466, An Act Relative to Probate Court Jurisdiction Over Special Needs Trusts. Signed by Governor 5/21/08 Effective 5/21/08. Act grants the Probate Court jurisdiction to order the creation of special needs trusts.

Recording: Recording Requirements Senate Bill 474, An Act Relative to Registers of Deeds and Reports of County Officers. Signed by Governor 7/2/08. Effective 8/31/08. Part of this bill simply changes the assumptive "he" as a register of deeds to a "he or she" and makes several technical changes.

Insurance/Business Issues: Deceptive Trade Practices/Anti Kickback Laws Senate Bill 475, an Act Relative to the Definition of Advance Fees in the Real Estate Practice Act. Signed by Governor 6/3/08. Effective 8/2/08. The act excludes fees paid for electronic publication from the definition of advance fees for real estate commissions.

Civil Actions: Courts Senate Bill 488, An Act Relative to Jurisdiction of the Probate Courts and Superior Courts. Chapter 109. Effective 7/27/08. The Act includes provisions re jurisdiction of both superior and probate courts over partition actions, depending on circumstances.

Insurance/Business Issues: Deceptive Trade Practices/Anti Kickback Laws Senate Bill 500, An Act Relative to Certain Insurance Fraud, Relative to Workers' Compensation for Employee Leasing Companies, and Establishing a Task Force on Employee Misclassification. Chapter 378. Effective 7/11/08.

Civil Actions: Statute of Limitations House Bill 1152, An Act Relative to Interpreting Statutory Deadlines. Chapter 11. Effective 1/1/09. The act extends the deadline for filing documents or paying fees to next business day where deadline falls on Saturday, Sunday, or holiday.

Real Property Interests: Subdivisions House Bill 1157, An Act Relative to Requirements for Approval of Village Plan Alternative Subdivisions. Chapter 63.

Effective 7/20/08. The Act adds a requirement that the recorded easement expressly state that restrictions are enforceable by municipality.

Taxes: Real Estate House Bill 1191, An Act Relative to Environmental Investigations in Tax Lien and Tax Sale Proceedings. Effective 7/20/08. The Act addresses municipal procedures on liens and sales.

Deeds and Security Interests: Obligations House Bill 1270, An Act Relative to Limiting Certain Future Interests in Real Property. Effective 1/1/09. The Act concerns future interests to be created and those in existence: reverters, rights of re-entry and executor interests.

Escrow Disclosures House Bill 1384, An Act Relative to the Regulation of Designated Agents by the New Hampshire Real Estate Commission, and Relative to the Disclosure of Certain Property Conditions. Effective 1/1/09.

Taxes: Real Estate House Bill 1442, An Act Relative to the Taxation of Farm Buildings and Land Under Farm Buildings. Sections 5-8 effective 7/1/08. The Act addresses taxation issues .

Statutory Liens: Attachments House Bill 1573, An Act Relative to Hazardous and Dilapidated Buildings. New Lien-effective 7/27/08 that affects title on date of recording.

New Jersey

Bill: S2173 ***
Sponsors: Allen (R7)
Summary: Allows identity theft victims to petition for judicial determination of factual innocence.
Related: 2008:A1755; 2008:S1715; 2006:A1364; 2006:S212; 2004:A4354; 2004:S2906
History: 10/02/2008—Proposed for introduction.

Bill: S2188 ***
Sponsors: Van Drew (D1)
Summary: Changes riparian land grant and lease process and amends various parts of statutory law.
Related: 2008:A1642; 2006:A4553; 2006:S2938
History: 10/02/2008—Proposed for introduction.
Position: Support

Bill: A1878 Aca (1R)
Sponsors: Conners (D7); Chiusano (R24); Coyle (R16)
Summary: Requires insurance producers to notify Commissioner of Banking and Insurance of any disciplinary action taken by non-governmental

regulatory authority.
History: 01/24/2008—Introduced and referred to Assembly Financial Institutions and Insurance Committee.
06/05/2008—Reported out of committee with committee amendments, 2nd reading in Assembly.
09/25/2008—Passed in Assembly 78-0-1.
10/02/2008—Received in Senate and referred to Senate Commerce Committee.
Position: Monitor

