

# The ADVOCATE

New Jersey Land Title Association

## President's Message

*By: Carl R. Samson, Esq., President*

I can remember saying to a number of people at the last convention that I was hoping for an uneventful administration. I know that I have said it many times since. Alas, my hope has not been realized. The title industry is in flux and I cannot predict uneventful administrations for my successors in the foreseeable future.

Here in New Jersey the most controversial issue is Senate Bill S2229 with which most of you are no doubt familiar. The bill, as originally drafted, would allow the giving of inducements by title companies if the inducement is given to the consumer and a number of conditions are met. The NJLTA has been in negotiation with the proponents of the bill for several months with a view toward mitigating what most of us believe would be disastrous consequences if the bill were passed in its original form. The Agency Section has been proactive in informing its members of the danger. As of this writing we are waiting for a decision by the Office of Legislative Services regarding a proposed revised version of the bill drafted by Larry Feinberg. We have proposed that the revised language be inserted into Title 46 instead of the Title Act itself.

Another important issue came to light when several of our members discovered an agent website that advertised rates and charges in violation of New Jersey law. This matter has also remained in controversy for an extended time period and formal complaints have been made to the NJDOBI.

The title industry now finds itself under heightened scrutiny and attack. The two matters I have talked about highlight some

important issues that we all must consider. Senate Bill S2229 would have the effect of carving out an exception to the regulatory scheme in place in New Jersey. There are many of us in New Jersey who believe this could lead to other carve outs. In my view a regulatory scheme, to be successful, must be uniform in concept and application. To the extent that exceptions are allowed unfairness is bound to result. We must also realize that the NJDOBI does not allocate extensive resources to enforce the regulations relating to title insurance. Lack of enforcement, or selective enforcement, must also lead to unfairness in the marketplace. The fact is that if we don't do more to police ourselves we will only have ourselves to blame. If we are going to successfully defend ourselves against uninformed attacks and ill considered legislation we must have our facts at our fingertips and we must make a principled argument for the value of the services we provide. If we are unable to successfully find our collective voice on these issues we may face some bumpy times, in New Jersey and in the country as a whole.

It is not my intention to paint a pessimistic picture. I do believe, however, that we must all take the time to educate ourselves on the challenges facing the industry. We all need to get involved. I challenge in particular those who have found long term success in this industry to take an active role. Let's make sure that those who come after have a chance for success in this wonderful business as well.

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# Civil Unions - Impact on Title Insurance

By: John A. Cannito and Kimberly A. Scotti<sup>i</sup>

There are few businesses in which changes in social and political policy can have as dramatic impact as title insurance. One such profound social and political change occurred on October 25, 2006 when the New Jersey Supreme Court rendered its opinion in the case Lewis v. Harris<sup>ii</sup>, the so-called same-sex marriage case.

Although widely reported as a 4-3 decision, the Court was not split as deeply as this would seemingly indicate. All seven Justices concurred in the finding that under New Jersey's State Constitution there was no basis to deny same sex couples the rights, privileges and obligations *of* marriage. The minority felt that there was likewise no basis to deny the right *to* marriage. The controlling majority found that there was no fundamental right of same sex couples to the institution of marriage if there was another legally defined relationship which provided couples with the same rights, privileges and obligations. It then gave the State Legislature 180 days in which to either amend the marriage laws to provide for same sex marriage or create another statutory structure whether it is to be called marriage, civil union, or something else.

In response to the Supreme Court decision, the Legislature passed the New Jersey Civil Union Act (P.L. 2006 c.103)<sup>iii</sup>. The Act was signed into law by Governor Jon Corzine on December 21, 2006 and went into effect on February 19, 2007. The law states it is the intent of the Legislature to comply with the constitutional mandate set forth by the New Jersey Supreme Court in Lewis vs. Harris to provide the same rights, duties and privileges to same sex couples as to married couples.

While debate continues whether or not the law fully addresses the Court's decision and whether by denying same-sex couples the right to call themselves legally married full equality is achieved; the title industry must address the changes which are set forth in the Civil Union Law, even if there may be more changes to come.

The effect on title is potentially far reaching, but simply stated: The two partners in a civil union are entitled to the same rights and interests in real property as are the two spouses in a marriage.

Since passage of the law and even prior to it taking effect, one of the most common misperceptions seems to be that a same-sex couple may choose or declare themselves to be entered into a Civil Union without any formal State sanction. This is wrong. Like marriage, a Civil Union is a legal relationship. A same-sex couple may no more declare themselves to be a Civil Union than an opposite sex couple can declare themselves to be married, without obtaining the proper license or certificate and without the relationship being solemnized in a ceremony

conducted by a person so authorized by law to do so.<sup>iv</sup> Just as New Jersey does not recognize common law marriage, there is no such thing as a "common law" civil union.

