

# CLTA News

By the California Land Title Association

## A MESSAGE FROM THE PRESIDENT



Rich Macaluso  
Orange Coast Title Company

Today's title industry is faced with challenges, a slowing marketplace and growing attacks from regulators and the media. We are up to the task!

We are an integral, necessary part of the real estate industry that has closed an unprecedented number of transactions (the number of California non-attached SFR sale transactions increased from 503,990 in 2002 to 624,957 in 2005), insured a record number of homeowners, helped create enormous amounts of homeowner wealth and made significant contributions to the California economy and to government revenue. Homeownership in California increased from 57.7% to 59.7% in 2005.

We have a lot to be proud of! For sure in recent years our business has been a profitable one and has provided a solid return on investment. Last time I looked capitalism was a basic core principal that has made our country different and better than all other alternatives. Clearly, we have in the

past and will in the present and future have much tougher financial realities.

We have served the California real estate consumers and professionals very well and have provided a great value proposition. We provide excellent service at a cost lower than the US average. We provide a large employment base of voting, tax paying, hard working people. We do a wonderful job of eliminating title problems during our search, examination and closing process helping us to maintain the low claims ratio that enables us to keep providing a great product at a real value. Escrow and closing services in California have allowed a record number of closings in a typically complicated process.

I believe that our agenda going forward should include:

- ▶ Public and governmental education and awareness of our "value proposition". We must fight the "over regulation" of business in our great State of California and improve our working relationship with the California Department of Insurance and other regulatory bodies, both state and national.
- ▶ Continue to encourage and support the consumer's ability to make informed decisions about our competitive title and escrow services and provide the same to the professionals who serve them.
- ▶ Efforts to make specific "illegal rebate" rules and to reduce specific illegal rebate activity. This is a competitive industry, contrary to what some say, and we must be able to

market our services to the real estate consumers and the professionals that serve them.

- ▶ Elimination of "sham" ABA's where they exist. Legitimate ABA's that operate according to the 'rules' of RESPA and the California Insurance Code have a vital place in the market. Consumer studies and experience have shown that consumers want "one stop shopping" and prefer to have their real estate professionals refer them to ancillary services.

I am proud to be the President of CLTA and to participate in the leadership of our vibrant industry and will work hard to help achieve the goals of our organization.

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under "Industry News".



## **eNOTARIZATION TASK FORCE**

The Electronic Notarization (eNotarization) Task Force, chaired by Craig C. Page, CLTA's Vice President and Legislative Counsel, met on July 13, 2006 to discuss a myriad of topics affecting electronic notarization in California.

The meeting covered a variety of subjects ranging from a review of the eNotarization standards drafted by the National eNotarization Commission to industry demonstrations of e-solutions by Countrywide and Stewart Title. A complete list of the agenda topics can be found at: <http://www.nationalnotary.org/eNotarization/caTaskForce/downloads/caNot-agenda071306.pdf>.

### **ATTORNEY GENERAL'S ELECTRONIC RECORDATION TASK FORCE MEETS TO DISCUSS ELECTRONIC RECORDATION DELIVERY SYSTEM (ERDS) HANDBOOKS**

A recent meeting of the Electronic Recordation Task Force, run by the State Attorney General's Office, centered around whether the computer terminals at the County Recorder's Office will be secure under the proposed system.

In other words, if a county worker at the Recorder's office has network connectivity at the county level, the concern is that the security and integrity of the ERDS system could be compromised by an intruder. While lender groups, county recorders and title industry representatives believe this issue will be addressed by individual recorders, district attorney representatives still want enhanced security provisions over and above those already provided for in the draft regulations.

So far, new and extremely restrictive security requirements have not been incorporated into the draft regulations.

The County Recorders are in opposition to any requirement that would subject them to being audited by the State of California under the ERDS regulations. However, this requirement may not be negotiable from the Attorney General's and District Attorney's perspective.

We strongly urge interested CLTA members to review these draft regulations at <http://ag.ca.gov/erds/index.htm>.