Bill: A1625
Sponsors: McKeon (D27); Chivukula (D17); Jasey (D27) +4
Summary: Requires installation of operational automatic rain sensor on lawn sprinklers as condition of sale and on lawn sprinklers on commercial, retail or industrial property and in common interest communities within specified timeframes.
Cospons: Giblin (D34); Stender (D22); Conaway (D7); Wisniewski (D19)
Related: 2008:S704; 2008:S705; 2006:A3591; 2006:A3593; 2006:S2156; 2006:S2157
History: 01/08/2008—Introduced and referred to Assembly Environment and Solid Waste Committee.
03/06/2008—Reported out of committee, 2nd reading in Assembly.
06/23/2008—Passed in Assembly 51-26-1.
10/02/2008—Received in Senate and referred to Senate Environment Committee.

New Mexico

New York

North Carolina

North Dakota

Ohio

Oklahoma

Oregon

Pennsylvania

Rhode Island

Civil Actions: Estates and Probate

Chapter 295, An Act Relating to Financial Institutions

This act adopts the Uniform Nonprobate Transfers on Death Act, relating to payment of funds in an account to a designated beneficiary, upon the death of the account holder. A product of the National Conference of Commissioners on

Uniform State Laws, the Uniform Act is designed to promote the uniform treatment of such accounts by the various states. The new act covers matters such as contracts of deposit, account forms, distribution to beneficiaries, and protection of depository institutions. Effective July 5, 2008.

Statutory Liens: Mechanics Liens

Chapter 75, An Act Relating to Property - Mechanic's Liens

This act makes a number of revisions to G.L. Chapter 34-28, concerning mechanic's liens. Section 34-28-4 is amended to tie the 200-day period therein to the filing of the copy of the notice of intention on the land records, rather than to the mailing of the notice. Section 34-28-9 is amended to provide that a notice of lien shall be effective as to any retainage earned but not paid, for work provided under Section 34-28-1, et seq. [See also Chapter 345, which makes the same statutory revisions.] Effective June 25, 2008.

Real Property Interests: Condominiums

Chapter 479, An Act Relating to Property - Condominium Law

This act makes a number of revisions to Chapter 34-36.1, "Condominium Law." New language provides that the condominium association's six-month priority lien includes all costs of foreclosure, not to exceed \$5000 (for a total aggregate of attorney's fees and costs not to exceed \$7500). The act sets forth requirements for the association to send notice to the unit owner of a delinquency in the payment of common expenses. If the association fails to send out the required notice, the six-months priority shall not be affected, but the priority amount shall not include any costs or attorney's fees. Other revisions concern the notice of a pending foreclosure sale that the association shall send to the holder of the first mortgage or deed of trust encumbering the subject unit, and the rights of redemption held by the holder. [See also Chapter 459, which makes the same statutory revisions.] Effective July 5, 2008.

Public Entities: Eminent Domain & Dedication

Chapter 169, An Act Relating to State Affairs and Government

This act adds a new Chapter 64.12 to Title 42 of the General Laws ("State Affairs and Government"), titled "Eminent Domain." The new provisions, collectively called the "Rhode Island Home and Business Protection Act of 2008," address the General Assembly's stated goal of setting forth permissible uses of eminent domain, and restricting the use of eminent domain for economic development purposes. If property is taken for economic development, certain standards must be met and the owners of the property shall be compensated at a minimum of 150% of the fair market value of the taken property. The owners shall also be compensated for certain related expenses incurred as a result of the taking of the property, as well as relocation expenses, including moving and reestablishment expenses. Tenants of such property shall be compensated at a minimum of 150% of one month's rent, plus relocation expenses. The new law shall not apply to condemnations for easements or other partial takings for less than five years duration where the effect of the taking is not the ousting of the owner or the displacing of a lawful tenant. Effective July 2, 2008.

Real Property Interests: Adverse Possession

Chapter 63, An Act Relating to Property - Property by Possession and Prescription

This act amends Chapter 34-7 of the General Laws, "By Possession and Prescription," by adding a new Section 34-7-9, titled "Land Preserved for Open Space and Conservation Purposes." The new Section provides that any land held or preserved by a nonprofit corporation or nonprofit association for purposes of conservation or open space is not subject to adverse possession or prescription. [See also Chapter 67, which makes the same revision to the statutes.] Effective June 23, 2008.