## The Law states:

*"Civil union couples shall have all of the same benefits, protections and responsibilities under law, whether they derive from statute, administrative or court rule, public policy, common law or any other source of civil law, as are granted to spouses in a marriage."*

*"The following list of legal benefits, protections and responsibilities of spouses shall apply in like manner to civil union couples, but shall not be an exclusive list of such benefits, protections and responsibilities:*

*a. laws relating to title, tenure, descent and distribution, intestate succession, survivorship, or other incidents of the acquisition, ownership, or transfer, inter vivos or at death, of real or personal property, including but not limited to eligibility to hold real and personal property as tenants by the entirety; . . .*

*n. laws relating to taxes imposed by the State or a municipality including but not limited to homestead rebate allowances, tax deductions based on marital status or exemptions from realty transfer tax based on marital status; . . .*

*p. home ownership rights of a surviving spouse; . . ."*

*"Whenever in any law, rule, regulation, judicial or administrative proceeding or otherwise, reference is made to "marriage," "husband," "wife," "spouse," "family," "immediate family," "dependent," "next of kin," "widow," "widower," "widowed" or another word which in a specific context denotes a marital or spousal relationship, the same shall include a civil union pursuant to the provisions of this act."*

On and after February 19, 2007 these benefits, protections and responsibilities include:

- The right to hold title as tenants by the entirety;
- The prohibition against one partner in a civil union acting unilaterally with respect to property owned as tenants by the entirety;
- The right of possession of a non-owning civil union partner in the "principal residence".
- The same survivorship rights and New Jersey state tax treatment for New Jersey Inheritance taxes as spouses in a marriage. Note: Federal law does not recognize same sex couples and Federal Estate Tax, as well as other Federal taxes, will apply as if partners in a civil union are unrelated. Because the New Jersey Estate tax is calculated, in part, based on Federal Estate tax, it is not clear at this time how New Jersey Estate Tax will impact civil union couples.

# Title Company Website Marketing, What Every Skeptic Needs to Know

Title companies hearing about the wonders of Internet marketing are often skeptical. They routinely point out that, “This is still a relationship business. I get most of my leads through personal contact and referrals.” The reality is *they’re right*. The Internet is not yet the best way for a title company to generate leads — but it has become an important tool in closing sales and cementing relationships.

“Increasingly, potential customers will look at your company’s online presence before doing any business with you — regardless of whether the actual sale is closed online,” says Jakob Nielsen author of *Homepage Usability, 50 Websites Deconstructed*.

In the very near future, prospective customers will be asking title companies about the availability of online services before placing an order. A growing percentage of lenders, realtors and consumers don’t want to wait for faxes, emails and phone calls returned only during business hours to get information and place orders.

If you don’t have an easy way to satisfy those clients who insist on being able to make orders and check order status whenever or wherever they’re doing business — you’re going to lose them to companies that have websites with that kind of functionality.

So once you’ve decided you need a website, what type of content and functionality do you want to include? How much do you want to invest in basic graphics or high-end bells and whistles?

## Before You Get Started

Looking isn’t cheating — unless you downright plagiarize. It’s OK to check out what the competition is doing at its website. Simply “google” the word “title company” and a number of sites will pop up. Think about which ones would appeal to your current customers, which ones would help drive new business your way? What makes them work? What’s the local competition offering that you are not?

## Keep It Simple

Beware of trendy web designers trying to build their portfolios. Many professional web designers will tell you that you need expensive flash animations to impress your clients — but the more bells and whistles you include the longer it takes your homepage to load, and the more apt your prospects are to look elsewhere. In the title business, there’s really no purpose to “branding” your company as the most entertaining. Avoiding the excesses that many graphic designers will try to sell you will not only make it easier for your homepage visitors — it will be a lot easier on your wallet.

## Getting Started

If you’ve never designed a website before, you should begin with a “Homepage.” Your homepage is your first opportunity to “brand” your title company. First-time or inexperienced users are frustrated and overwhelmed by websites that don’t help them understand how to get the information they need.

Your homepage should instantly tell visitors who you are. The most common mistake made on many home pages is that a company neglects to prominently display its name and logo.

If your company’s name doesn’t tell visitors that you are a “Title Company,” your subhead certainly should. If you have a subhead that clearly summarizes what you do or your value to your customers, display that prominently as well.

Your homepage should be inviting and easy to read. Think of a client standing at the door of your office. Do you invite them in and immediately start throwing brochures at them about every product and service you offer? Or do you find out what it is they want and then provide them with the information they need.

You want to design a homepage that makes it easy for visitors to see what you do — without cramming a laundry list of your products and services into what frequently becomes an unreadable hodgepodge. That’s where navigation tools come in. Navigation tools help you subdivide all the information you want to include into smaller, more inviting chunks.

## Begin With The Basics

Here are the most basic navigation buttons or links that you might want to include on your company’s homepage:

- **Company Info:** When visitors click on this link, they’ll go to a page that displays your company philosophy and/or history. You should also provide “links” back to your Home Page, Products & Services and Contact Us links.
- **Products & Services:** Include a generic list of every product or service offered — or break your services into specific products designed for specific target audiences such as Lenders, Realtors, Consumer. Product lists that break a “laundry list” into smaller, more readable chunks are preferable.
- **Contact Us:** Include an email address, mailing address — and, if you have a good answering system, include a phone number. (Many people want to get their questions answered instantly and by a human.)

Once you’ve covered the basics, think about what additional resources you might like to add — consider additional sections for items such as Press Releases, Employment Opportunities, Frequently Asked Questions, Advice Columns and links to Industry Publications. Many websites offer something for free, ranging from discount coupons to free online title fee calculators.

