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ADVOCATE

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Tidelands Alert! Read Carefully! by Joseph A. Grabas, CTP, NTP

Last month the NJ Tidelands Resource Council approved an application for a tidelands grant that brings into fine focus the importance of what it is we do in the title insurance industry to protect landowners, and the perils and complexities that often occasion real estate transactions in New Jersey. The Bad News - the State of New Jersey owned half of a residential lot in Seaside Park. The Good News - the title insurance company paid for the Tidelands Grant and the homeowner was made whole. During this process it was revealed that an entire development of 101 homes is subject to outstanding tidelands rights that run right through the middle of most of those homes. What follows is a warning and a lesson about the dangers of insuring shore properties without properly searching and examining the title.

I remember the day that the "Riparian Maps" first arrived in the Middlesex County Clerk's Office. They were maps unlike we had ever seen before. Each map was actually comprised of two sheets: 1) a large black & white aerial photograph; and 2) a clear mylar overlay with black tic lines running indiscriminately across it. Only when matched together did they make sense. These mysterious lines on the overlay coincided with streams and rivers and beach fronts. And then there were those other lines; the ones that had no apparent relationship to any existing body of water and ran perilously through the middle of "dry land" under buildings and houses. It was then that it became apparent how very important it was to learn to read these maps, interpret their

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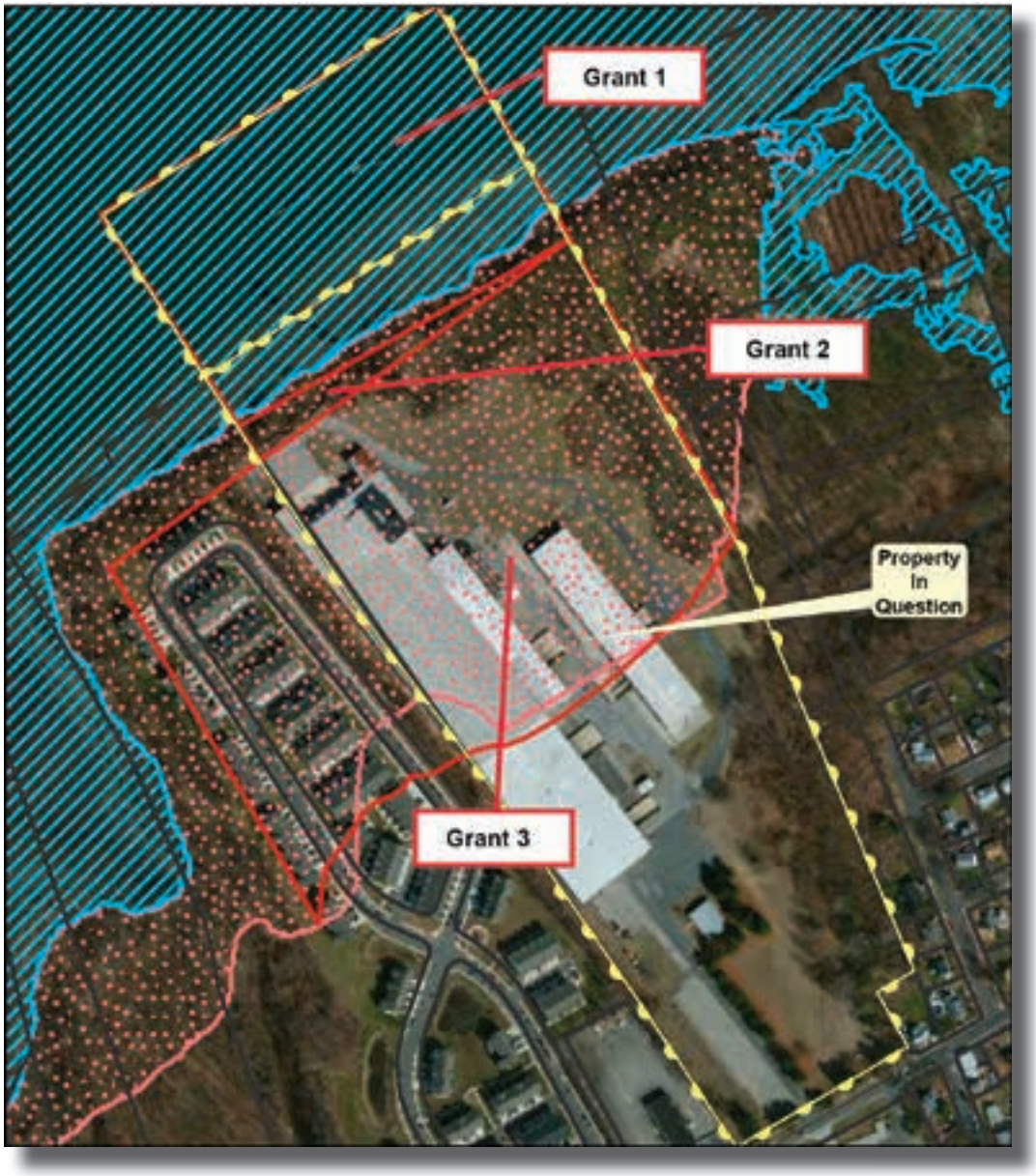

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Tidelands Alert cont. from cover

meanings and properly search the titles to reveal the claims of the State of New Jersey.

At first it was the County Title Searcher's job to review these maps and the records, identifying a claim and searching for a Grant. Middlesex County had two light tables that allowed a searcher to hand trace the tic lines onto tax maps. It was a precise task–enlarging or reducing the tax map and/or filed map to the proper scale so you could accurately trace the tic/claim lines. Eventually, computer mapping technology like GIS, would supplant manual tracing and Tidelands Searches would be offered by information services organizations. Many in the title industry would mistakenly assume that the role of the title searcher and examiner had been replaced by such technology; that once a Tidelands Search and a Grant Search was successfully obtained, the search was over.

In 2008, facing increased tidelands claims, the title underwriters in New Jersey mandated that Tidelands Searches be ordered on every transaction, except for those four counties where such claims do not exist, Hunterdon, Morris, Sussex, & Warren. Further evidence for some, that a tidelands search from a third party information service provider was all that was needed to effectively address the question of the State's property rights.

But, the Tideland Search is only a tool. Just the same as any other, knowing the tool and how to use it is the key to success. The tidelands search eliminates manual plotting, employs more precise mapping and provides easier, faster access to a database of land title documents, many of which are not recorded in the Clerk's Office. This database is based upon the information found on the Tidelands Conveyance Maps maintained by the Tidelands Management Bureau, NJDEP. However it has its limits. Just as there are tideland grants that are not recorded in the land records, or in some cases recorded decades after their issuance, there may be some recorded in the Clerk's Office that are missing from the records of the Tidelands Management Bureau.

