

# NORTH CAROLINA LAWYERS WEEKLY

April 5, 2010

www.nclawyersweekly.com

## Title insurers tightening reins on dirt law attorneys

By **PAUL THARP, StaffWriter**  
*paul.tharp@nc.lawyersweekly.com*

A State Bar license may permit an attorney to practice, but to do real estate closings in North Carolina, lawyers must also carry million-dollar malpractice policies and become approved attorneys of one or more title insurance companies.

Becoming an approved attorney isn't as easy as it used to be.

"It is safe to say that there has been a tightening of the reins" due to an uptick in adverse claims, said Greensboro attorney Joseph M. Ritter, state counsel for Fidelity National Title.

Hunter L. Meacham, title counsel for Attorneys Title in Charlotte, also said that the tightening of the process "is happening."

"It's fair to say that the approval process is more thorough than it used to be," Meacham told North Carolina Lawyers Weekly.

First American Title Insurance Company of North Carolina representative Phillip Slaska said the company began using an approved-attorney list in 2008.

"Mainly because of the fact of attorney defalcations, we wanted to get a grasp on who's coming in and what kind of background they have," he said.

Thomas Lundsford, executive director of the State Bar, said the Bar is aware of approved-attorney lists. He said the issue is not one that the State Bar Council has considered recently.

Lundsford referenced RPC 57, adopted in 1989, which provides, "An attorney may ethically request lenders and title insurance companies to place him on an approved attorney list."

The opinion expressed "no opinion as to the legality of the limitation of the number of attorneys on the list."

Lundsford emphasized that the Bar has no regulatory authority over title insurance companies or lenders. "We only have jurisdiction over members of the Bar," he said.

### Case study

Highlands attorney Jeremy White graduated from Campbell University's law school a year ago and passed the July 2009 bar exam. After scouting a number of locations, he decided that the mountain town would be an attractive location to set up a successful real estate practice.

"It's a seasonal town," White said. "During the winter, only about 3,000 people live here. During the summer, the population swells to over 30,000."

White said Highlands is a strong second-home market for Georgians and Floridians. "It's the closest mountain destination for Southerners who travel north during the summertime to escape the heat," he said.

White obtained a law license, moved to Highlands, set up an office and satisfied corporate formalities with the state, and then he began marketing his practice.

That wasn't all.

"I realized after I got my first few clients that I needed to become an approved attorney with a title insurance company," White said.

Title insurance protects owners and lenders against losses due to title defects, liens and other encumbrances. A typical policy indemnifies a named insured up to the dollar amount of insurance provided under the policy.

Attorneys render opinions on title, draft and oversee execution of deeds and loan and legal documents, receive and disburse closing funds, and in general conduct the business of real estate closings.

Property owners and lenders rely on the professional judgment of closing attorneys to obtain title insurance. Attorneys render written opinions on title and relay them to insurance agencies.

Based on those reports, agencies issue commitments to issue insurance and — following closing and meeting of all the conditions listed in the commitments — final policies of insurance.

Most or all of the title insurance companies that do business in North Carolina maintain approved-attorney lists. Attorneys cannot obtain title insurance policies on their clients' or lenders' behalf unless they are on an approved-attorney list with one or more title insurers.

That is where White's startup practice hit a roadblock.

"I couldn't get on a list," he said.

After being turned down by at least two title insurance companies, White was able to work out a contingency arrangement whereby his work is reviewed, approved and signed by another more experienced attorney.

"Right now, that is the only way I can do business," White said.

### Revamping the approval process

Jane Barkley, underwriting counsel for Stewart Title, said the company was "revamping the entire process" of approving new attorneys.

She said the company was taking a "we want experienced attorneys' approach to stem some of the claims."

"We still continue to approve new attorneys," Fidelity's Ritter emphasized. "It's not like we've stopped."

Slaska of First American said attorneys fresh out of school will have to spend a year or two working under the supervision of a more experienced attorney.

"We'll work with new attorneys," he said.

Not all attorneys get a thumbs-up. "If you've had some claims and you were at fault, you're not going to get approved," Slaska said.

He said he conducts an initial review of all new applications for First American's southeast region.

"We don't take direct applications from attorneys," he said. Applications come from agents who have either met with an attorney in person or spent time with him or her on the phone "to find out more about their practice."

Agents issue a letter of recommendation with a list of references. References are contacted, and attorneys submit to credit and criminal background checks. Slaska said some applicants have been declined due to a poor credit history.

In addition, attorneys must prove that they have obtained a \$1 million malpractice insurance policy.

Attorneys practicing in real estate have long been required by title insurance companies and lenders to carry a malpractice insurance policy of at least \$1 million. If a title insurer is required to pay a claim that is the result of an attorney's mistake or malfeasance, the insurer may seek indemnification from the attorney's malpractice carrier.

In the past attorneys could submit the declarations page of their malpractice policy.

"We no longer accept a lawyer's self-serving representation of himself," Ritter said. "We need to see the whole liability policy."

### Lender lists the next leap

White said he is aware that lenders also maintain lists of approved attorneys.

"So far I've been doing cash deals," he said. "I do have one coming up that involves a loan."

White said he isn't sure whether that lender will require him to become an approved attorney.

If it does, White said, "I'll try to get on the list. If I want to do real estate, what other choice do I have?"