If you work directly with a large numbers of consumers, you might want to include links to: locksmiths, contractors, carpet/flooring professionals, painters/paint suppliers, roofers, landscapers, appliance vendors, cable/satellite providers, home security, area physicians, fitness/golf/tennis facilities, telephone/cell services, furniture dealers and more.

## Demonstrating Your Worth

You can tell your prospects that your technology is top notch — but that’s not half as effective as demonstrating what you can do. For a good example check out Weissman, Nowack, Curry & Wilco’s website at [www.wncwlaw.com](http://www.wncwlaw.com). In addition to touting the firm’s online transaction management system, the site also directs prospects to a page that will allow them to order online.

# Come One, Come All

## to the New Jersey Land Title Association's 2007 Convention

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# The NJLTA Title Liaison Committee with the NJ Department of Banking & Insurance

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*By: Richard A. Wilson, CTP and Sr. Vice President of LandAmerica Financial Group*

Where were you on December 20, 1987? It was on this date the relatively unknown New Jersey title insurance industry made headlines. The Sunday Star-Ledger printed a front page above the fold article degrading the title insurance industry as making large profits and paying few claims. (If only this were true!) The article was based on information contained in the now infamous "Karp Report" which as of that date had not been published by the NJ Department of Insurance [n/k/a NJ Department of Banking and Insurance (NJDOBI)]. As Director of Consumer Affairs, Leonard Karp was directed by Insurance Commissioner Kenneth Merin to prepare a report on title insurance. Because this draft report and subsequent newspaper article inaccurately portrayed our industry, the NJLTA Board of Governors sought to establish a liaison with the Department to foster improved communications and overall relations with our regulator. The Title Liaison Committee was the outgrowth of this effort.

The Title Liaison Committee, which has evolved into an advisory committee of the NJDOBI, meets quarterly to discuss issues affecting our industry. Our role is to be an advisory board for the Department; to educate the Department about title insurance in general and more specifically the New Jersey title insurance market and practices.

In the early years the Committee met with Special Deputy Commissioner Joseph Kenney and Eileen Costello and assumed a defensive position in our efforts to set the record straight in response to the inaccurate Karp Report findings. We were able to persuade the Department not to release a subsequent white paper report which potentially could have further damaged the reputation of our industry because of inaccuracies contained in that report.

Over the years the Title Liaison Committee has 1) assisted the Department in its efforts to reconcile the Insurance Producer Licensing Act with the Title Act, 2) advised the Department on the Insurance Producer Licensing regulations, 3) reviewed the Financial Modernization Act and its impact on the title industry in New Jersey, 4) garnered NJDOBI support for the good funds legislation, 5) discussed the role of financial institutions in title insurance, and 6) assisted the Department by providing background information leading to the issuance of multiple Department bulletins (97-14, 99-08 and 02-29 to cite a few) on inducements, rental of settlement rooms from realtors, volume discounts, etc. Most recently, the Committee brought ALTA experts to Trenton to educate the Department on mortgage impairment. At our request, the Department issued Bulletin 05-05 to all property and casualty insurers stating non-title mortgage products have been determined

to be title insurance and cannot be offered or issued without proper licensure. This was a victory for our industry against the threat of mortgage impairment superseding title insurance loan policies for certain types of mortgages.

Larry Fineberg, Frank Melchior and I have served on the Title Liaison Committee since the early days of Joe Kenney's tirades against our industry. Other current Committee members include Bill DeAscentiis, Ed Eastman, Mike Grant, Harry Hayes and George Watson. Peter Hartt, Assistant Director of Insurance, has been the primary Department representative at our meetings the past couple years. Our meeting schedule for the balance of 2006 is September 7 and November 30. If you have any issues you want addressed with the Department, please feel free to contact me or any member of the Committee to request the issue be included on the agenda for our next meeting. ■

## Welcome

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The following are welcomed into the Agency Section of the New Jersey Land Title Association:

MAX TITLE AGENCY, LLC, Florham Park, NJ  
(Delegate: Linda Percoco)

PRESTIGE NEW JERSEY TITLE AGENCY, INC., Shrewsbury, NJ  
(Delegate: Eda Cruz)

SUTTON LAND TITLE AGENCY, Valley Stream, NY  
(Delegate: Janine Scotti)

TITLE TRUST, LLC, Wall, NJ  
(Delegate: Donald W. Barrett)

RIVER EDGE TITLE AGENCY, LLC, Island Heights, NJ  
(Delegate: Kara Kukfa)

EMPIRE TITLE & ABSTRACT AGENCY, Yardville, NJ  
(Delegate: Charles E. Francis)

HARVARD ABSTRACT & SEARCH INC., Wildwood, NJ  
(Delegate: Anthony J. Venuti)

The following are welcome as Associate Members to the Association:

NEW JERSEY LAW JOURNAL,  
(Delegate: Helen C. Mulligan)

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# A Word from Our Consultant

This issue discusses the words “sign” and “signature”.

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**By: Dave Ewan, Esq.**

## Introduction

We all know that, to be recorded in the public land records, documents generally must be signed. But this, logically, raises the question of what does it mean to require that a document be signed? Analysis must begin with the statute setting forth the requirements for recording documents. This section, N.J.S.A. 46:15-1.1, currently provides:

46:15-1.1. Prerequisites to recordation. a. Any instrument affecting title to or interest in real estate or containing any agreement in relation to real estate in this State shall be recorded on presentation to the recording officer of any county in which all or part of the real estate is located, if it appears that:

\* \* \*

(2) the instrument bears a signature;

\* \* \*

Thus, a general requirement would be that the document offered for recording “bear a signature” as specified in the statute. But, what is a signature?