Deeds and Security Interests: Mortgages/Deed of trust

Chapter 19, An Act Relating to Property - Reverse Mortgages

This act makes a number of revisions to Chapter 34-25.1, "Reverse Mortgages," all designed to ensure that reverse mortgage borrowers fully understand the ramifications of entering into a reverse mortgage transaction. The act covers matters such as prepayment penalties, pre-closing and post-closing disclosures, the application process, permissible fees and costs, registration of reverse mortgage loan officers, and the implementation of a required counseling program for prospective borrowers. The act provides that an applicant for a reverse mortgage loan shall not be bound for at least three business days after all of the following have occurred: the applicant's execution and delivery of a fully completed application; the applicant's delivery to the mortgagee of a proper form evidencing the receipt of counseling; and the applicant's receipt of all of the information to which he is entitled. Further detail on this provision is set forth in the act. The act also gives the Director of the Department of Business Regulation the authority to promulgate regulations regarding reverse mortgages. [See also Chapter 21, which makes the same statutory

Deeds and Security Interests: Foreclosures

Chapter 238, An Act Relating to Property - Mortgage Foreclosure and Sale
Section 1 of this act adds a new Section 34-27-6 to Chapter 34-27 ("Mortgage Foreclosure and Sale"), titled "Payment of Outstanding Taxes." The new Section provides that if the mortgagee or an "affiliate" (as defined) is the successful bidder at the foreclosure sale, the foreclosure deed shall be recorded in the land records within forty-five days after the date of the sale. The act sets forth certain exceptions to this requirement. All outstanding taxes and other assessments shall be paid on or before the date on which the foreclosure deed is recorded. Additional time is allowed for the payment of taxes if the grantee under the deed has applied for a municipal lien certificate from the tax collector. Violations shall be subject to the penalties set forth. The act also amends Section 19-9-2, by adding a provision whereby the Director of the Department of Business Regulation annually establishes a variable rate of interest to be paid on escrow accounts held by mortgagees for the payment of a mortgagor's taxes and insurance premiums. [See also Chapter 309, which makes the same statutory changes.] Effective, generally, on July 4, 2008, with Section 1 effective 60 days later and applicable to foreclosure auction sales occurring thereafter.

Deeds and Security Interests: Foreclosures

Chapter 352, An Act Relating to Property - Mortgage Foreclosure and Sale

This act amends Section 34-27-4, concerning publication of notice under power of sale, by adding language that provides that a sale may take place no more than fourteen days from the date on which the third notice is published, including the day of the third publication in the computation. If the sale is adjourned

pursuant to G.L. 34-11-22, and the adjourned sale is held during the same calendar week as the originally scheduled day of sale, then no additional advertising is required. Otherwise, publication of the notice of the adjourned sale, together with a notice of the adjournment, shall be continued at least once each week commencing with the calendar week following the originally scheduled day of sale. The sale shall then take place during the calendar week in which the last notice of the adjourned sale is published, at least one day after the date on which that last notice is published. [See also Chapter 369, reviewed below.] Effective July 5, 2008.

Deeds and Security Interests: Foreclosures

Chapter 369, An Act Relating to Property - Mortgage Foreclosure and Sale Like Chapter 352, this act amends the publication of notice requirements set forth in G.L. Section 34-27-4. Chapter 369 adds new language providing that the third publication of the notice shall be no fewer than seven days, and no more than fourteen days, before the original date of sale listed in the advertisement. Effective July 8, 2008.

Public Entities: Zoning

Chapter 172, An Act Relating to Towns and Cities - Zoning Ordinances G.L. Section 45-24-37 sets forth the various uses that are considered permissible uses within residential zoning use districts of a municipality. This new act amends the statute to provide that an accessory family dwelling unit in an owner-occupied, single-family residence shall be permitted as a reasonable accommodation only for family members with disabilities. Detail is set forth concerning various characteristics of such an accessory unit, covering matters such as the appearance of the structure, means of egress, and sewage disposal systems. A declaration of the accessory unit shall be recorded in the land evidence records and filed with the zoning enforcement officer and the building official. Once the family member with disabilities no longer resides on the premises on a permanent basis, or title is transferred, the owner shall notify the zoning official in writing, and the accessory unit shall no longer be permitted, unless there is a subsequent, valid application. [See also Chapter 176, which makes the same statutory revisions.] Effective July 2, 2008.