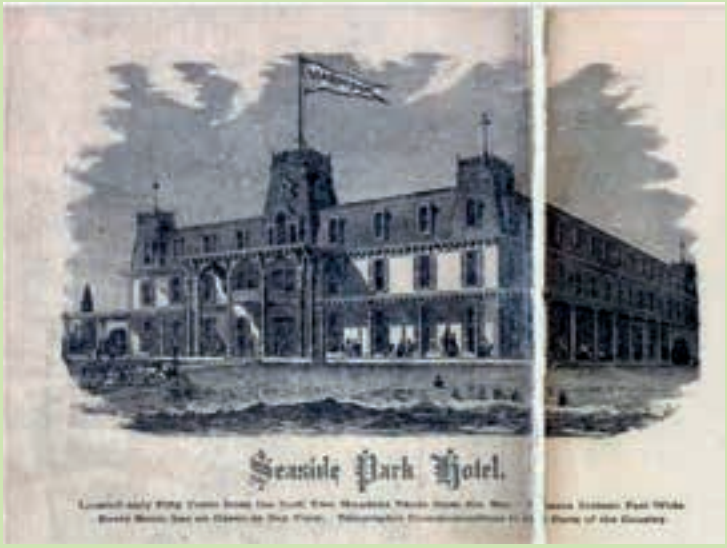
Furthermore, all such searches contain specific disclaimers that generally state:

"We have reviewed the Tidelands Conveyance Maps for instruments which may affect the property. We recommend careful review of these instruments. We are simply reporting that these instruments appear in the records of the Tidelands Management Bureau, and assume no responsibility for their nature, extent or validity."

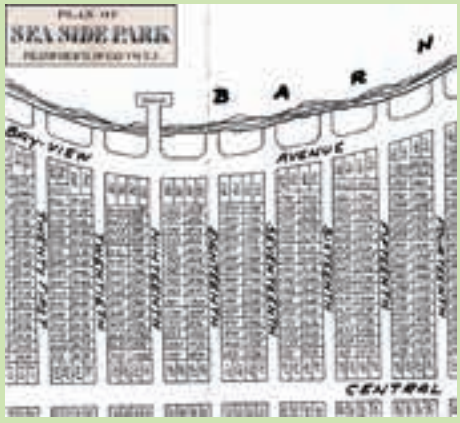
The responsibility for the careful examination of the instruments revealed by the search, comparison with the record title, existing maps and the tidelands claims maps remains with the title examiner. Once a tidelands claim has been revealed, it is incumbent upon the examiner to painstakingly review the four corners of the applicable tidelands grant to insure that ALL the claims of the State have been extinguished. Which brings me to the recent application in Seaside Park.

It was the latter part of the 19th century and the nation was embracing the naturalist movement. As industry took hold of the great cities, the people wanted to return to the outdoors and romanticized the rustic lives of their forefathers, escaping the overbearing pollution, disease and poverty of the urban landscape. They came to the Jersey shore, at places like Atlantic City, Long Branch and Cape May; establishing resorts and retreats at places with names such as Ocean Grove, Point Pleasant and in 1872, Sea Side Park. The earliest map of Sea Side Park clearly listed all the "natural advantages;" Health-Drinking Water-Fishing and Gunning-Direct Access by railroad and most importantly it was safe from the "dreaded land breeze."

The streets were laid out in grids and numbered from First to Twenty-Third, with wide Avenues running east to west (70') and even wider ones running North and South (100'), with Grand Hotels right on the Atlantic Ocean every five blocks.



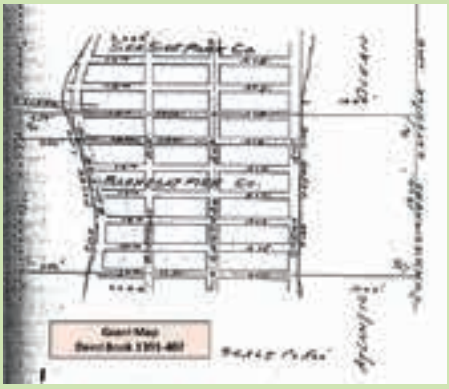
Around this same time the NJ Legislature passed the Riparian Act of 1869 creating the Board of Riparian Commissioners, which was the predecessor of the current Tidelands Resource Council. Between 1869 and 1891 when the Wharf Act was repealed, there was a sea of change in the State's tidelands policies due to the rapid development of the coastline. The formerly remote sandy islands along the Jersey coast were becoming very popular destinations, land values were increasing and land ownership was at a premium. As the islands filled up, land speculators and developers wanted to expand out into the water, out to the exterior wharf line, to have the greatest opportunity for profit.



It was necessary to own the adjacent upland in order to purchase a Riparian Grant from the Commissioners. The post-1869 grants were more precise and particular than those issued before, the post-1891 grants were even more so. Particular form and language, more precise descriptions and detailed maps accompanied these grants.

In July of 1900, the Barnegat Pier Company negotiated the purchase of land under the waters of the Barnegat Bay adjacent to 15th, 16th, 17th, 18th, 19th and 20th Avenues as "laid down on the Map of Sea Side Park." This grant, designated in the State's tidelands records as Liber N page 353, was not recorded in the Ocean County Clerk's Office until March 12, 1951 in Deed Book 1391 page 407. Fifty one years later.

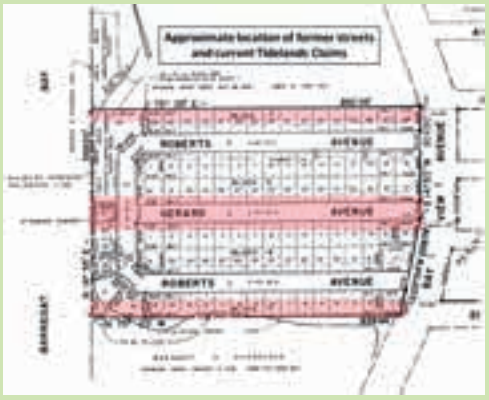
Although the late recording of the grant certainly complicates the title, it is not the most crucial issue. This grant contains two tracts of land under water, one under the Atlantic Ocean and the other under the Barnegat Bay. Both descriptions tie to streets on the map of Sea Side Park (although there are 3 different maps of Sea Side Park) and include specific distances, but for some unknown reason the Barnegat Pier Company was not willing to pay for the land lying under the avenues in the Barnegat Bay, if they were extended into the grant area. The description contains this exception:



"Excepting out of the above described tract of land under water the land under water lying within the extension of 16th 17th 18th and 19th Avenues and the southerly half of 15th and the northerly half of 20th Avenue out to said Exterior wharf line."

This was a "Front Foot Grant" with a charge of 30 cents per front foot. The grant map shows 1350 feet of frontage on the Bay, less 350 feet for five 70 foot wide streets equals 1000 feet or $300.00. Ultimately, the Barnegat Pier Company never filled the grant area and it remained under water for over 60 years.

In fact the grant area and the adjacent upland was not effectively developed until the mid 60's when Midway West, Inc. resubdivided the former map of Sea Side Park, creating three new maps which changed the street widths and Block & Lot measurements. A portion of the grant area was laid out on the map of Peninsula Park, Section 2B, Map No. F-28, filed January 9, 1970. This map lays out three new streets that do not match up with the proposed extensions of the former numbered streets on the Sea Side Park map. The numbered street names were eliminated and the new streets have proper names.



