

Investors Title

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NC CONNECTION

MAY 2017

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First All-Electronic Paperless Mortgage Closing in NC

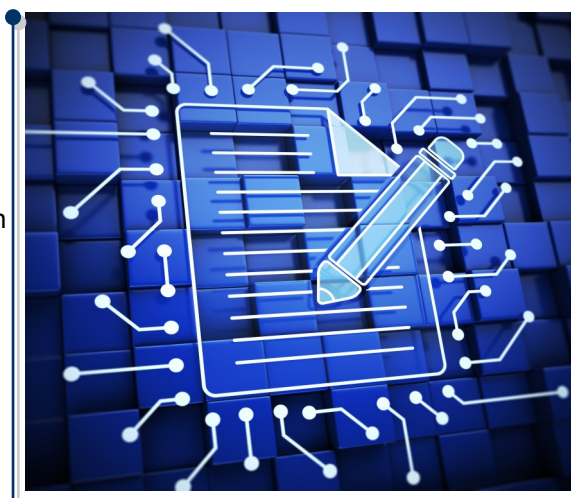


Jon Biggs, Esq. — VP, Director of Risk Management & Education
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On May 5th, North State Bank successfully launched its eMortgage platform with the first fully-electronic closing of a mortgage, where the attorney conducted the closing by virtue of video conferencing technology. While there have been previous eClosings and eMortgages in North Carolina, this instance marked the first time that 100 percent of the necessary elements were digital.

North Carolina Secretary of State Elaine F. Marshall was on hand to witness this step into the future. In her comments about the historic eClosing, she specifically remarked that the following North Carolina requirements were met:

- 1) eNotary was physically present at the closing; and
- 2) A North Carolina licensed attorney was present at the



closing (with the aid of modern video conferencing technology).

*“For eClosings we [North Carolina] require[s] the **physical presence of that notary plus the access to legal expertise**—there is zero drop in standards for an eClosing—it is just faster, far more convenient and in my opinion more secure... The eNotary is essential to moving legal filings into the digital age. People and institutions still want to know that a notary was there in the room confirming the signer’s identity...”*

(Continued on page 2)

First All-Electronic... cont. from page 1

The North Carolina Secretary of State is the primary regulator for the state and, as such, has developed the standards and education curriculum for an electronic notary or eNotary. An eNotary can attach a digital representation of their notary seal and signature to digital documents, giving the documents the same legal effect as a paper document that requires a notary acknowledgement.

Secretary Marshall proclaimed North State Bank's eMortgage program to be a success and a big step forward in the Secretary's E-Commerce Pilot Program for eMortgages.

"This is a win-win-win scenario. The lender gets their work done quick and easy, the borrower gets in and out on a schedule that

fits for them, and the land records get recorded instantly at the county register of deeds... We stand ready to work with all other North Carolina lenders to get them up to speed on this."

The President of North State Bank, Ken Sykes, was also on hand to witness the culmination of North State Bank's year-long effort, and the state's step into the future of residential lending. The eClosing ceremony was performed by Ben Drayton, of the Hunoval Law Firm, via video conference from his office in Charlotte. The borrowers, who were present (together with the eNotary) in the North State Bank branch in Hickory, reviewed the documents with counsel on a big screen television and executed the documents on a digital pad. Vice President of

Communications and Market Development Stephen Brown monitored the eClosing for Investors Title, which insured the transaction.

Investors Title is committed to exploring and supporting innovation and creative solutions that support and allow our approved attorney network to offer professional, ethical, and compliant legal services to their clients, whether they involve "traditional" methods or "high-tech" methods.

Also, in this edition of the NC Connection, you can read how you can "Be Prepared" to perform eClosings with eNotaries.

Click to view: [North Carolina Secretary of State's Press Release](#) and [Opening Remarks](#).