Real Property Interests: Subdivisions

Chapter 224, An Act Relating to Towns and Cities - Subdivision of Land This act makes a number of revisions to statutes set forth in G.L. Chapter 45-23, "Subdivision of Land." Generally, the act requires that decisions made with respect to subdivision plans must be in writing. Section 45-23-56 is amended to provide that all reports of a technical review committee shall be made available to the applicant prior to the planning board meeting at which the reports are first considered. Section 45-23-63 is amended to provide that all written decisions of the planning board shall be recorded in the land evidence records within 35 days after the board's vote. Within one business day of recording, a copy of the recorded decision shall be mailed to the applicant and to any objector who has filed a written request for notice with the administrative officer. The mailing shall be by a method that provides confirmation of receipt. [See also Chapter 464, which contains similar language.] Effective July 4, 2008.

Real Property Interests: Subdivisions

Chapter 294, An Act Relating to Towns and Cities - Subdivision of Land

This act increases the length of time during which an approved master plan (G.L. Section 45-23-40) or preliminary plan (Section 45-23-41) is vested, from one year to two years, with the right to extend for two one-year extensions. The act also amends Section 45-23-43, concerning final plans, to provide for a one-year extension, beyond the one-year standard vesting period, relative to the final approval of a major subdivision or land development project. Effective July 5, 2008.

Public Entities: Zoning

Chapter 372, An Act Relating to Towns and Cities - Historical Zoning

This act amends G.L. Section 45-24.1-10, concerning the enforcement of historical area zoning, to provide that a person who has any historical building, or portion thereof, demolished without the requisite permits as required under Chapter 45-24.1 shall be guilty of a misdemeanor and upon conviction shall be punished by a fine not to exceed \$500 and/or imprisonment of up to one year. Effective July 8, 2008.

Civil Actions: Estates and Probate

Chapter 296, An Act Relating to Probate Practice and Procedure - Probate Courts

G.L. Section 33-22-2 concerns the contents of a petition for probate or administration. Chapter 296 amends the statute by adding new language that provides that if the petition is for the allowance of a will, it shall contain the names and post office addresses of the named beneficiaries under the will, to the extent that they are different from the heirs at law. [See also Chapter 315, which adds the same language to the statute.] Effective July 5, 2008.

Civil Actions: Estates and Probate

Chapter 298, An Act Relating to Probate Practice and Procedure - Claims

The stated purpose of this act is to ensure that dependent children shall be maintained and supported, as completely as possible, from the resources of their parents, thereby avoiding, to the fullest extent possible, the burden borne by citizens of the state in supporting such children. The act provides detail as to the continuing obligation to pay child support, especially as it applies to the estate of a decedent parent. The act amends G.L. Section 33-12-11, concerning the order of preference in the payment of debts owed by a decedent, to provide that child support obligations shall be paid after payment of funeral charges, last sickness expenses, debts to the United States and to the state, and state and town taxes. The act also provides that any such obligation is enforceable by the imposition of a constructive trust over the deceased parent's non-probate assets. [See also Chapter 314, which makes the same statutory changes.] Effective July 5, 2008.

Civil Actions: Estates and Probate

Chapter 299, An Act Relating to Probate Practice and Procedure - Guardianship of Minors

This act makes a number of revisions to the statutes governing guardianship, covering matters such as bonding requirements, "good Samaritan" guardians, the appointment of guardians ad litem, and service of notice of a petition for

appointment. [See also Chapter 419, which makes the same statutory changes.]
Effective July 5, 2008.