Here we finally arrive at the fatal title flaw. The land under the Barnegat Bay, lying underneath Avenues that were never extended and later moved and renamed, was never

conveyed by the State of New Jersey. Today a portion of that land has been filled and lies underneath the majority of the homes in Peninsula Park, Section 2B.

None of the deeds in the chain of title specifically mention the exception for the extended avenues. The only place that this exception can be found is in the riparian grant which was recorded 51 years after it was issued. It can be assumed that most of the Lots on the Section 2-B map have an Owner's Policy of Title Insurance. The grant applicant did. Unfortunately for the title insurer, their title examiner appears to have not read the grant nor took the time to plot out the exceptions. This was the second application in this development presented to the Tidelands Resource Council, there will certainly be more.

Be warned that this is not an isolated case of a peculiar exception. A similar situation existed in South Amboy and caused much consternation before the City of South Amboy stepped in and brokered a deal with the State of New Jersey, resulting in grants being issued in 2012 curing the problem. In addition, there are often reservations of fishing and clamming rights, and of course rights of navigation, stressing the point that tidelands grants, leases and licenses must never be taken at face value and always examined with great care.

Most properties insured in this State are clear of tideland claims. Yet if you find yourself insuring title off the Map of Peninsula Park, Section 2-B in Berkeley Township, Ocean County (Blocks 1689.03, .04, .05, .06), be sure to pause and look carefully at the title. Read the four corners of all the documents, especially the riparian grants. Examine the title in a careful and conscientious way. Have your protractor ready, be aware of the claims of the State and do not abdicate your responsibilities to a third party information service provider. Use the tools properly and be a Master Title Examiner.

Joseph A. Grabas, *is a 37 year veteran of the NJ title insurance industry, author, land title educator and has been recognized by the Superior Court of NJ as an expert in land title matters. Mr. Grabas currently serves on the NJ Tidelands Resource Council. The statements, facts and opinions set forth above are solely those of the author and do not represent the policies, representations, opinions or decisions of the State of New Jersey, NJDEP or the Tidelands Resource Council in any way.*

The President's Message: An Uncaged Bear

by George A. Stickel, Esq., C.T.P.

One of the benefits of serving as President of the New Jersey Land Title Association is an invitation to join the American Land Title Association's State Legislative and Regulatory Action Committee monthly conference call. ALTA also provides a weekly report of newly proposed legislation and the status of pending legislation, broken out by State.

Frankly, I was always an isolationist, concentrating on what affects us here in New Jersey. The NJLTA has a wonderful Legislative Committee, chaired by Dave Ewan, which keeps the Board of Governors apprised of items on track to become law in our State. By keeping abreast of legislation in New Jersey we are able to aid the passage of new law beneficial to our interests. The Adverse Possession Bill (S2143/A3547) and the bill prohibiting fee-centered evaluation of escrow agent capacity (A308) are two matters of extreme importance to we New Jersey title people and are receiving all measure of support from your trade organization on your behalf. We often make our members aware of such legislation so they can contact their representatives.

ALTA offers a much wider perspective. It is not unusual for legislation to be adopted in California, gain traction in Kansas and then plow its way east to our doorstep. ALTA provides information about legislation which may just be over the horizon from New Jersey.

This is one reason why membership first in the New Jersey Land Title Association and, for the bigger picture, the American Land Title Association can be so valuable. These groups serve the title industry by sponsoring legislation beneficial to our interests. At the same time, they immediately hop onto Bills which may present a hardship so that, as a group, we can voice our opposition. Let me provide you with a few examples from other states to illustrate why we must keep a wide perspective.

The State of Georgia is an attorney-closing state, much like what we used to call the "North Jersey practice", but, apparently, much stricter. Georgia House Bill 153 would specifically prohibit real estate settlements conducted by anyone other than attorneys. A Notary Public or non-attorney title agent serving as settlement agent could be charged with the unauthorized practice of law. It is interesting to see at least one State moving towards the opposite the trend in New Jersey.

In Oregon, House Bill 2780 is intended to protect the interests of Sellers of real estate who are over the age of 65, but imposes onerous requirements on settlement agents. The settlement agent must first determine if the selling price of the real estate is more than 20 percent below the appraised value. And, if that is the case, the settlement agent may not close the transaction unless convinced that the Seller understands the nature and terms of the transaction. Now, admittedly, we are currently expected to make a determination of Seller capacity before taking an acknowledgment. But what if, as in most cases, the Seller does not attend closing, but a previously signed Deed is delivered by a third party? How is the settlement agent supposed to determine if the Seller understood the sales price was 20 percent below market? Will an appraisal and a "meet and greet" now be required on every deal where the seller is over age 65? Understandably, the intent of the legislation is noble. We need to protect our seniors. But our industry must educate legislators about the difficulty of implementing that safeguard. If, somehow, the Bill is made law in Oregon, some well-meaning New Jersey legislator will certainly hear of it and seek favor of the AARP lobby by proposing similar legislation in New Jersey. If the law cannot be made workable in Oregon it should never see the light of day elsewhere.

Senate Bill 2528 from our neighboring State of New York proposes a new Restrictive Covenant Modification Document. The Bill mandates that title industry personnel include "in at least eighteen-point boldface type on a separate page within the title abstract report" "any covenants, conditions and restrictions ...which discriminate on the basis of race, color, religion, sex, familial status, marital status, disability, national origin, source of income or ancestry". The title representative must then inform the purchaser that they may have such restrictive language "removed" from their title by the preparation and filing of a "Restrictive Covenant Modification Document". Now, I already thought this issue was pretty much covered by Federal law and that any such ancient restrictions are already unenforceable. But, certain concerned legislators feel it worth the effort to also have the restrictive language highlighted in large boldface print. And, as if, by magic, they feel the recording of a new Modification Document will excise that language from the public record. Regrettably, all this Bill seems to accomplish is to impose upon the title representative a duty to dredge up and highlight unenforceable disrespectful language from title history. And to what purpose? To prove that discrimination once existed in America? The recording of a new document cannot make that old document, with its offensive language, go away.

Of course, many Bills such as these never make it out of committee. And it is a part of the function of ALTA and NJLTA to take a stand, where appropriate, to see that only legislation beneficial to our industry and to the public moves forward. Nevertheless, in spite of our best efforts, some crazy legislation still makes it through. Keep in mind that someone failed to step up to oppose legislators in Missouri who felt it necessary to adopt a law prohibiting driving a car with an uncaged bear.

So join ALTA and the NJLTA (or at least join the Title Action Network, which is free) so that our industry can speak with one voice representing many voters to educate and inform legislators when they have lost their way.

The NJLTA Legislative Committee

by David Ewan, Esq. NJLTA Legislative Committee Chair

"Man is the only animal that laughs and has a state legislature."

Samuel Butler (British Poet, 1835-1902)

"Politics is the art of looking for trouble, finding it everywhere, diagnosing it incorrectly, and applying the wrong remedies."