Be Prepared - eMortgages and eNotaries are Coming to a Law Firm Near you



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"Good Fortune often happens when opportunity meets preparation." - Thomas Edison

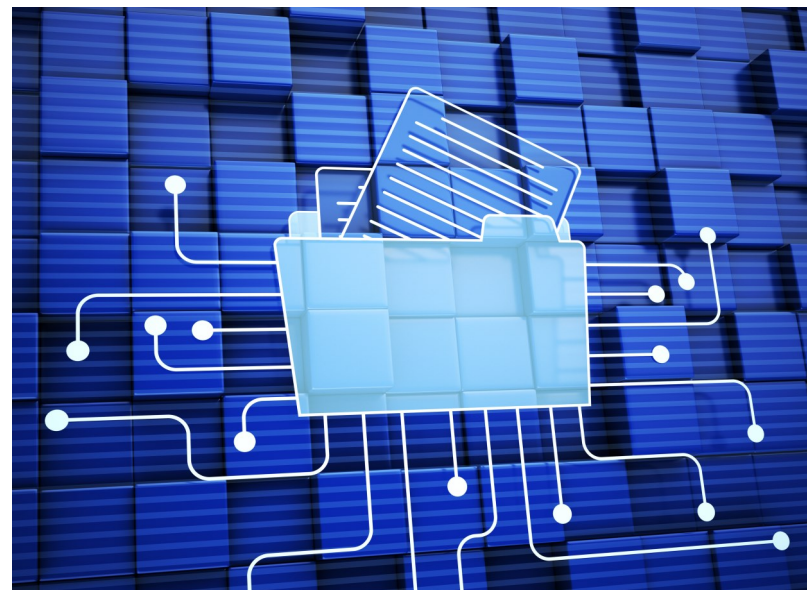
On my first day of law school at Wake Forest, we had homework. We had to "prepare" before we even darkened the door. Preparation was not a foreign concept to me or my classmates. We had all prepared for class and exams in high school and college; prepared for the LSAT; prepared for everything. We had prepared for so many things over our collective academic

lives that we were well aware there was no substitute for good solid preparation. We were not aware, however, of a bulletin board in Carswell Hall that contained the assignments for our first day of class. Remember: there was no email to read, no website to check, and Mother certainly was not there to tell us about it. This little tidbit of information, that a

bulletin board existed, would have been a good thing to know.

Many of the students had not even purchased the book yet.

(Continued on page 3)



Be Prepared... cont. from page 2

This fact was of little concern to Professor Rhoda Billings, the esteemed and respected former Chief Justice of the North Carolina Supreme Court, who was going to lead us through Civil Procedure. She looked down on her seating chart and called on Mike – his last name has been omitted in case his children may read this article. She asked Mike to tell us about Rule 15(a) – “Amended and Supplemental Pleadings.” I remember this rule to this day, even though I am a real estate attorney and have not filed an amended pleading in 20 years or more. I remember this rule because of what happened next.

Mike tried to fake it – pretend that he was prepared, that he had read the assignment, or that he had even purchased the book. Miscalculation! Professor Billings kept him standing and squirming the entire lecture as she challenged his preparation (or lack thereof) with every subtle and not-so-subtle form of embarrassment available in her Socratic Method arsenal. We all felt bad for Mike, but were grateful that we had avoided a similar fate. At some point in the inquisition, Professor Billings rhetorically asked if Mike was aware of the student announcement bulletin board. I, for one, found that bulletin board and was absolutely prepared for the next class. We would rather learn from others mistakes than our own. When the next class started, Mike was called upon in a similar fashion, and this continued in each of our next five class periods. Our full class rotation took two days. By the time we reached the first



session of our last class on the second day of law school, Mike had been called upon in every single class. As Professor Castleman looked over his bifocals at his seating chart, there were whispers in the room – “it is going to be Mike.” As he called Mike’s name, the class burst out laughing. Mike rose to his feet and asked, “Did ya’ll have a meeting?” Professor Castleman responded, “No, but we have a bulletin board in the teachers’ lounge.”