Civil Actions: Estates and Probate

Chapter 306, An Act Relating to Probate Practice and Procedure - Probate
Courts

This act repeals Sections 33-7-1 through 33-7-4, which provide for the depositing of a will with the probate court clerk, and the court's retention of all deposited wills pending delivery to the testator, during his lifetime, or until the will's public opening at probate court following the testator's death. The act also adds a new Section 33-7-7.1 to the statutes, setting forth the procedure for the probate courts to use in returning any wills in their possession. Proper notice shall be sent to each testator, each person designated to receive the will upon the testator's death, and each drafting attorney, if known. The notice shall advise the recipient that the probate court is no longer required to maintain custody of the will, and give information concerning the return of the document. Effective December 31, 2008.

Civil Actions: Estates and Probate

Chapter 307, An Act Relating to Probate Practice and Procedure - Claims
Against Decedents' Estates

This act makes a number of revisions to Chapter 33-11, "Claims Against Decedents' Estates," covering matters such as the manner of filing claims; notices to creditors; contingent claims; bonds; disallowance of claims; payment of claims; extensions; insolvent estates; and appeals taken from probate court actions. Effective July 5, 2008.

Civil Actions: Estates and Probate

Chapter 434, An Act Relating to Fiduciaries - Powers of Fiduciaries

G.L. Section 18-4-24 concerns the termination of small trusts, where the principal has a current market value of less than \$100,000. This new act amends the statute to increase the market value limitation to less than \$200,000. The act makes no further changes to the statute, which sets forth the criteria for termination and the actions that the trustee shall take in seeking termination. [See also Chapter 442, which makes the same revision to the statute.] Effective July 5, 2008, and applicable to all trusts, whenever created.

South Carolina

South Dakota

Tennessee

Texas

Utah

Vermont

Real Property Interests: Streets & Highways

Act 90: Grants to Communities / Ancient Roads and Unidentified Corridor Requirements

This lengthy act, which makes adjustments to various budget matters, includes a provision setting aside the sum of \$55,000 to be used for grants to communities, on a one-time basis, for costs related to ancient roads and unidentified corridors requirements. Effective March 6, 2008.

Recording: Automation

Act 96: Consolidating Management of Public Records

This act consolidates the administration and management of public records into a new program called the Vermont State Archives and Records Administration, within the Office of the Secretary of State. The state archivist shall serve as Director of the program. The act amends 3 V.S.A. § 117, listing the duties of the state archivist, to add new language providing that the state archivist shall administer a central reformatting program for public records, including land records. Public records that are microfilmed, electronically captured, or otherwise reformatted shall be taken and received in all courts, public offices, and official bodies as prima facie evidence. The state archivist shall also establish policies for the management of public records and public documents, with the policies to include instructions for retention, access and management of such records and documents. Effective July 1, 2008.

Real Property Interests: Streets & Highways

Act 158: Mapping Class Four Town Highways and Trails / Discontinuances of Unmapped Town Highways

Section 1 of this act sets forth the General Assembly's finding that there is a need to clarify the provisions of 19 V.S.A. § 305(h) relative to a municipality's ability to discontinue town highways. The act extends, by one year, the time which municipalities have to map unidentified corridors from July 1, 2008 to July 1, 2009. The act states that "...19 V.S.A. § 305(h) is intended to apply only to those highways that are not otherwise clearly observable by physical evidence of their use as a highway or trail." Notwithstanding this new language, the act also provides that on or before July 1, 2010, a municipality's legislative body may vote to discontinue all town highways that are not otherwise clearly observable. Effective July 1, 2008.

Deeds and Security Interests: Mortgages/Deed of Trust

Act 177: Discharge of Mortgage by Attorney / Conveyance of Homestead Interest / Validation of Mortgage Discharges

Section 1 of this act adds a new subsection (d) to 27 V.S.A. § 141, concerning estates of homestead and the execution and acknowledgment of conveyance. The new subsection provides that a spouse or civil union partner may convey his or her respective homestead interest to the other party prior to the time the homestead right vests, thereby divesting the grantor of any homestead interest in the property. A conveyance of homestead property between spouses or civil union partners shall be deemed to include a conveyance of any homestead interest. This revision to the statute is to apply retroactively, except that it shall not affect a suit begun or pending as of July 1, 2008.