Groucho Marx (Philosopher?, 1890-1977)

As many of you know from attending the Board of Governors meetings, the NJLTA has a Legislative Committee. I've been privileged enough to have been the chair of this committee for several years now. As committees go, the Legislative Committee tends to be one of the more active committees, predominately because we're constantly checking legislative action which has or may have an effect on our industry.

On the federal front, we largely rely on ALTA to keep us abreast of federal legislation, but in a few instances we've kept tabs on various individual pieces of legislation there as well. Most of our work is confined to the potential for both good and evil which is embodied in the state legislature.

At the state level, as of this writing, our committee is monitoring 203 bills. So far, in the 2014-2015 Legislative Session, our elected state representatives have introduced 7,653 bills or resolutions. For the statistics lovers, the percentage of legislation introduced that we wind up monitoring works out to be approximately 2.65 percent. With such a small percentage of bills requiring our attention, this may sound like a relatively easy task, but in reality it isn't.

How does the Legislative Committee operate? First, members of the committee check the synopsis of each bill introduced in the legislature to see if the bill may have an effect on us. If the synopsis indicates that we may be affected, the text of the bill is then analyzed to see what would be accomplished if the bill were enacted.

Bills that, as drafted will not affect us, but if amended may affect us, are added to our list so that we can monitor their progress and examine any amendments. For bills that do (or may) affect us as they are currently drafted, we discuss the bills on our monthly committee conference calls. If a certain bill is important enough, then the committee brings it to the attention of the Board of Governors (or if time is pressing for action, the Executive Committee). The Association then may take an official position on the bill, such as "oppose" or "support."

The members of the committee also cooperate with other legislative efforts, such as draft legislation proposed by the New Jersey Law Revision Commission. We also collaborate closely with our lobbyist, who also keeps us well informed of goings-on in Trenton.

Overall, while we believe we have a good operational method in place, as we all know, whenever the legislature is in session, virtually anything can happen. Even though we're constantly on our toes, we also rely on the greater NJLTA membership to alert us of matters that come to the members' attention.

If any NJLTA member would like to join the Legislative Committee, please send me an e-mail at dewan@wltic.com and I'll be glad to add you to the committee roster. There is no need to worry about joining the committee – we've abandoned the hazing rituals that have been used in the past.

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More Than Just a Meeting

by Nicole Plath, Fortune Title Agency, Inc.

If you haven't been to an Agency Section Meeting, then you are really missing out! At this past meeting a big decision was made regarding our 2015 budget and membership dues; discussions were had regarding pertinent legislation, our upcoming NJLTA convention, and ALTA's upcoming convention; some new ideas were introduced; and we all had a great time earning our continuing education credits. That's right, we had fun!

There is a lot going on in our industry right now, between the need to be compliant, the introduction of a new Closing Disclosure Form, and the need to educate consumers on the value of an owner's policy. There's a lot to talk to about and a real need for every title producer's input as we decide how we are going to navigate this new landscape. The purpose of the New Jersey Land Title Association is to lead this endeavor and to be the voice of every agent. As an Association, we want to ensure that no agent is left behind throughout all these new changes. As a result, we decided to vote in a membership increase on our budget in order to fund a marketing campaign. The new Closing Disclosure Form has the Owner's Policy labeled as "Optional." This designation on the form has created a very real need for us to explain to our consumers why, although optional, it is a choice every home buyer should make. The NJLTA is dedicating a significant amount of funds towards educating the consumer, and is developing a committee that will lead this effort. Informing the consumer is a benefit to ALL agents and I highly encourage you to make your voice heard.

We also touched on Assembly Bill A308. This Bill was passed in December 2014. It states that: "It shall be an unlawful practice for any person or entity to prepare a report for use by a mortgage lender in evaluating the capacity of an escrow agent to perform real estate settlement services, in exchange for a fee charged to that escrow agent." Under the consumer fraud act, this is punishable by a penalty of not more than $10,000 for a first offense and not more than $20,000 for any subsequent offense. Violations can also result in cease and desist orders, the assessment of punitive damages, and the awarding of treble damages and costs to the injured party. The bill has moved to the Senate Commerce Committee and we are now waiting to see if they want someone to testify at the committee hearing.

Next, we discussed our 2015 NJLTA Annual Convention. It is coming up soon and there are more reasons than ever to attend this year. Learn about the new Closing Disclosure, get tips on how to complete ALTA Best Practices, and even get a free Technical Assessment just for attending the Best Practices Made Easy Continuing Education Course. There is so much value in this year's convention that you simply cannot miss it!

And all that great information was just the first hour of the meeting. We then got our game on as Joseph Grabas of Grabas Institute introduced us to the most interactive and fun way to earn your Continuing Education credits - THE SUPER BOWL OF TITLE! I know that you probably don't usually correlate continuing education courses with a really good time. Not everyone is an education junkie, I understand. But this class was a blast, was very interactive, and had everyone laughing and learning all at once. The rules of the game were as follows: First, a Super Bowl question was asked. The first four people to raise their hands had a chance to answer that question, in order of hand raised. Once that question was answered correctly, then a title question was presented. If that question was answered correctly, then a mini football went flying through the air as your prize. But, WAIT, that's not all!! Any of the other three people who originally raised their hands could call a Fumble! This meant an even HARDER title question was asked of the hand-raiser, (and man did Joe bring the difficult questions)! When answered correctly, the football had to be thrown to the new winner! Each question was a chance to win another football and the person with the most footballs at the end of the game won. Needless to say there were footballs flying all over the place, quite a few bad throws, and a whole lot of laughs. There was even a spirited debate over whether or not Katy Perry was riding a Lion or a Tiger during the halftime show.

Don't miss the next Agency Section Meeting! There is so much great content - so much happening in our industry that we need to discuss as peers, and an opportunity to earn education credits as well. Not to mention a good time to be had by all. If there's one thing that all title agents have in common, it's that we know how to have a good time. So come on down, make your voice heard, and earn some credits while you're at it!

An Agent's Perspective: Not Funny

by George A. Stickel, Esq., C.T.P.

Apparently, the feeling may exist that it is unseemly and inappropriate for the President of the New Jersey Land Title Association to write a humor column. Frankly, I find it to be hysterical (and humbling) that I am President of the NJLTA. Nevertheless, in an effort to avoid offending anyone, until the end of my Presidential term, or the next two issues of the Advocate, whichever comes first, I promise not to be funny and will accept just being cute. What follows are observations I've made in my 40 year career which are intended to be illuminating, but certainly not funny.