## What is a Signature Anyway?

Ask any person about a signature, and they’ll usually nod their head in understanding. A signature is something that most of us take for granted, and really don’t fully understand. This lack of understanding becomes increasingly more important in an electronic realm where our concept of what a signature is can be taxed.

The average person, when asked what a signature is, will immediately describe what is more accurately referred to as an “autograph,” which is a type of signature. An autograph signature is the person’s name written by that person. Interestingly, even for an autograph signature, there is no requirement that the autograph be in cursive rather than block letters. A “printed” name is still an autograph signature so long as the person printed it (usually by taking pen in hand).

But there are other types of signatures as well, even in the paper world. Current law assists us in understanding what the recording statutes contemplate. For paper documents, Title 46 provides “a signature includes any mark made on a document by a person who thereby intends to give legal effect to the document. A signature also includes any mark made on a document on behalf of a person, with that person’s authority and to effectuate that person’s intent.” N.J.S.A. 46:14-4.2. Accordingly, my telephonic direction to my assistant to “sign my name” to a document would be my signature under the second provision of N.J.S.A. 46:14-4.2 because it is a mark made on a document on my behalf with my authority and to effectuate my intent.

## A Bit of History

How and what we sign has never changed ... until now. Recall that, throughout most of recorded history, the majority of the people were illiterate. They could not read, nor could they write – not even the simplest types of writing, including their own names. Thus, even an autograph signature was impossible for the vast majority of the people – another form of signature must have been used.

To accommodate the illiteracy of the masses, the practice of using witnesses and notaries developed. Witnesses and notaries were people who could read and write and document that the signer “placed his mark” on the instrument being witnessed or notarized. The use of witnesses and notaries also provides assurance that the purported signer did “sign” the document (even though it be by an “x”). A form of this ancient rule that we all know about still exists (even when the most literate person signs an autograph signature) – to be recorded in the land records, documents must also be acknowledged by a notary or other person authorized by statute to take acknowledgements (e.g. an attorney at law). The reason for the rule – same as it was originally – is to provide assurance (and a bit of evidence) that the person really did sign the document.

But remember that autograph signatures are only one type of valid and enforceable signatures. There are other “paper” based signatures (alluded to above), and a myriad of newer “electronic” signatures with which we have to contend. So – how do we handle electronic signatures?

## Types of Electronic Signatures

The Uniform Electronic Transactions Act, as enacted in New Jersey, provides that an electronic signature is “an electronic sound, symbol, or process attached to or logically associated with a record and executed or adopted by a person with the intent to sign the record.” N.J.S.A. 12A:12-2. A “record” as defined in the act is “information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.” In simpler terms, a “record” equates to an electronic “document” for our purposes.

Most likely, you have already used one or more forms of electronic signature in your daily life. Here are a few that should be familiar:

- You use an ATM machine – your PIN is your electronic signature
- You make a credit card purchase at a store and “sign” the electronic pad at the cash register – your movement of the pen on the pad is your signature
- You call your bank to transfer funds from one account to another using an automated system – the sounds of the keys you touch on the phone can be your electronic signature
- You download the latest anti-virus software so that your computer will not fall victim to a Trojan. When you click on the “I Accept” or “I Agree” button, you’re using an electronic signature to be bound by the terms of the software licensing agreement which you dutifully read in its entirety before clicking the button.

Under a new system, certain store purchases may be charged to a pre-determined account when you supply your thumbprint on an electronic fingerprint reader at the checkout counter (you only supply the thumbprint – nothing more). This is a biometric form of electronic signature.

*continued on page 8*

## Title Company Website Marketing (continued)

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“We added a transaction management system to our website to enhance client service,” says Marla Singletary, closing operations manager at Weissman, Nowack, Curry & Wilco, a large Atlanta law firm. “Once clients experience the efficiency of on-line order entry and tracking, they rarely want to work another way.”

“It’s often difficult for title companies to transition their older and most profitable customers to online ordering and order tracking — because they’re simply not interested,” agrees Michael Gilbert, president of Clear Creek-Gilpin Abstract and Title. “If you’re trying to develop relationships with the Internet-savvy bankers and real estate professionals getting started today, you’re wasting your time unless you can give them what they want. If you wait too long, they’ll already have a relationship with somebody else.”

### Helping Your Audience Find You

When you first launch your website, you’ll want to increase the chances that when people Google title companies in your area, your company will pop up first. Getting preferred placement can be done two ways.

The first is Search Engine Optimization (SEO). Ask your web site designer or the Internet Service Provider hosting your site about SEO options designed to bring your site to the “top of the list.” Be cautious though — it really doesn’t pay to spend a great deal of money optimizing your site for thousands of search engines — when the vast majority of traffic goes to Google, Yahoo and MSN.

Pay-Per Click, Pay-Per-Placement and Pay-For-Ranking Search Engines are more expensive than SEO, but they’re also highly effective methods of attracting targeted traffic to your website. The best and most popular pay per click search engines are [Yahoo! Search Marketing](#) (formerly Overture) and [MIVA](#). Lower-priced Pay-Per-Click search engines which also provide an excellent service are [GoClick](#) and [Enhance Interactive](#).

