

LAW SCHOOL FOR LEGISLATORS
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CURRENT REAL PROPERTY TITLE ISSUES

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I. Recording Documents with County Registers of Deeds

Issues

Recording Delays

Priority Disputes

Adversary Proceedings

Fraud

Good News:

Late last year the legislature passed Senate Bills 927 and 1160 which amended the State of Michigan's recording statutes. The Senate Bills are designed to address some current problems with our State's recording system. This legislation was the end product of a continuing struggle between County Registers (MARD) and the Title Insurance Industry (MLTA). Thankfully the Real Property Section served as a negotiator and was able to submit amendatory legislation that both groups could accept.

Bad News:

We are not even close to being done yet. Electronic recording has not yet been codified and its implementation not yet integrated into the new amendments to the recording acts. Electronic recording may create even greater problems that were addressed by the recent recording act amendments. Additionally, as with any legislative change, we may experience unforeseen problems.

II. The Economy

Issues

Name One

Good News:

2008 is in the history books.

Bad News:

We are still dealing with past issues. We have even more challenging issues ahead.

III. Title Insurance Industry

Issues

Financial Strength

Purpose

Good News:

Major title insurance companies are financially strong and should weather the economic and claims storm.

Bad News:

Things are changing in the title industry-as in all industries. A close look is being made at rate structures, acceptance of risks and overall cost of doing business. Most real property lawyers would agree-title insurance is essential in every real estate transaction. The viability of the title insurance industry is essential to real estate transactions. The competitiveness of the title industry and lending community lends itself to a "survival" mentality-leading to desperate attempts at staying alive.

The title industry can only absorb so much in losses. Title insurance products are intended to eliminate liens and other encumbrances on title. They are not intended to simply assume risk. Unlike other forms of insurance, most of the premium dollars are used for payment of the cost of overhead including maintenance of title plants and the cost of examination of title. An increase in title claims and losses will result in an increase in rates which will be passed on to the consumer.

IV. Current Legal Issues

Issues:

Increase in construction lien litigation

Increase in fraud

Increase in priority disputes

Good News:

Most construction lien litigation is underway and headed for some kind of resolution. The failed developments have already surfaced. Hopefully, lessons have been learned and the mistakes of the past will be corrected with more prudent lending and underwriting practices. Considering the current amount of construction lien litigation-some legal issues will be addressed by the court and clarification of existing statutes will be addressed.

Bad News:

It has been costly for developers, builders, lenders, suppliers and title insurers. Many developers and builders have gone bankrupt and lenders and title insurers are seeking recovery for huge losses that are often the result of a misappropriation of funds by developers and builders.

Fraud has become more prevalent as opportunists and criminals manipulate a crippled recording system.

An increase in title insurance claims and losses has a direct correlation to a downturn in the economy.

V. Possible Solutions

Careful and proper use of technology to accomplish the purposes of recording laws.

Continued efforts at implementing electronic recording and reducing the amount of litigation resulting from priority disputes, fraud and hindering borrowers from refinancing.

Enact legislation adopting the doctrine of Equitable Subrogation. Our Supreme Court has thus far refused to consider the doctrine.

Purpose of Equitable Subrogation

Prevents unforeseen windfalls at the expense of others

Prevents lenders from holding borrowers "hostage" from favorable refinancing

Legislation in Indiana