1. I love being my own boss. When telemarketers call and I have no use for their product (which is in every case) I simply tell them that our business is closing at the end of the month. A lie, but it stops the calls; and sometimes even elicits well wishes and an apology for their having bothered me.
2. On a daily basis I battle issues of self-esteem as a lawyer in a profession where those without a law degree are licensed to do exactly the same thing and are experiencing greater personal satisfaction and prosperity.
3. You know the title education system is broken when:
   a) You can satisfy half of your title insurance credits with twelve hours of marine insurance education.
   b) A student gets 3 title credits for 50 minutes of class time because the instructor claims to have fit 3 hours of material into 1 hour.
   c) You can satisfy your 3 hours of ethics credits by taking an on-line class that can be completed in 20 minutes.
   d) Anyone thinks ethics can really be taught.
4. The title industry should self-police, since the State seems not to have resources to do so. Who knows the industry better than we immersed in it? We know the rules and should enforce them amongst ourselves. Attorneys have their own ethics panels, endorsed by the State Supreme Court. Why can't we have a similar panel?
5. Whoever said there are no stupid questions was just trying to be politically correct and never sat in my chair. There are indeed stupid people who ask stupid questions. I once asked a Seller's attorney for a copy of his client's title policy to try to clear an old mortgage revealed in our title search. The attorney replied, "I don't have a copy of my client's title policy, but I do have a copy of the deed. Will that satisfy you?" (I wanted to crawl through the phone and choke him.)
6. Our 24 hour economy, with the ability to reach anyone, anywhere and at any time is not necessarily helpful. I once called an attorney-client in the middle of a weekday to ask him a question. He indicated he would be happy to help me, but he could not access his file at that moment because he was riding his bicycle. And I was supposed to know that? But at least he took my call.
7. Once a file goes bad, it only gets worse. Sometimes it is better to cut your losses and get out early if you can.
8. Certain attorney-clients have only bad deals. I cringe when I receive orders from these attorneys. Egotistically, I believe I get challenging deals because the attorney knows I can work them out. (On a bad day I believe the attorney also has good deals, but sends those to the title agent who offers the tastiest donuts.)
9. I have been required by lenders to correct my title binder when their instructions showed their name as "XYZ Bank, ISAOA ATIMA" and we spelled it out as "XYZ Bank, its successors and/or assigns, as their interest may appear". I have also been instructed that "as their interest may appear" was unacceptable and they required "as their interests may appear". I've lost track of how many times I've used the address shown from the lender's instructions on our Closing Services Letter and been told that is not their correct address.
10. The use of a Power of Attorney to execute documents invites nothing but trouble. It burns my buns when presented with a Power of Attorney signed by the Principal on the same day as the Deed signed by the Attorney in Fact. If the Principal was available and competent to sign the Power, why did he not just sign the Deed? Grrr.
11. When I'm given a copy of an existing title policy for a property in Morris County (or Hunterdon County, or Sussex County or Warren County) and it contains a general tidelands exception, I tend not to trust anything else in that policy.
12. The greater the number of days before the lender starts calling for their Loan Policy, the busier the market. When they call 30 days after closing, the market is soft. When they call 7 days after closing the market is dead.
13. The greater the deed consideration, the more likely the client will request a quote, and/or call to discuss the invoice.
14. On residential deals, the greater the consideration, the fewer the problems. I've had $50,000.00 dwelling deals that required more time and effort than a $50 million commercial transaction.
15. The louder the attorney argues, the less he knows about the subject of the dispute. Attorneys who really know their stuff never raise their voices.
16. When asked to review a proposed Deed for a basic residential real estate conveyance I am no longer surprised when it takes me a two page letter to detail the corrections needed to make the Deed simply adequate. In response, I receive a revised proposed Deed where some of my corrections have been made, but not others, so I draft another letter. When the Deed is still no good after the third revision I regret that we title people cannot just draft the Deed ourselves and send it out with our commitment.
17. A person can work in this industry for 40 years and still not have all the answers.

George A. Stickel, *Esq., CTP, is a Third Generation, 40 year veteran of the title industry. He is President of Stickel Title Agency in Pennington, New Jersey. George is also President of the NJLTA Board of Governors and a contributing writer to The Advocate. It is okay to call him cute, but please don't call him funny.*

A Watershed Year for the Title Industry - 2015

by Anthony Floria-Callori, Esq. NJLTA 2015 Convention Chair

We will look back upon this year as "the year everything changed".

Of course our industry has seen many of these years: The introduction of the HUD regulations in 1974, the subsequent promulgation of the current settlement statement in 2009, and The Savings & Loan Crisis of the 80's and 90's immediately spring to mind.

Our industry has faced and bested prior challenges. Can we do so again?

Time will surely tell, but the demand is upon us to prepare ourselves in an historic manner in order to meet and beat the tasks ahead.

Our industry must adapt and change to the new landscape in order to survive in the coming years.

The NJLTA Convention Committee has carefully tailored the curriculum of this year's Annual Convention to the zeitgeist. The Speakers, the agents, the underwriters, and the vendors will undoubtedly be discussing the implementation of ALTA's Best Practices and the adoption of the new CFPB forms. We are calling all agents to ensure they don't miss the opportunity to take advantage of this year's Convention.

Believe me when I say I know how difficult it is to leave the office. We know your work needs to be processed and we know your client base needs to be serviced. The harsh reality is that, unless you are comfortable with the topics that will be addressed at this year's Convention, your clients might have a hard time continuing to do work with you based on new lender requirements.

Generally hyperbole is scary, but facts are facts. The implementation of ALTA's Best Practices is not an option. It is a mandate for those agents hoping to continue their existence. Join us to converse with other agents and explore how they are implementing the practices. Come to meet vendors who are capable of ensuring compliance with both Best Practices and the new CFPB forms. Enjoy Speakers who have literally been in the room with CFPB lobbying on behalf of our industry as the rule was drafted.

Based on the severity of the above referenced subject matter, drinks will be plentiful.

Registration is available on the NJLTA website at njlta.org. – or tear out the next page and mail it in to the NJLTA.

See you in Maryland!

REGISTRATION FORM for the NJLTA 93rd Annual Convention

Hyatt Regency Chesapeake Bay Golf Resort, Spa and Marina
100 Heron Boulevard at Route 50, Cambridge, Maryland
(http://chesapeakebay.hyatt.com)
Sunday, June 7, 2015 through Tuesday, June 9, 2015

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Registration Fees

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Late Fee (After April 1, 2015)	_____ @ $25.00	_____
Subtotal		_____
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TIPAC Miniature Golf Tournament	_____ @ TBD___	_____
Total Enclosed		_____

To reserve your room contact Chesapeake Bay Golf Resort, Spa and Marina directly at 410-901-1234 or go to http://tinyurl.com/njlta2015. Rooms are $241.00 per night plus resort fees. Be sure to mention you are with the New Jersey Land Title Association to receive this special rate. PLEASE NOTE: Room rate cannot be guaranteed after May 10, 2015.

Please make your check payable to: **New Jersey Land Title Association.**
(Sorry – credit cards cannot be accepted at this time)

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100 Willow Brook Road, Suite 100, Freehold, New Jersey 07728

QUESTIONS: Please contact Anthony Floria-Callori – Anthony@PrestigeTitle.net

To receive your ***early bird registration discount***, please mail your Registration Form and Fee no later than ***April 1, 2015***

All Registrations must be received by May 1, 2015.