### Driving Customers To Your Site

Why tell your customers and prospects how useful your website is, when they can see it for themselves? All you have to do is make sure your web address is prominently featured on your business card and in any ad you produce — whether it runs in a realtor home publication, for-sale-by-owner publications, in newspaper real estate sections, on billboards, in church bulletins or on TV.

Directing potential customers to your website is not only more effective than sending them brochures; it’s also much less expensive once your website is launched.

### Capitalizing on Your Investment

Once you’ve invested in creating and launching a website, one of the easiest ways to maximize your return is viral or “refer-a-friend” marketing. Free referrals are the most powerful form of marketing that you can use — and have far more of an impact than paid advertisements. Add an incentive for referrals and your results will increase exponentially. Some proven methods for generating referrals are:

- Use an incentive to reward emailed referrals to your site — for example a banker who sends emails to five colleagues recommending your services might receive a coupon for 10% off of their next order.

- Ask for permission to send a monthly newsletter. Reward contacts who forward your newsletters to others. Another means of viral marketing is getting users or other sites to promote your message for free. Methods here include:
- Writing an article that spotlights your expertise and inviting others to post it on their sites for free.
- While “spamming” is obnoxious to most businesses and consumers, a forwarded email to current clients and prospects of a tip they find useful may spark interest in visiting your website for more information. Include an easy pass-it-on link in every email.

### Too Valuable To Ignore

It is never too late to start taking advantage of Internet Marketing, but why deny yourself the profits it can reap? It doesn’t have to be expensive. It doesn’t have to be time consuming. Most importantly, it doesn’t have to stay on your to-do list for another five years. ■

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## *A Word from Our Consultant (continued)*

All of the above electronic signatures could be utilized for an electronic real estate closing (save for the “sound” variety which is not currently permissible under guidelines for the secondary mortgage market). The borrower could click on an “I Agree” button for the mortgage, and the notary could click on an “I Notarize” button in the electronic mortgage document. But something this simple (although quite legal) raises many eyebrows, especially when the document is submitted to the recording office.

Fortunately, the folks at the Property Records Industry Association (PRIA) and the Mortgage Industry Standards Maintenance Organization (MISMO) have answers to this dilemma. The PRIA/MISMO eRecording Standard defines all permissible types of electronic signatures and further provides for security measures to allay any fears concerning the use of electronic signatures. The depth of the documentation and technical specifications of the standards are well beyond the scope of this article, but more information can be obtained from <http://www.pria.us> or <http://www.mismo.org>

The distinct functions identified by the eNW (e Notary Workgroup) were:

- The act of notarization itself
- The act of documenting the notarization
- The use of the document that has been notarized
- Authenticating the notary
- Alteration of the notarized document
- Authenticating the notarized document

For each of these areas, the White Paper reports the similarities as well as the differences between paper and electronic notarizations. The White Paper also has some examples of solutions for the electronic realm. The complete White Paper is currently available at <http://meetings.abanet.org/webupload/commupload/ST231005/newsletterpubs/eNotarization.pdf> ■



# UPPER COURT SEARCHES

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Valtech Research would like to announce that we have extended our product list to include  
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or e-mail: [cchielli@valtechresearch.com](mailto:cchielli@valtechresearch.com) in our Customer Relations Department.

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## Civil Unions (continued)

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In short, whenever you would require a spouse in a marriage to join in a Deed<sup>V</sup> or a Mortgage, you will require a civil union partner to do so.

Accordingly, the standard language generally set forth in a title commitment must be modified in order to correctly ascertain the marital or civil union status of a couple. A suggested provision is:

*Proof of marital status or civil union status of all parties to this transaction. (If the property is the primary marital or civil union residence of the owner, the joinder of spouse or civil union partner in the execution of the [mortgage/deed] is required pursuant to N.J.S.A. 3B:28-3)*

Likewise, Affidavits of Title must disclose marital or civil union status. Care will also need to be taken when addressing lender instructions regarding marital status, to accurately report civil union status, even if the lender's instructions do not specify civil union status.

The question arises as to how title should be vested. The Law refers to "civil union couple" and to an individual in such a relationship as a "partner in a civil union couple". Accordingly, if such a relationship is set forth in a legal document it is suggested that the proper way in which the couple should be identified is **Terry and Pat, a civil union couple** or **Terry and Pat, partners in a civil union couple**. Since the law in New Jersey is that two persons who are married who take title together are presumed to be vested as tenants by the entirety unless expressly stated otherwise, if a couple are in fact a civil union couple at the time title vests, the same presumption should apply. As with a marriage, dissolution of a civil union will result in a tenancy by the entirety becoming a tenancy in common or the termination of the right of possession of the principal residence; subject of course to the terms of the Judgment terminating the relationship.

Domestic Partnerships created since July 2004 under New Jersey's Domestic Partnership law, continue to exist as domestic partnerships. The new law does not change or expand the benefits, protections and responsibilities of existing domestic partners. Existing same-sex domestic partners will be given notice and opportunity to enter into a civil union but this is not an "automatic" conversion of domestic partnerships to civil unions. Once the Civil Union law goes into effect, new domestic partnerships created under the New Jersey Domestic Partnership Law will be limited to two persons each over the age of 62 who may be either opposite-sex or same-sex couples.