So, why is this lesson important? You may or may not know Mike or have had the pleasure of studying in the classrooms of Professors Billings and Castleman, but you have been caught unprepared. So have I. In fact, we all have. I share this lesson so that you may learn from Mike’s experience, as I did, and take

advantage of this opportunity to “Be Prepared.”

Be Prepared for Electronic Transactions

The future of commerce, real estate transactions, and our profession is moving from a paper platform to a digital one. It will not happen overnight, but eMortgages are coming, and they are bringing eNotaries with them. Ask yourself, “Are you prepared?”

First, let’s talk about definitions:

eClosing – Closing the transaction through electronic or digital means. In this case, some or all of the documents are accessed or executed online. There are two types of eClosings:

Hybrid Closing – This type of closing may be largely

((Continued on page 4))

Be Prepared... cont. from page 3

electronic but may also have some documents that are executed on paper (such as the note and/or deed of trust).

eMortgage – It is a true eMortgage **ONLY if the Promissory Note is executed electronically**; therefore, all eMortgages are eClosed, but not all eClosed mortgages are eMortgages.

eNotary – With a true eMortgage, all of the documents are executed electronically, and an eNotary (or electronic notary) will be required to acknowledge a digital or electronic signature. In North Carolina, this is the same as a paper notary, except that the signature to be acknowledged and the eNotary's acknowledgement are digitally affixed to the document by electronic means.

Be Prepared for the Electronic Notary

In 2005, North Carolina passed the Electronic Notarization Act N.C.G.S. §10B-100 et. seq. (http://www.ncleg.net/EnactedLegislation/Statutes/PDF/ByArticle/Chapter_10B/Article_2.pdf). To be properly prepared to perform electronic notaries, [here is what you need to know](#):

A. Qualifications: In order to qualify to be an eNotary in North Carolina, you must first:

1. *Hold a valid commission* as a Notary Public in the State of North Carolina (N.C.G.S. §10B-105);
2. *Take and pass a three-hour course* (N.C.G.S. §10B-107); and
3. *Submit the proper forms and payment* to the North Carolina Secretary of State.

The course is offered exclusively by the North Carolina Community Colleges, and anyone wishing to be an eNotary must take it. (For example, while attorneys are exempt from the notary course, they are NOT exempt from the additional three-hour class.) Check with your closest North Carolina Community College for course dates and times.

B. Elements: In order to perform an eNotary, you must include the following elements in the acknowledgement:

1. The notary's name, state, and county of commissioning, exactly as stated on the commission issued by the Secretary;
2. The words "Electronic Notary Public";
3. The words "State of North Carolina";
4. The expiration date of the commission;
5. The notary's electronic signature; and
6. The completed wording of one of the following notarial certificates:
 - a. Acknowledgment;
 - b. Jurat;
 - c. Verification or proof; or
 - d. Oath or affirmation.

If you are reviewing an eNotary acknowledgement on a document in your chain of title or your transaction, then you must review it for the presence of each of these elements.

C. "In Person" Requirement: In order to perform an eNotary, you must be IN THE PRESENCE OF THE SIGNER at the time of the notarization or acknowledgement.

Some states have authorized the use of video conferencing tools, such as FaceTime or Skype, to perform eNotary acknowledgements, most notably Virginia. North Carolina has specifically rejected this approach. N.C.G.S. §10B-3(16) defines this requirement as follows:

Personal appearance and appear in person before a notary. – An individual and a notary are in close physical proximity to one another so that they may freely see and communicate with one another and exchange records back and forth during the notarization process.

[See Investors Title Underwriting Alert for requirements related to transactions involving a Virginia electronic notary.](#)

D. Necessary Equipment: In order to perform an eNotary, you must use approved equipment to properly affix the digital signature and digital seal to the electronic document.