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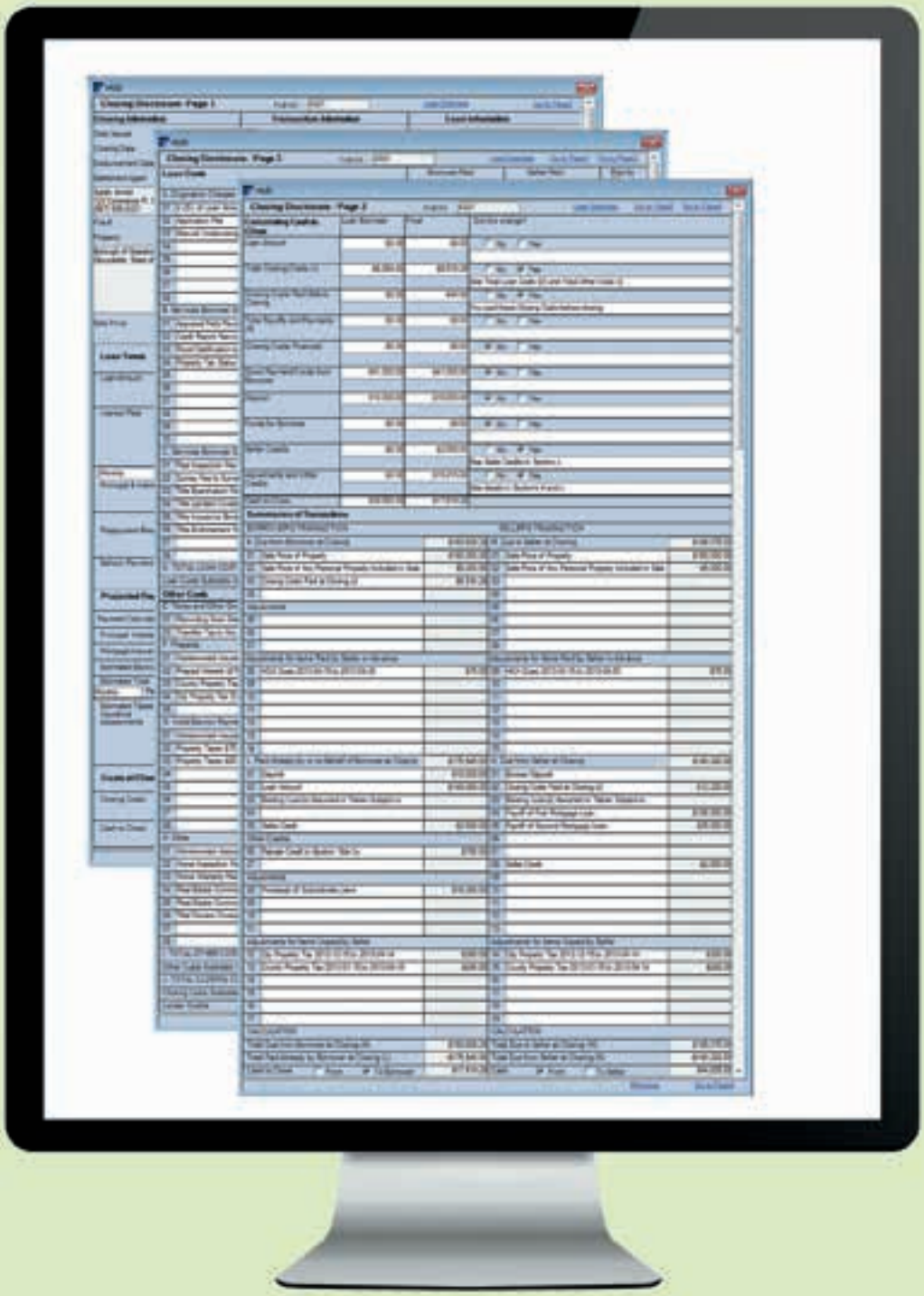

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What Price Compliance?

by Alfred D. Santoro, Jr., Esq., CTP

Compliance appears to be everyone's watchword today. It started with the Consumer Financial Protection Bureau's (CFPB) April 2012 memo urging lenders to exercise supervision over their sub-contractors. Third Party Companies offering to "vet" you and your employees for a fee seemed to crop up overnight. This was accompanied misinformation and bullying tactics. I was actually told by one mortgage loan representative that we HAD to submit to their third party vetting because "It was the law!"

The belief that a positive industry response was required led the American Land Title Association to develop and adopt its Title Insurance and Settlement Company Best Practices. This was envisioned as a voluntary self-certification program that sought to enable agents to memorialize the safeguards and practices that most of them were following anyway. It was hoped that this self-certification would satisfy lenders by letting them know what steps we had taken as title insurance and settlement agents to protect the consumer.

However, Best Practices is now morphing into a new regulatory scheme. No end of vendors have been contacting us for e-mail encryption, employee background checks, positive pay, three way reconciliation software, secure data storage and other products to help us comply with Best Practices, at least as they interpret them, and all at a cost to title and settlement agents.

It is also spawning a cottage industry for accountants and auditors offering 'Best Practice Certifications." A large accounting firm runs an article with the following title on their website:

> *"Become ALTA Best Practices Certified now: Becoming Settlement and Escrow Compliant in accordance with federal consumer financial laws"*

The trouble is, no federal consumer financial law requires a title insurance agent or settlement services provider to comply with any set of "Best Practices." Lenders who are subject to CFPB regulations are requiring compliance with a voluntary set of Best Practices which themselves can only be considered a guideline. They must be tailored to each individual business and to business practices which can vary state to state and region to region. Best Practices for a large, multi-state organization may look very different from those for a small 2-4 person office. The point is that "Compliance can be in the Eye of the Beholder."

Yet, I am told that to obtain a third party audit of Best Practices can cost $5000 to $10,000 or more depending on an agent's size, and all that buys is an opinion, with no recourse. There is no guarantee of protection either to the agent or to the lender relying on it that you are actually in compliance. To add insult to injury, it must also be done at least every other year.

Now we are being told by at least one lender that third party certification of Best Practices compliance is required!

BancorpSouth released a memo to its approved closing attorneys on March 2, 2015 stating: "Your adherence to the ALTA Best Practices must be verified by an independent third party vendor acceptable to us, and self-certification is not acceptable." (Emphasis added)

You can be sure that other lenders will attempt to follow suit:

Which leads us to other questions, how many times would an agent have to be "vetted" by different third parties for the various lenders it works with? Who is to bear the cost?

One would like to think that the existing oversite by the New Jersey Department of Insurance as well as the various regulations under RESPA would constitute a sufficient regulatory environment. At least two states agree that third party verification is superfluous.

The Department of Financial Institutions in Washington State recognized it's state regulation of the title industry and issued a letter urging its non-banks to do business with honest service provides stating that "…adding unnecessary and duplicative processes and their related costs to the system will eventually make mortgages more expensive for consumers without any additional benefit."

The California Department of Corporations went further in its Commissioners Bulletin No. 001-12. After enumerating the state's existing consumer and industry safeguards, it concluded that:

"The Department of Corporations is closely evaluating the business arrangements of its licensees under its lending and escrow laws that involve third-party risk management companies, which purport to pre-screen service providers for a fee paid by the service provider. The Department cautions licensees that it may bring an action against licensees that contract with third-party risk management companies or place restrictions on service providers, in a manner that violates the law."