The new law also provides that a civil union relationship created in another jurisdiction which is valid in that jurisdiction is valid in the State of New Jersey. The law does not provide specific guidance with regard to same-sex marriages lawfully created in another jurisdiction. However, on February 16, 2007 the Attorney General of New Jersey issued a written opinion that as of February 19, 2007 New Jersey would recognize "government-sanctioned, same-sex relationships validly established under the laws of other States and foreign nations" as either civil unions or domestic partnerships. The Attorney General's Opinion further stated that in determining whether or not such a relationship established in another venue would be treated as a civil union or a domestic partnership would depend on an analysis of the rights conferred and not merely on the name given to such a relationship by the other jurisdiction.<sup>vi</sup> If you encounter a situation involving a civil union, domestic partnership, same-sex marriage, or other same-sex relationship created in another state or country, please consult with your underwriting counsel for specific instructions.

It is further noted that the law also amends the Law Against Discrimination to include civil union status. You cannot decline to insure or impose any special or different requirements or exceptions than you would for spouses in a marriage in the same circumstances.

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<sup>i</sup> The opinions expressed herein are those of the authors. Please contact your underwriter for specific instructions.

<sup>ii</sup> <http://lawlibrary.rutgers.edu/decisions/supreme/a-68-05.doc.html> [188 N.J. 145 (October 25, 2006)]

<sup>iii</sup> [http://www.njleg.state.nj.us/2006/Bills/AL06/103\\_.PDF](http://www.njleg.state.nj.us/2006/Bills/AL06/103_.PDF)

<sup>iv</sup> for additional information regarding applying for a Civil Union license see: [http://www.nj.gov/health/vital/civilunion\\_apply.shtml](http://www.nj.gov/health/vital/civilunion_apply.shtml); for additional information regarding the duties and obligations of civil and religious authorities to perform civil unions see: <http://www.nj.gov/oag/newsreleases07/civil-union-clergy-letter.pdf>

<sup>v</sup> As of February 19, 2007 the RTF-1, RTF-1EE, GIT/REP-1, GIT/REP-2, and GIT/REP-3 forms have been amended to incorporate reference to civil union couples.

<sup>vi</sup> Attorney General Formal Opinion 3-2007  
<http://www.nj.gov/oag/newsreleases07/ag-formal-opinion-2.16.07.pdf>  
Specifically, Civil Unions created under the current laws of Vermont and Connecticut; same-sex marriages created under the current laws of Massachusetts, Canada, the Netherlands, Belgium, South Africa and Spain; same-sex relationships (regardless of the name given) under the current laws of Great Britain, Iceland, New Zealand, and Sweden; and same-sex Domestic Partnerships created under the current law of California will be valid in New Jersey and treated as Civil Unions. ■

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## Notary QUIZ Questions

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1. Which is NOT a requirement to become a Notary in the State of New Jersey?
  - a) must be 18 years of age or older
  - b) a U.S. citizen
  - c) a New Jersey resident
  - d) a resident of an adjoining state maintaining a business or office in the state
  - e) you must not have been convicted of a crime involving dishonesty or a crime in the first or second degree
2. If a Notary is asked to explain the document being signed or assist in completing a document or a portion of the document, the notary should:
  - a) Assist whenever and wherever necessary so to complete the document for signing
  - b) Assist and answer any questions only if the signer has specific instructions from a professional or attorney
  - c) Refuse, and explain to the signer that they should seek advice from a professional involved in the details of the document or their attorney
  - d) Assist at a nominal fee

*Answers on page 13*

## ASK THE EXPERT

---

**Q:** Dear Expert:

Suppose that someone, without knowledge of the mortgagee, forges and then records a discharge of an existing (unpaid) recorded first mortgage ("old mortgage"). Thereafter a good faith new mortgagee ("new mortgagee"), for value and without knowledge of the discharge having been forged, (in reliance on the record) makes a new loan which is secured by a newly recorded mortgage. It may be assumed that the new mortgagee would only have extended the loan and taken the mortgage if it were in 1st position. Which mortgagee has priority?

– Perplexed

**A:** Dear Anonymous:

A forgery is "void", not "voidable" and thus has no validity. It is clear to me, therefore, that "old" mortgagee, having properly recorded its mortgage, is protected in its priority. "New" mortgagee, while having taken every reasonable precaution and having reasonably assumed that it was going to have a first lien, is nevertheless behind "old" mortgagee. This, of course, is one of the situations which prove the value of title insurance. On another note, however, I question why the person "closing" the new mortgage didn't double-check with the searcher for an open (or recently closed) mortgage as most people are not in a position to pay-off an existing mortgage (unless it is amortized) without obtaining the proceeds of a new loan to do so. It certainly would have been prudent, if not necessary, to make a telephone inquiry of a lender whose mortgage was recently terminated of record.

Dear Reader:

The expert is always looking for more questions that, hopefully, he can help you with. Please send them to [fmelchior@njtic.com](mailto:fmelchior@njtic.com). Thank you.