This equipment will cost around \$100, but it **MUST BE APPROVED BY THE NORTH CAROLINA SECRETARY OF STATE**. You would find out more about this required equipment if you were to take the mandatory three-hour course, but here is a link to the North Carolina Secretary of State's website where they list the approved vendors of this equipment:

<https://www.sosnc.gov/enotary/>

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Be Prepared... cont. from page 4

Be Prepared For Change

The Electronic Notary Act has been around for 12 years - what is so important about getting prepared now? "I have not done this in the last decade and have not had any issues." If this is your thought process, it is an understandable one; however, eMortgages are gaining momentum and everyone should take note.

"Why should I take note?" The industry is moving this way, and there are a lot of factors adding to its momentum. Here are the most influential:

1) North Carolina Secretary of State

- The North Carolina Secretary of State has initiated an E-Commerce Pilot Program to help create a banking environment that is "bank friendly" and "consumer friendly."

2) Director Richard Cordray and the Consumer Financial Protection Bureau

- "[eClosing] is something that we think is direction industry is intending and wanting to go. It is the future... the future can be here much sooner than maybe it otherwise would be... we are on board with that... We think the advantages for the industry, the efficiencies and accuracy that this kind of process will create can also incorporate some really consumer-friendly aspects, consumer education and the like... on the whole, it can be a win-win on both sides of the closing table."

3) GSE (Government Sponsored Entities) Such as Fannie Mae & Freddie Mac

- Fannie Mae and Freddie

Mac are currently acquiring eMortgages and other mortgages that were eClosed.

4) Millennials – Generation Y – Born after 1980

- Millennials want the convenience to do everything from their smart phone or tablet.
- Millennials have now passed the "Baby Boomers" as the generation with the most people currently in the workforce. Millennials will drive the way that banks interact with them because they will probably buy more houses and investment property in the next decade than other generational age groups.
- Millennials do not remember a world without the internet as the primary form of social interaction and commerce.

5) Banks

- eMortgages are a big part of many banks' future plans to attract Millennials as customers.
- eMortgages provide traceable, compliant, and enforceable documents that are easily retrievable, making them a cost-effective solution.
- Ultimately, the biggest driving forces come down to money. eMortgages can be moved to the secondary market much faster than paper mortgages, providing the lenders with faster liquidity and smaller interest carry costs.

Semper Paratus

My introduction to law school was one filled with lessons about preparation. I remember Rule 15a, but I do not remember the topics in the rest of the

classes during those first two days. I do remember that both Mike and I were prepared for every other class in those first two days – after the defining object lesson in Professor Billings' class. It was quite a lesson for me to be writing about it 30 years later. My goal in this article is not to tell you what to do; rather, I just want to do the equivalent of showing you the student announcement bulletin board in the law school before the first day of class.

I want you to have the facts so that you can make an educated decision before you are caught "unprepared." When you get that call from a lender, realtor, client, or other referral source asking if you can close an eMortgage, your response should be either a "Confident Yes" or an "Authoritative No." In either case, you want to avoid the "Quizzical Huh?" The unfortunate reality is that if you are not prepared for this question, then the caller could scratch your name off their list of preferred attorneys and move on to the next name. The other potential outcome is that your referral source convinces you to take these additional steps, and you have to do so in a hurried manner -- not in a thoughtful and purposeful way. Ultimately, the decision to embrace this technology in providing professional and ethical representation to your clients is up to you.

"By failing to prepare, you are preparing to fail."

- Ben Franklin



Fraud Alert: Wire Fraud Attacks Up 480% on Title Professionals and Wire Fraud Losses Up 2370% Nationally

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In our ongoing efforts to keep our approved providers, agents, and other partners informed of potential threats to their business, we distribute Fraud Alerts so that you are aware of potential threats and can take any steps you feel necessary to guard against them.

We have sent out numerous alerts, newsletters, and other communications regarding the rampant epidemic of wire fraud in our industry. While we know that you are actively involved in combatting this ever-growing problem, the fraudsters techniques have continued to evolve in response to the industry's diligent efforts to frustrate their schemes.