A bill currently before the New Jersey Senate recognizes the unfairness of subjecting New Jersey Title Agents and Attorneys to the additional cost of third party vetting. S2203 states simply that"

> " a. It shall be an unlawful practice for any person or entity to prepare a report for use by a mortgage lender in evaluating the capacity of an escrow agent to perform real estate settlement services, in exchange for a fee charged to that escrow agent.
>
> b. As used in this section, "escrow agent" means an independent person, including an independent bonded escrow company, an independent financial institution whose accounts are insured by a governmental agency or instrumentality, an independent licensed title insurance agent, or an attorney licensed to practice law in this State, who is responsible for the receipt of any written instrument, money, evidence of title to real or personal property, or other thing of value to be held until the happening of a specified event or the performance of a prescribed condition, when it is then to be delivered in connection with the transfer of real estate."

This bill, originally introduced in the Assembly by Assemblyman David Russo, was approved by a vote of 73 to 0 in favor and 7 not voting. It is now awaiting consideration in the Senate Commerce Committee. Its primary sponsor is State Senator Kevin J. O'Toole.

Best Practices was an industry sponsored solution to legitimate industry concerns and will benefit title insurance and settlement service providers as well as consumers. We should bear in mind however that no amount of third party vetting will prevent fraud. According to Reuters, United States Investigations Services (USSI) the largest provider of security and background checks for the United States Government, has been accused by the Justice Department of bilking the government of millions by filing over 665,000 flawed background checks between 2009 and 2012. You may have heard of one of the high profile candidates they considered to be satisfactory, Eric Snowden.

Passage of this bill will help to prevent vetting of dubious and misleading value as well as to control the cost of compliance for attorneys and title agents in New Jersey. It will also help keep them at the closing table where they can continue to provide the services that have protected New Jersey consumers for so long.

I urge you to contact you state senator and voice support for S2203. You can find your State Senator by going online to:

www.njleg.state.nj.us/members/legsearch.asp

Also consider attending the ALTA Federal Conference & Lobby Day to be held May 18 – 20, 2015 at the Mandarin Oriental Hotel in Washington D.C. Compliance and its effect on our business will be at the top of the list again as we have the unique opportunity to speak directly to our legislators. Go to ALTA.org for more information.

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Can you take one more article on Best Practices?

by Marilyn Henshaw, Chair, NJLTA Agency Section Management Board

I know that by now every one of you is thoroughly immune to the constant E-mail reminders, webinars and other communications bombarding us daily about ALTA Best Practices. I suspect that, like me, many of you are tuning out to this constant barrage and somehow in the rush to emphasize the importance of adopting Best Practices, the opposite of that intent has occurred and we are feeling numb about the process.

I recently commenced my own company's attempt at compliance with the seven pillars. In my own defense, this was not procrastination but as I was moving my office in December and changing software providers in January, it was a planned decision to tackle the issues after we were settled.

So January arrives and things are relatively back to normal and I am starting to panic about the enormous task of tackling compliance. Guess what, by the middle of February we are done. I am comfortable that we are compliant and in our ability to demonstrate it.

The reason that this was not the overwhelming job that I anticipated was that we found that we were already compliant in so many areas and those in which we were not had fairly simple fixes. This is not intended to be a pat on my back because I do not think that my operation is anything special but rather it is to let you know that this is no big deal.

I must admit I have never had a complaint department before (unless those coming from my husband and kids count) but I would like to think that any complaints would have been brought to my attention. Now there is a formal directive to send any complaints to me for investigation and disposition and I will keep a log. I am hopeful that the log will remain empty for a long, long time. I suspect that this particular pillar is intended for much larger agencies than mine.

The pillar that seemed daunting to accomplish was the protection of non-public information. Anyone who has ever seen my office knows that I have never adhered to a clean desk policy. The reality has been that with the timely help of my computing vendors, secure backup and encryption has been easily accomplished. We have been shredding files post policy for quite a while but now we shred as we go along including all discarded paperwork. For the price of few well-placed locks and some portable shredders compliance has been achieved. Someday I would like to go paperless but I have discovered that my brain turns to mush unless I have a paper search and a pencil to make notes with!

I decided to write on this topic because I heard from an underwriter that only around 25% of agents have started the process of proving compliance. It is not enough to be compliant but you must be prepared to show prospective lenders and clients that you are. The onus placed on lenders by the CFBP to vet their third party vendors (and the potential of huge fines if they do not) guarantees that we will need to be ready to show the lender our professionalism and trustworthiness. Having a manual that shows the steps that you have undertaken to be compliant with Best Practices may not be enough in all cases but it is certainly better than doing nothing.

For those of you reading this that are part of the 75% who have not done anything yet, I urge you to consider a trip to the New Jersey Land Title Association annual Convention in June. There will be the opportunity to sit in on a workshop to produce your "Best Practices Manual". You can talk to vendors in a relaxed setting about how their products can help you become compliant and most importantly you can talk to your peers about the challenges you are facing, their experiences and how they have overcome the same issues. There is no need to go this alone. We as a title community are there to offer support and our shared knowledge so that we are all here and ready for the next challenge coming in August!!

P.S. Whenever you see the words I, me or we in this article, what I really mean is Lisa Marie who pulled this whole thing together for us and did a wonderful job (and no, we do not rent her out!)

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Ask The Expert Questions

Dear Mr. Expert:

I am insuring a purchase from Jack and Joan to my buyers. Joan is an American citizen, but Jack is a Canadian citizen who is currently in France because of his job. The closing will take place before he gets back. The sellers' attorney is sending the documents to France to be signed, but he's not sure whether to tell Jack to go to the American Embassy, or the French Embassy or the Canadian Embassy to have the documents acknowledged. I've never had a seller who was not able to attend the closing because they were in a foreign county, so I'm not sure what the correct place is either. Can you help?

Thanks, Lost Traveler

Dear Lost:

Going to the American Embassy is the best (though not the only) solution. By going to the Embassy you avoid the need to get an Apostille. See § 3902 Fineberg, Handbook of New Jersey Title Practice. On the other hand, as a New Jersey Attorney at Law, I could take the acknowledgment if they want to pay my expenses to go to France! As usual, I recommend that you check with your underwriter, who might have a different opinion on this matter.

Your Expert

Dear Expert:

I'm insuring the purchase of residential property to a very nice couple. The property was originally two lots (Lots 7 and 45) and they were merged into one before the seller took title in 2000. The deed into the present owner only recites that the property is "known as Lot 7", although it describes both Lot 7 and what was 45. The municipality no longer lists Lot 45 on their tax rolls. All was well until my county searcher came up with two tax sale certificates – one against Lot 7 and one against Lot 45. The seller is willing to pay the lien on Lot 7 but wants me to just omit the one on Lot 45 since he doesn't own Lot 45, not only because it doesn't exist anymore, but also because it didn't even exist at the time he purchased the property. The municipality is being a little vague, telling me it's for taxes he owes on the lot, even if he didn't know he was supposed to pay them. I think this will take some time to work out between the seller and the municipality, and might even need some attorneys to assist BUT my buyer needs to close or they will lose their mortgage and their current apartment. Do you think it's okay to close if we hold an escrow? If so, how much over the amount of the 2002 certificate?