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# Report from the Legislative Committee

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By: *Frank Melchior, Esq., CTP*

Your committee has been busy on your behalf. Some of the bills of interest to our industry currently working their way through the legislative halls are the following, with comments as of the date this article was written:

**S-2229** which would permit certain inducements. We have created a sub-committee to explore ways of meeting the proponents needs without destroying the “level playing field” we are attempting to maintain.

**S-1649** is the electronic recording bill (previously referred to as the “Rice bill”) is making progress. Our consultant, David Ewan, has been most helpful in testifying before legislative committees and working with the legislative staff to shepherd this bill. While we had to make some minor, temporary concessions, this bill, if enacted, will be a major assist in taking us into the electronic age while modernizing some of our obsolete procedures.

Some of the many other bills, of major interest to us, are: **A-3588**, which would provide a limitation on *residential* mortgages, **A-3332**, which fixes riparian claim values at date

of application, **S-2080**, **A-3190**, **A-3341** and **A-3387** which would permit local realty transfer fees, **A-2606** shortening time period for adverse possession back to 20 years (more for woodlands), **A-218** which would prevent recording deeds older than 30 days.

Numerous other bills and regulations, of interest to us but of lesser importance, include those on governmental organization, notarial requirements, mortgagee’s handling of payoff requests, terrorism related attachments and privacy protection. We also support a Bar Association bill, about to be introduced, which should alleviate the “certified check” conundrum we frequently encounter when recording documents.

The committee has had a busy year . . . and the work keeps on coming in. Additional members are also welcome because we value their input and assistance. At the present time, the committee plans to meet (in person) approximately every two (or three) months with continuing e-mail meetings, discussions and dissemination of information between meetings. To join, send an e-mail to [fmelchior@njtic.com](mailto:fmelchior@njtic.com). ■

## COMING EVENTS

**NJLTA Annual Convention**  
June 3-7, 2007  
Waterfront Marriott Hotel  
Annapolis, Maryland

## Notary QUIZ Answers:

1. b) A U.S. citizenship is not a requirement, as long as you legally reside in this country under federal law. (Source: The New Jersey Notary Law Primer)
2. c) A notary should NEVER explain anything in or about a document being signed other than the notarization process. Doing anything other, may be considered the unauthorized practice of law. If questioned, a notary should always refer the signer to their attorney, other professional with knowledge of the documents contents or to the issuer/receiver of the document.

## New and Noteworthy

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**New Jersey Title Insurance Company** was acquired by CATIC Financial, Inc. in the latter part of 2006. CATIC Financial is the holding company of Connecticut Attorney’s Title Insurance Company, Inc., which does business in New Hampshire, Massachusetts, Vermont, Rhode Island and Connecticut; it also holds licenses in Maine and New Jersey. New Jersey Title Insurance Company is licensed to do business in New York, New Jersey and Pennsylvania. New Jersey Title Insurance Company will maintain all its current officers with Carl L. Samson remaining as President.

## On the Move

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**Ronald (Ron) J. Maas**, formerly of Fidelity National Title Insurance Co., has assumed the position of Government Affairs Director at the Real Estate Services Providers Council (RESPRO) in Washington, DC.

## RESOURCES FOR REAL PROPERTY PRACTITIONERS

(there is a possibility of some duplications; additional listings are always welcome)

### TEXT REFERENCES:

New Jersey Title Law & Practice  
Fineberg, Handbook of New Jersey Title Practice, 3rd Ed.  
See NJLTI, below  
Banks, mortgagees - where are they now?  
Kay, Directory (lender mergers & addresses)  
(800) 345-0203

### INDUSTRY ORGANIZATIONS:

www.alta.org - American Land Title Ass'n  
www.njlta.org - NJ Land Title Ass'n  
www.njlri.org - NJ Land Title Institute  
www.taanj.org - Title Abstracters Association of New Jersey

### INDUSTRY VENDORS (searches):

https://accessnet.state.nj.us/HIndex.asp State of New Jersey – Corporation Information  
www.acusearch.com  
www.charlesjones.com - Charles Jones LLC  
www.DataTrace.com - Data Trace (formerly Current Status)  
www.statecapital.net - State Capitol and Abstract  
http://www.thetitlereport.com - The Title Report

### LENDERS, LOCATE OR TRADE ORGANIZATIONS & BANKING

www3.fdic.gov/idaspl/index.asp - Fed'l Reserve Bank Information  
www.ffiec.gov/nic/default.htmwww.banking.state.ny.us/history.htm - NY Banking info  
www.federalregister.com/hpage/cc.html - Comptroller of the Currency  
http://www.efanniemae.com/singlefamily/forms\_guidelines/mortgage\_documents/sec\_1ns\_tr.jhtml?role=ou - FNMA state-by-state forms  
www.federalreserve.gov - Federal Reserve Board  
www.ffiec.gov - FDIC site, to get histories of fed banks  
www.getdownpayment.com - Nehemiah Program  
www.mbaa.org - Mortgage Bankers Ass'n  
www.mersinc.org/index1.htm - MERS  
www.naic.org/nj/mergers.htm - Bank mergers ,NJ  
www.njleague.com/BankMerge.htm - NJ Savings Institutions, merger info for  
www.payoffassist.com - Kay Directory  
http://wolffirm.com/assignment - Missing Assignment Database