Over the last few weeks, we have received numerous calls from real estate attorneys indicating that are receiving an alarming increase in “phishing emails” - in most cases up 3-4 times what they usually experience. The FBI calls this Business Email Compromise (BEC). Additionally, they have a special category of this for businesses that perform wire transfer payments, known as Email Account Compromise (EAC). Collectively, this is a \$5 billion a year crime industry that continues to grow at an alarming rate.

As these scams continue to evolve, the FBI reported that there was a 2,370% increase in wire fraud losses nationally.
<https://www.ic3.gov/media/2017/170504.aspx#ref3>

At the same time, ALTA is reporting that wire fraud attacks are up 480% among title professionals (including title companies, real estate attorneys, and settlement agents). <http://www.alta.org/news/news.cfm?20170509-Title-Companies-Report-480-Increase-in-Wire-Fraud-Attacks>

In an effort to better inform you on these risks and how to protect yourself, Investors Title developed a three -part series of informational materials that can be found at www.invtitle.com/wire. These short pamphlets are packed with steps to protect your practice, your clients, and your collective money.

C.Y.B.E.R. – Can You Be Entirely Ready (Click [here](#).)

Steps, policies, and procedures to consider in formulating your Information Security and Trust Account Security Plans.

W.I.R.E. – What I Require Every time (Click [here](#).)

Steps, policies, and procedures to consider before you send another wire out of your office.

F.A.S.T. – Fast Action Stops Theft (Click [here](#).)

Steps, policies, and procedures to consider in formulating your Cyber Fraud Response Team and your Cyber Fraud Response Plan.

In 2012, Director of the FBI Robert Mueller noted in a speech that “There are only two types of companies: Those that have been hacked and those



that will be.” Please review the materials we have prepared to assist you in protecting yourself from the plague of the 21st Century. While the incorporating of the concepts provided in the materials will not make you immune to this plague, it will certainly make you less likely to become a victim.

We are interested in alerting our approved providers, agents, and other partners in the real estate business of any and all external and internal threats and fraud scams. In the event that you become the target of a fraud scam, please share that scam with us so that we may alert others. You may email the facts about the attempted fraud scam to riskmanagement@invtitle.com.

This Fraud Alert is a service of Investors Title. If you have any questions about this Fraud Alert or the contents hereof, please feel free to contact Jonathan Biggs, Vice President of Risk Management and Education, at riskmanagement@invtitle.com.



CLAIMS CORNER

HUD Deeds of Trusts

Jason Portnoy, Esq. — Claims Counsel

In the years following the economic downturn that began in 2008, the US Department of Housing and Urban Development (HUD) developed many initiatives to assist struggling homeowners who potentially faced foreclosure. Through these programs, including the Emergency Homeowner Loan Program, HUD offers financial assistance to eligible homeowners who meet certain criteria. This assistance is typically used to bring current or to modify the homeowner's primary mortgage loan. Depending upon the program and the circumstances, a new note and deed of trust for the benefit of the Secretary of HUD will be created to secure repayment pursuant to the terms of the specific HUD program. The HUD deed of trust will act as a junior lien to the lien of the primary lender's deed of trust.

As a recent number of claims submissions have revealed, closing attorneys have encountered difficulties dealing with these HUD liens. As a consequence, HUD deeds of trust are not being paid off properly (or at all), and new homeowners are receiving letters from HUD notifying them that the deed of trust remains an active lien against their property. Our claims experience indicates that the source of the difficulties lies primarily in three areas.

