

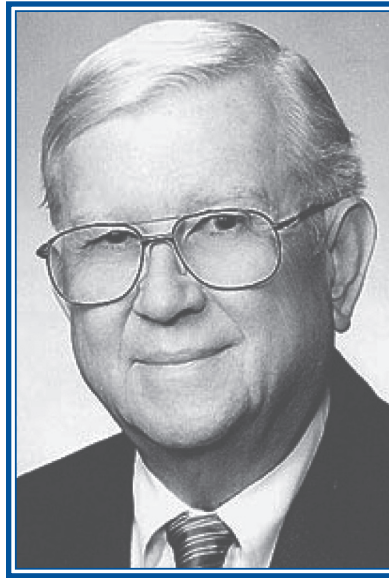


THE TITLE COMPANY OF NORTH CAROLINA

A PUBLICATION OF THE TITLE COMPANY OF NORTH CAROLINA

– *In Memoriam* –

WILLIAM BRYAN PITTMAN



It is our sad duty to report that on October 2, 2007, William B. “Bill” Pittman died after a battle with cancer. At the time of his death, Bill was serving as Vice President and Counsel of The Title Company of North Carolina. Bill was a true southern gentleman, giving sound advice to all who called upon him, delivered in a polite and calm manner.

Bill had been involved in all phases of title insurance in North Carolina, having served as President and General Counsel of First Title Insurance Company, as an officer of Lawyer’s Title of North Carolina, and as State Manager of Fidelity Title Insurance Company prior to joining The Title Company of North Carolina, where he dealt mainly with underwriting and claims.

Bill graduated from the University of North Carolina in 1956; served in the U.S. Navy from 1956 to 1958 and graduated from UNC Law School in 1961. For eleven years, he practiced with his father, Judge J. Carlton Pittman in Sanford with the firm of Pittman, Staton and Betts. In 1972, he moved to Raleigh to begin work with First Title Insurance Company. He remained a resident of Raleigh until his death.

During his long service to the title insurance industry, Bill served as President and later as General Counsel of the North Carolina Land Title Association. His many contributions to the real estate industry were recognized when he was named as an Honorary Member of the NCLTA in 2001.

Bill is survived by his many friends and family, including his wife, Susan, his daughter, three sons, a son-in-law, three daughters-in-law, and five grandchildren. Bill will be missed and remembered fondly. Our thoughts are with his family in this time of sadness.

Terrorism Compliance

The attacks of 9/11 prompted several dramatic changes in the average American's lifestyle, as anyone who has flown recently recognizes. As closing attorneys, you have your own version of "baggage screening" to deal with.

The Patriot Act of 2001 [Public Law 107-56 adopted October 26, 2001 and available as a .pdf file at: http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=107_cong_public_laws&docid=f:publ056.107.pdf] and the President's Executive Order No. 13224 prohibit transactions with individuals and organizations on a list of "Specially Designated Nationals and Blocked Persons" (the "SDN") published by the Office of Foreign Assets Control. The federal regulations require that all real estate settlement agents check the names of "all relevant parties to the transaction" against that list. The Act does not define "relevant parties", but TCNC recommends that searches be made against the sellers, buyers and any non-traditional or non-institutional lender.

If you discover a match, you have a duty to determine whether the party to the transaction is the same person or entity on the list. For assistance, you can contact the OFAC's Compliance program at 1-800-540-6322 for verification of your "hit". The hotline can also advise you as to what your next step should be.

There are several different websites available for your use in searching the names of the "relevant parties". Old Republic Title Insurance Company maintains a searchable database at: <http://www.oldrepublictitle.com/TAssets/impairment/FindByDirectpr.asp>. The official website, maintained by the U.S. government is: <http://www.treas.gov/offices/enforcement/ofac/>. Select "Specially Designated Nationals" for the most current list.

You should keep in mind that the Patriot Act search is free and you cannot charge to conduct the search. Failure to routinely conduct a search of the SDN could subject a settlement agent to civil fines and penalties of up to \$11,000 for each violation.

Some real estate attorneys add an "anti-terrorism clause" to their closing documents in which the buyer and seller warrant that:

- they are not listed on the SDN watch list
- they are not entities that are prohibited from doing business under anti-terrorism laws
- the closing will not violate anti-terrorism laws; and
- the parties will not do business with any entity that may violate anti-terrorism laws.

Don't just assume that you will be able to recognize a SDN, or that all of the names on the list are from one nationality. Some of the names on the list include such relatively innocent sounding companies and individuals as: "A.I.C. Comprehensive Research Institute"; "Galleria de Portales, SA"; "Leonid Minin"; "American Friends of the United Yeshiva"; "Jonathan N. Moyo"; and "Plastic Sacks Factory, Ltd."

TCNC WEBSITE

www.oldrepublictitle.com/nc

All of our newsletters and an up to date index are on the website. The index will be kept up to date with each new issue.