Section 2 of the act amends 27 V.S.A. § 348, concerning the validation of defective instruments of record, by adding new language validating certain errors

after three years. The types of errors validated include: a defective acknowledgment; an incorrect statement of date of execution; the absence of a statement of consideration; and the improper execution of a conveyance from a business entity. The new language also validates, immediately, certain errors relative to the execution of a document pursuant to a recorded power of attorney, such as the failure to reference the power of attorney, or the recording of the power of attorney after the recording of the instrument. Additional language concerns the discharge or assignment of a mortgage interest executed by a commercial lender with respect to one-to-four family residential real estate, which document recites the authority to act on behalf of the record holder of the mortgage, under a power of attorney, where the power of attorney is not of record. The new language validates such a discharge or assignment, unless within three years of the recording of the instrument an action to challenge the document is brought and a copy of the complaint is recorded on the land records. This new provision shall not apply to releases, discharges or assignments obtained by fraud or forgery.

Section 3 amends 27 V.S.A. § 464a, which allows an attorney to discharge a mortgage if the mortgagee has failed to do so. The existing statute was limited to mortgages on dwellings with two units or less and occupied by the owner as a principal residence, and to mortgages on farmland. The revised statute removes that limitation, thereby allowing the discharge as to any type of property. The new language also provides that the statute shall apply if a discharge has been executed by, or is in the name of, a purported mortgagee that is not the holder of record, or if the discharge was not executed in accordance with Sections 461 ("by entry on record"), 462 ("by acknowledgment of payment"), or 463 ("by separate instrument") of Title 27. Other revisions to the statute concern the content of the affidavit to be recorded on the land records, and provide that the attorney who executes and records a discharge of mortgage pursuant to the statute shall not be liable to the holder of the mortgage, except in the event of negligence or fraud by the discharging attorney.

Section 4 adds a new § 470 to Title 27, titled "Validation of Mortgage Discharge on One-to-Four-Family Residential Property." The new statute sets forth criteria for the validation of a discharge with respect to such a mortgage where the discharge is not executed by or is not issued by or in the name of the record holder of the mortgage. Three years must have passed with no challenge to the validity of the mortgage. There must be an affidavit, recorded and dated more than three years after the recording of the discharge, setting forth the following: a statement that the affiant has been the record owner of the property for at least two years prior to the date of the affidavit; the recording information for the mortgage, any assignments and the release; a statement that, since the date of the recording of the release, the affiant has received no demand for payment or any notice that would indicate that all or any part of the mortgage debt remains unpaid; and a statement that, to the best of the affiant's knowledge and belief, the mortgage has been paid in full. The provisions of this new section shall not apply to any release obtained by fraud or forgery. Effective July 1, 2008.

Civil Actions: Estates and Probate
Act 186: Guardianships

This lengthy act makes a number of revisions to 14 V.S.A. Chapter 11, concerning guardianship, covering matter such as the probate court's supervisory authority over guardians; petitions for the appointment of a guardian; court-ordered evaluation of a respondent; advance directives and consent for medical or dental treatment; guardianship powers; financial conflicts of interest; annual reports and accountings; and termination and modification of guardianship. The act also establishes a task force charged with assessing ways to improve guardian accountability and competency and protect the rights and well-being of individuals under guardianship. The task force shall report its findings and recommendation on or before December 15, 2008. Effective July 1, 2008.

Environmental Issues: Public Trust/Riparian Rights

Act 199: Groundwater Withdrawal Permit Program

Section 1 of this act sets forth the General Assembly's finding that it is the policy of the state that the state shall protect its groundwater resources in order to maintain high-quality drinking water, that the groundwater resources shall be managed to minimize the risk of groundwater quality deterioration by regulating human activities that pose a risk to those groundwaters, and that the groundwater resources of the state are held in trust for the public. A new Subchapter 6 is added to 10 V.S.A. Chapter 48, titled "Groundwater Withdrawal Program," covering matters such as groundwater withdrawal permits and reporting requirements, public input at hearings on permit applications, and the adoption of rules by the Secretary of the Agency of Natural Resources implementing the new statutes. The rules shall include requirements for the mitigation of undue adverse effects on water systems and requirements for the renewal of permits. Effective June 9, 2008.

Virginia

Washington

West Virginia

Wisconsin

Wyoming