1. Closing attorneys are unable to get a payoff from HUD.

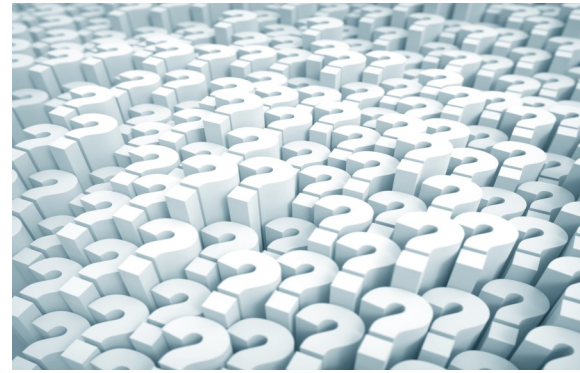
For those who routinely obtain payoff information from banks and other institutional lenders, it is understandable that attempting to obtain a payoff from a governmental agency such as HUD is outside the

ordinary course of operations. It can be difficult to locate a point of contact and navigate uncharted bureaucratic waters. Furthermore, when the particular HUD program does not require the borrower to make periodic payments, the borrower does not have any contact information to utilize.

Fortunately, HUD has a very informative website which is a good place to start: https://portal.hud.gov/hudportal/HUD?src=/program_offices/housing/sfh/nsc/fmaddr. A review of HUD's website indicates that HUD's servicing contractor, Novad Management Consulting, handles payoff requests for HUD assets. This point of contact should at least get you going in the right direction.

2. Borrowers indicate to the closing attorney that they do not have a mortgage with HUD.

Despite being the recipient of HUD assistance, the borrower may not fully understand how the particular HUD program works. The borrower likely never received the funds directly; instead, the funds typically go straight to the primary lender. Also, the borrower may not recall having ever executed a deed of trust in favor of HUD, particularly when it was not completed in the context of a standard real estate closing and when they may not have been making any periodic payments to HUD. Because of the confusion this scenario may cause, borrowers have informed the closing attorney that there has been a mistake and they did not have a deed of trust with HUD.



Just as it wouldn't be sufficient to take the borrower's word to address other types of deeds of trust, the same applies with HUD deeds of trust. Take the opportunity to probe deeper regarding any modification or assistance the borrower may have received with their primary mortgage loan.

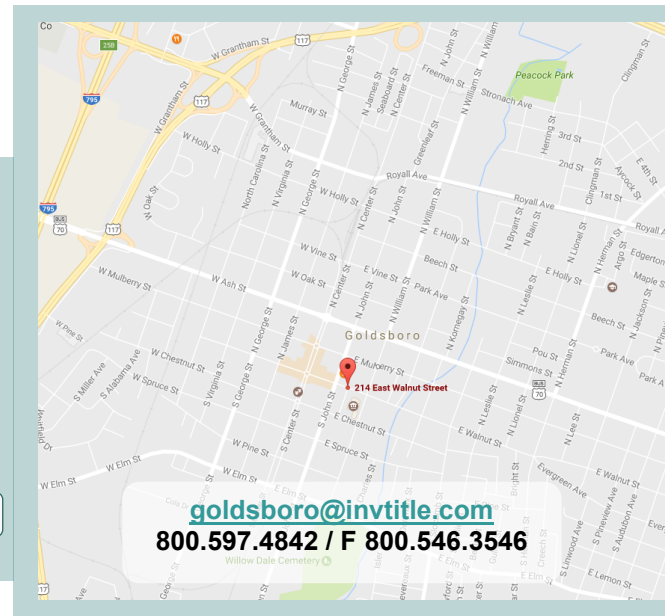
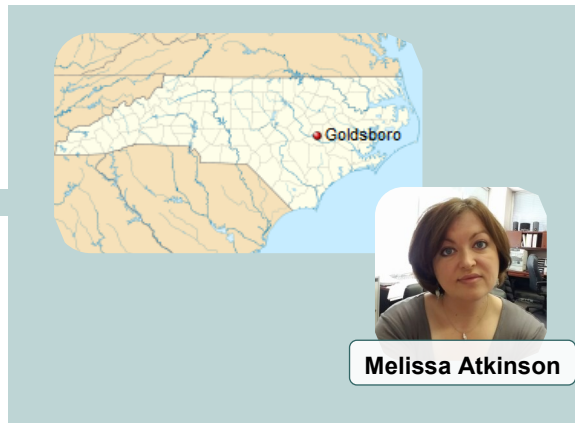
3. Closing attorneys are erroneously informed that the payoff of the primary mortgage loan incorporates the HUD payoff.