NC Supreme Court Orders Mandatory IOLTA Program

At the request of the North Carolina State Bar, the N.C. Supreme Court issued an order on Oct. 11, 2007 to implement a mandatory IOLTA program for lawyers in North Carolina. All active members of the State Bar who maintain general client trust accounts in North Carolina must ensure that all of their general client trust accounts are established as interest bearing IOLTA accounts as of January 1, 2008.

According to a press release from the State Bar, attorneys must certify annually when paying their State Bar dues that all general client trust accounts maintained by the lawyer/law firm are IOLTA accounts.

It will still be permissible to set up interest bearing, non-IOLTA accounts when the size of the deposit or the length of time the deposited funds are expected to be held would cause a prudent fiduciary to invest the funds. These accounts, referred to in the State Bar materials as “dedicated trust accounts” must be segregated to hold only one client’s funds.

Look for further guidance as the State Bar adopts final rules to implement the mandatory IOLTA program.

Recent Cases of Interest

Escrow Account—Implied Fiduciary Duty of Lender to Borrower--*Smith v. GMAC Mortgage Corp.* (Lawyers Weekly No. 07-04-1136, 20 pp.) (Richard L. Voorhees, J. - Memorandum & Order) W.D.N.C.

Mrs. Smith entered into a loan with First Citizens Bank (“Bank”) in 1997, secured by a deed of trust which required monthly payments of estimated taxes and insurance into an escrow account. Invoices for the insurance premiums were sent directly to the Bank. In 2000, the Bank assigned the servicing of the Smith loan to GMAC. Despite written assurance that it would pay the taxes and insurance premiums when due, GMAC failed to pay the premium in 2002, and the insurance policy was cancelled in 2003. GMAC then “force-placed” the insurance, which increased the annual homeowner’s insurance premium from \$370 to \$1182. Mrs. Smith had difficulty making the increased mortgage payments (which included the insurance premium), and foreclosure was instituted. Ms. Smith sought to enjoin the foreclosure and sued for breach of the Bank’s fiduciary duty. HELD: Where the deed of trust required the borrower to make regular payments into an escrow account for the property taxes and homeowner’s insurance on her mortgaged property, and she properly relied on the lender to make the payments, a fiduciary relationship may have existed between the lender and the borrower. The Bank’s motion to dismiss the borrower’s breach of fiduciary duty claim was denied.

SEASONS GREETINGS FROM TCNC

As we reach the end of another successful year, let us take the time to thank all of our friends for the confidence you repose in The Title Company of North Carolina each time you allow us to underwrite a policy for your clients. We recognize that there are a number of alternatives you could choose, and appreciate your selecting us to assist your clients.

We wish you a blessed Thanksgiving and a wonderful holiday season. Here’s to a prosperous 2008!!

OFFICES

STATE ADMINISTRATION

(910) 343-8374
(800) 222-6613

GARY CHADWICK

President & Counsel
gchadwick@tcnc.biz
(910) 343-8374
(800) 222-6613

NICK LONG, Jr.

State Counsel
nlong@tcnc.biz
(919) 861-4441
(866) 437-9172

ASHEVILLE

(828) 253-7988
(800) 743-8262

STEVE JONES

Sr. Vice Pres. & Counsel
sjones2@tcnc.biz

CHARLOTTE

(704) 342-4278
(866) 229-4803

CANDICE WILLIAMS

Vice Pres. & Counsel
cwilliams@tcnc.biz

STACIE JACOBS

Vice President
sjacobs@tcnc.biz

OUTER BANKS

(252) 441-2877
(800) 666-2258

GENEVA PERRY

Vice President
gperry@tcnc.biz

RALEIGH

(919) 832-0252
(800) 277-0081

ALTON RUSSELL

Chairman Emeritus & Counsel
arussell@tcnc.biz

ALICE BRACEY

Senior Vice President
abracey@tcnc.biz

STATESVILLE

(704) 878-0439
(800) 649-0439

KATHY QUINN

Vice President
kquinn@tcnc.biz

WILMINGTON

(910) 343-8374
(800) 222-6613

GARY CHADWICK

President & Counsel
gchadwick@tcnc.biz

WINSTON-SALEM

(336) 631-8004
(800) 631-8086

JAY HEDGPETH

Sr. Vice Pres. & General Counsel
jhedgpeth@tcnc.biz

OREXCO - 1031 EXCH.

(704) 333-0308
(866) 543-1031

DAVE PAWLOWSKI

Reg. Acct. Manager & Counsel
dpawlowski@orexco1031.com

LAURA HUCKABY

Sales Associate
lhuckaby@orexco1031.com

PRSRRT STD
US Postage Paid
Greensboro, NC
Permit No. 590

THE TITLE COMPANY OF
NORTH CAROLINA