Thank you, Toni in Taxville

Dear Toni:

The recital "known as Lot 7" is for searching convenience and is material ONLY if there is a discrepancy in the metes and bounds (or filed map) description. Thus it does not control. As the property (whatever its present designation is) is geographically the old Lots 7 and 45 both tax sale certificates appear to be valid liens. Holding an escrow is very dangerous in this situation as the new owners (and their lender) may lose the property to a tax sale. To insure this, you should take an exception for the unpaid tax lien on lot 45 and then, if you hold an escrow, insure against loss by reason of enforcement of that lien. As to the amount of the escrow for (old) lot 45, I would get a payoff letter for the lien, then hold double the amount shown on the current payoff and provide in the escrow agreement (better described as a security deposit) that you may pay off the lien if it is not released or satisfied of record within 3 months. Finally, good luck because I don't think that this will close! As usual, I recommend that you check with your underwriter, who might have a different opinion on this matter.

Your Expert

Dear Expert:

I issued a commitment to insure out of a foreclosure. The owner of the property is deceased. The deceased left 3 children, one of which is also the Executor/Administrator. I ran all three names and came up with a number of judgments; some I know are the parties. The attorney doing the foreclosure only wants to name the Executor/Administrator but not the heirs, and therefore not the judgment creditors. Can he just name the Executor/ Administrator?

Dina in Death Valley

Dear Dina:

A minor carp: The owner is not deceased because "one can't take it with them". It is the record owner who is deceased! Once you make that distinction, the rest of your problem explains itself because the persons owning the property are the heirs, or if a Will has been admitted to probate, the Devisees. The Executor/ Administrator does not "own" the property but only has a power of sale. Thus the owner's heirs and/or devisees and those claiming by, through or under them are all necessary parties to the foreclosure. My question to you is "How can you insure out of a foreclosure if they haven't yet filed the complaint"? As usual, I recommend that you check with your underwriter, who might have a different opinion on this matter.

Your Expert

Technology Smarts

by Lisa J. Aubrey

In today's world where just about everyone has a smartphone, tablet computer or other mobile devices, the question is "Are we using our smart phones smartly?"

While many of you have the most popular apps installed, such as Google Earth, Facebook, Instagram, YouTube, and probably some of you even have the guilty pleasure…..Candy Crush Saga; what types of apps do you have to help you increase or streamline your business OR what apps do you know about that can help your customers with their business?

So, for that reason, I'd like to introduce you to a few apps that have you and your business in mind...oh, and they are free:

- **LinkedIn Connected®** – For those of you who have a personal or business LinkedIn profile, but haven't checked it out in a while, they've been doing some pretty cool stuff these days. There is a new look and feel providing you even more opportunities to keep connected to your contacts. If you haven't checked out the app before, you should, as it will notify you of your contacts jobs changes, birthdays, work anniversaries, & more. They also added some integrations with other apps like Evernote (sync notes with contacts).

And that brings us to the next app….

- **Evernote®** – This app allows you to capture information and makes this information accessible and searchable at any time. It can be used to jot a note down, create a to-do list, clip entire Web pages, manage password, record audio notes and even create a contact or note off a printed or handwritten text in photos and images. Plus you can share these clips or notes with your clients without having to log into other accounts or your server, depending upon what you store here. It does just about everything but call your customer for you.

And speaking of calling.....

- **slydial®** – This voice messaging service connects you directly to someone's mobile voicemail. So if you are short on time or do not want to bother someone but still need provide them with pertinent information or just want avoid an awkward conversation, then use this app and the person you are calling will just receive a new voicemail alert, without the ringing.

These apps are a few in the sea of many available to you and your customers and their customers and so on...all designed to help the user connect more or be more efficient or are just plain fun!

ADVOCATE

On the Move

Welcome New Members!

- BEACON TITLE SERVICES AGENCY, INC.
  Vineland, NJ 08360
- PROPERTY TITLE GROUP, LLC
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Did You Know?

- You can follow the Consumer Financial Protection Bureaus (CFPB) through Twitter and facebook?
  - twitter.com/cfpb
  - www.facebook.com/CFPB
- You can also keep updated with the American Land Title Association (ALTA) with Twitter and facebook?
  - twitter.com/altaonline
  - www.facebook.com/altaonline

Dates to Remember

MARCH 2015

18th

- New Jersey Land Title Association
  Board of Governors Meeting - Lomurro, Davison
  NJLTA – 100 Willowbrook Road, Freehold, New Jersey

18 - 20th

- ALTA – 2015 Business Strategies Conference
  Sheraton Philadelphia Downtown Hotel, Philadelphia, PA

25th

- New Jersey Land Title Association Agency Section Meeting
  & Continuing Education Class given by The Grabas Institute
  Holiday Inn, East Windsor, New Jersey

MAY 2015

13th

- New Jersey Land Title Association
  Board of Governors Meeting - Lomurro, Davison
  NJLTA – 100 Willowbrook Road, Freehold, New Jersey

18 - 20th

- ALTA – 2015 Federal Conference and Lobby Day
  Mandarin Oriental, Washington, D.C.

JUNE 2015

7th – 9th

- New Jersey Land Title Associations – Annual Convention
  Hyatt Regency Chesapeake Bay, Cambridge, Maryland

Notes from the Editor

The snow is melting, the weather is warming and the winter of 2014 is almost a memory.

For some of us, it's a time of celebration –warm sun, short sleeves, and long days.

For others, not so much of a celebration – no more skiing, sledding or down parkas with fur collars.

But whether you're a member of the first group or the second, it is clear things are changing -- and as you read in the various articles, it's not just the season and the weather, but it's also the way we are doing business now and the way we will be conducting our business in the near future.

For some, this is a time of moving forward with a sense of adventure – something new and interesting to learn and, if done properly, even a way to get an advantage over those who cannot or will not keep up.

For others, not so much – it's a time of trepidation, a time to worry about whether we can we get there in time, and be ready for what will surely be (at least in the beginning) lots of confusion.

So, the focus of many of the articles is to get involved. Whether you volunteer for a committee, or attend an NJ Agency sponsored seminar, or join us for the yearly NJLTA Convention, or an ALTA conference, it's important to be informed. The articles will let you know what to expect when you get there, and how it will help you. Being involved will leave you better prepared for the challenges to come later this year.

In addition, this issue starts off with a topic that is so important and so often overlooked. While many of us may remember reviewing the old maps and overlays, some others may have heard "I just check, and see if I find any grants in the area. If so, I'm okay" without any further explanation (someone actually said that to me!). However, it's important to know the dangers of what that statement will lead to if only taken at face value. Knowing what the Riparian Grant is, and what property it actually covers, or doesn't cover is the key to preventing situations such as the one in the article.

And lastly, a few lighter articles to put things in perspective; even our expert added some levity. Hope you enjoy.

…and, for the record, I'm all for the warm sun, short sleeves and long days

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