In addition to the financial assistance provided by HUD going directly to the primary lender, the primary lender also usually prepares the HUD deed of trust. This practice has led to confusion about whether the payoff statement received from the primary lender is inclusive of the HUD payoff as well. Adding to the confusion is the fact that the borrower did not directly receive any funds from HUD and does not recall executing any other deed of trust. Furthermore, the point of contact with the primary lender may also be confused and incorrectly advise that their payoff is inclusive of the amount HUD is owed.

Confused yet? Don't be. Treat the HUD deed of trust as you would any other deed of trust. Go directly to HUD or its third-party servicer, and do not close until you have an actual payoff statement from HUD and the HUD deed of trust is paid off.

Investors Title Branch Profile

Get to Know Your Local Office



The Goldsboro Branch opened in September 1987 and is currently managed by Melissa Atkinson, who served as a real estate paralegal for 14 years prior to joining Investors Title in 2014. Angie Willis is the marketing manager for the Goldsboro area.

Burns v. Kingdom Impact Global Ministries

When churches split, as they often do over any number of social and economic issues, several issues often arise, not the least of which focus on property ownership. That's a lesson members of a North Carolina congregation learned when Freewill Baptist Church (in some deeds, the word "Freewill" was separated into two words) purportedly merged with Kingdom Impact Global Ministries, Inc. Long before the litigation developed, several members of Freewill conveyed various tracts of land to the church, which went through at least one name change, to Parks Chapel Free Will Baptist Church ("Parks Chapel"). When that change occurred, all of the Freewill trustees signed the necessary deeds to transfer the church-owned real estate to the new entity. Approximately ten years later, in April 2009, the acting pastor proposed Parks Chapel withdraw from various church-related affiliations and governing bodies, and in February 2010, several church members (the exact number was disputed) signed Articles of Incorporation for the

Kingdom Impact Global Ministries ("Kingdom Impact"). Three months later, a single trustee of Parks

Chapel conveyed various tracts of land to the new entity. Several members of Parks Chapel eventually filed suit, alleging that Kingdom Impact had not acquired ownership in the real estate. The plaintiffs also sought to quiet title, alleging the property was still owned by Parks Chapel. After Kingdom Impact consistently refused to cooperate during discovery, the trial court initially entered a Sanctions Order, but ultimately issued Summary Judgment in favor of the plaintiffs. The Court of Appeals, noting that the record was "replete with information supporting the Sanctions Order," affirmed both the sanctions and the summary judgment. In upholding the trial court's decision, the Court of Appeals concluded, inter alia, that there was "no evidence" to support the Defendant's contention that a single trustee had authority to convey the property—it was still owned by Parks Chapel.

--*Burns v. Kingdom Impact Global Ministries*, No. COA15-1313, N.C. Ct. App. 2/7/17

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ADVANTAGE #1 Expert-Level Support

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ADVANTAGE #3 Personalized Customer Service

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ADVANTAGE #4 Value-Added Services

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The *iTracs*[®] Advantage

ADVANTAGE #5 Customizable Solutions

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ADVANTAGE #6 Compliance

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ADVANTAGE #7 Tools

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ADVANTAGE #8 Electronic Verification of Reconciliation

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Value in Partners

VIP connects you to extraordinary purchasing power and *ALTA Best Practices* solution providers.

The **Value in Partners (VIP)** program utilizes Investors Title's extensive network of affiliates to bring our clients and agents unprecedented business connections and purchasing power.

- Enjoy pricing and service typically available only to large companies
- Review our list of *ALTA Best Practices* providers
- Link to offers from key vendors:



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