### **CLTA MEETS WITH NETHERLANDS DELEGATION**

The California Land Title Association recently met with a professional research delegation from the Netherlands. Attending the meeting were Craig C. Page, CLTA's Vice President and Legislative Counsel; Emiel Maasland, Erasmus University Rotterdam; Prof. dr. Yves Montangie, Lessius Business School; and Robert Schrage, Royal Netherlands Notarial Organization. These professionals are conducting a research project on the costs and benefits of an obligatory notary intermediation in a house sale transaction (as it exists in Belgium, France and the Netherlands) compared to the U.S. system of voluntary title insurance and lawyer intermediation. The research project is being conducted on behalf of the Belgian, Dutch and French Notarial Federations.

The delegation made a trip to Illinois (a state with more or less unregulated title insurance rates) as well as to California (a "file and use" state) where they met with representatives of title insurance companies and associations, real estate agents, banks and escrow companies.

The delegation gained insight into the systems used in both Illinois and California. They were particularly interested in the legal framework and associated costs in which a home sale takes place.

After the study is complete, the result of the research will be published in an international law and economics journal. ■

## **SUMMARY OF WITHHOLDING BILL (AB 2962 - BENOIT)**

Pending legislation would amend California's law on withholding on real estate sales.

Under existing law, withholding on the sale of real estate fails to reflect the actual taxes due on the sale of property, often resulting in over-withholding of taxes. Unfortunately, escrow and title professionals have ended up being the collection agency for the state for this withholding.

AB 2962 would allow sellers to elect to have the maximum tax rate, presently 9.3% for individuals and trusts and 8.84% for corporations, applicable to the gain on the sale withheld, instead of 3&1/3% of the sales price. The seller would have to certify under penalty of perjury that the amount of the gain reported to the buyer or escrow person is correct.

This legislation recognizes that escrow and title professionals should not be providing financial and legal advice to consumers regarding the withholding of taxes. The form to be developed by the Franchise Tax Board will include a statement that reads "Title, escrow, and exchange accommodators are not authorized to provide legal or accounting advice for purposes of determining withholding amounts. Transferors are strongly encouraged to consult with a competent tax professional for this purpose."

Informing the consumer early in the process is critical to having the consumer be ready to address this financial decision. ■

## **CLTA ATTACKS GARAMENDI PLAN**

The CLTA has criticized the Garamendi plan to create unprofitable operations, decrease competition and create workforce reductions by unilaterally setting rates at levels over 20 percent lower than five years ago. The CLTA will submit formal comments at the August 30th hearing of the Department of Insurance.

The basis for the plan is a report by an out-of-state consultant prepared under a no bid contract. The regulations themselves are a work product of outside counsel, retained by

Garamendi, whose work on title insurance issues has already cost taxpayers in excess of a half of a million dollars.

The CLTA will be joined by the Escrow Institute of California and the California Escrow Association in objecting to the plan. Garamendi himself has determined that the regulations may have a significant adverse impact on businesses subject to the proposed regulations. It is no wonder, since his press release suggests consumer savings in a transaction that actually exceeds the cost of title insurance. The CLTA will oppose these regulations every step of the way. ■

## **HOUSING AND EMERGENCY SHELTER TRUST FUND ACT OF 2006**

The CLTA Board of Governors recently endorsed the Housing and Emergency Shelter Trust Fund Act of 2006. This act, if passed during the November election, would create a \$1.50 billion affordable housing bond. More specifically, the act proposes the following:

- \$345 million for multi-family housing
- \$300 million for Cal Home homeownership program
- \$200 million for CHADAP down payment assistance program
- \$195 million for supportive housing
- \$135 million for farm worker housing

- \$125 million for the Building Equity and Growth in Neighborhoods (BEGIN) program
- \$100 million for affordable housing innovation
- \$50 million for homeless youth housing
- \$50 million for domestic violence shelters

*Also, Infill incentives would include the following:*

- \$850 million (up to \$200 million available for urban parks)
- \$200 million for housing-related parks in urban, suburban, and rural areas
- \$300 million for transit oriented development. ■