### GOVERNMENTAL SITES, DOBI, OTHER, ALL STATES, ETC.

www.access.gpo.gov/su\_docs/aces/aaces002.html - GPO  
https://accessnet.state.nj.us/web2/images/leftcut3.gif - NJ Gateway to business service (business info)  
www.fedstats.gov/policy/access.html - Federal Statistics  
www.nara.gov - National Archives and Records Administration  
www.njbarexams.org - (for certificates of good standing for attorney insurance producer license renewals)  
www.njdobi.org - Generally  
www.njdobi.org/producers.shtml - Producer Information, Licensing, etc.  
www.njleg.state.nj.us - NJ Legislature  
www.netonline.com.  
http://ssdi.genealogy.rootsweb.com/cgi-bin/ssdi.cgi - Social Security Death Information  
www.state.gov/>http://travel.state.gov - State Department  
www.state.nj.us/state/darm/archives.html - NJ Department of Archives and Records Management (DARM)  
  
http://travel.state.gov/links.html  
Bureau of Consular Affairs  
www.travel.state.gov/links.html>http://travel.state.gov/links.html  
Links to Embassies:  
www.vitalrec.com/nj.html - DJ Vital Records  
www.zanatec.com/multiwin.html

### PEOPLE/ORGANIZATION (GENERALLY), LOCATE

www.411.com  
www.555-1212.com - reverse phone book  
www.anywho.com  
www.bigbook.com - verizon  
www.infospace.com  
www.infousa.com/homesite/index.html  
www.people.yahoo.com  
www.switchboard.com  
www.whowhere.lycos.com  
www.usps.gov - zip codes

### DECEDENTS (DEAD PEOPLE)

ssdi.genealogy.rootsweb.com/cgi-bin/ssdi.cgi/  
www.state.nj.us/health/vital/vital.htm

### LEGAL RESEARCH:

www.4.law.cornell.edu/uscode - US Code  
www.burco.lib.nj.us/law - Law library  
http://c2.com/w2/bridges/LnetStatePages - Limited Liability Co & Ptnrship laws  
www.cjnj.org/html/the\_nj\_bartender.html - NJ attorney disciplinary actions  
http://findlaw.com  
www.gpoaccess.gov - US Gov't generally, incl. U.S.C., CFR, Cong'r. Rec'd, etc.  
www.hrsa.gov/osp/docr/obtain/HBSTATES.HTM - Hill Burton sites  
www.hudclips.org/cgi/index.cgi - HUD  
www.judiciary.state.nj.us - NJ Courts  
www.judiciary.state.nj.us/oae/discsum01.pdf - NJ attorney disciplinary proceedings  
www.law.cornell.edu - law library  
http://lawguru.com/  
www.lawinfo.com - legal research; dictionary  
www.lawresearch.com/  
www.lawsourc.com/also/usa.cgi?usm - Uniform Laws and Model Acts  
www.nccusl.org - Nat'l Conference Commis. Uniform Laws  
www.njb.uscourts.gov - Bankruptcy Court in New Jersey  
www.njlawnet.com  
www.njleague.com - BankMerge.htm New Jersey League of Community and Savings Bankers (tracing former lending institutions)  
www.njleg.state.nj.us - NJ Legislature (recent & pending bills)  
www.njstatelib.org/cyberdesk - New Jersey State Library  
http://pacer.psc.uscourts.gov/pacerdesc.html  
www.state.gov/www/authenticate/index.html - Dept of State page for getting docs abroad  
www.state.nj.us/dobi/index.html - NJ Dep't Banking & Insurance  
www.state.nj.us/lps/ca/director.htm - Directory of State licensees  
http://thomas.loc.gov - Congress on the Internet  
www.titlelawannotated.com - Title Law Associates (Bill Hart's web site)  
http://uscode.house.gov/usc.htm - U.S.Code

### MISC. USEFUL INFO

www.dictionary.com  
www.m-w.com - Merriam-Webster dictionary & thesaurus  
http://ray.met.fsu.edu/cgi-bin/amortize - Amortization tables

### SEARCH ENGINES & DEEP SEARCH SITES

www.37.com/  
www.alltheweb.com - fast; crawler based  
www.altavista.com - advanced boolean query  
www.askjeeves.com - natural language  
www.beaucoup.com  
http://beta.profusion.com/  
chubba.whatuseek.com/i/headline2-tips-on-using-chubba.gif  
www.completeplanet.com/  
www.dogpile.com - searches multiple engines  
www.excite.com - concept searches  
www.google.com  
www.hotbot.com - by date or category  
http://gwis2.circ.gwu.edu/%7egprice/direct.htm  
www.google.com/  
http://infomine.ucr.edu/search.phtml  
www.infoplease.com - General Information  
www.infospace.com - Ultimate directory  
www.invisibleweb.com/  
www.kartoo.com  
www.lii.org - Librarian's Index to the Internet  
www.looksmart.com  
www.lycos.com/  
http://dir.lycos.com/reference/searchable\_databases  
www.metacrawler.com  
www.Qbsearch.com  
www.rdn.ac.uk  
www.researchville.com  
www.surfmax.com  
www.teoma.com - crawler  
web.webcrawler.com/d/search/p/webcrawler/ - crawler  
www.webdata.com/webdata.htm  
www.wisenut.com  
www.yahoo.com/

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