

The ADVOCATE

New Jersey Land Title Association

President's Message

By: Elissa Buonarota, Esq., President

First and foremost, all title issues aside, my sincere apologies to those movie buffs who were disappointed by my mis-statements as to who played whom in Casablanca. Well, who knew that not only would I have people read my article, but also have "movie experts" politely point out my error. So, everyone without the DVD, Claude Rains played Capt. Renault, Conrad Veidt played Major Strasser and Paul Henreid played Victor Laslo. My apologies again to those with far more movie knowledge and better memories than I.

Hopefully, all had a good summer. The annual picnic and Tech Expo were very well attended. Congratulations to all who volunteered their time and talent to make the events successful.

Anyway, to title concerns.

Well, where else would a "city girl" go in October but New York City for the ALTA Annual Convention. The Convention this year was held at the beautiful Marriott Marquis in the center of Times Square. From Mark Billbrey's witty welcome to Rudy Guiliani's inspiring keynote to the annual banquet finale, a wonderful time was had by all.

The "usual suspects" were there, of course, and it's always fun to catch up with old friends and acquaintances, and meet new ones. Being on the membership committee gives me a unique opportunity to welcome the newcomers into the group and chat about what is important to them and what they are looking for in ALTA. The answer is almost always the same, to find out how best to compete (and survive) in the down turn in refinancing and "bubble about to burst" markets. What surprises them most is that, no matter what the state and what size of their business, all agencies are going through the same problems and predicaments.

Many this year were greatly affected by Hurricane Katrina. Those in Louisiana and the surrounding states were still wondering how they were going to get through the next few months, and were especially vocal about how appreciative they were that the others in the association reached out to them with prayers, supplies, support and even job offers. It is truly heartwarming to see that, although there may be differences in opinions and viewpoints as to where this industry may be going, all those differences are put aside when catastrophe strikes.

While at these conferences, it's also important to be aware of the new, or not so new, things going on with the association. HUD and RESPA Reform took one of the front seats again, although with a different angle – while some at ALTA tell us the "bundling" aspect is gone, others tell us it's still here, but transformed into a new Good Faith Estimate "guaranteed price". As I stated at the recent Agency section meeting, it is important for **all** of us to be aware of where this industry is heading and – better to be one of the ones driving than be in the back seat wondering what happened and how we got here. Of course, the only way to do that is to become involved, so please keep an eye out and attend the next Agency meeting. Or, to paraphrase another conversation in my favorite movie, "Rick, what brought to Casablanca?" "My health. I came to Casablanca for the waters." "What waters, we're in the desert!" "Oh, I was misinformed".

One last serious and important note. This industry recently lost someone who had served this association as an affiliate member for a very long time. John Eler was a well-respected presence in our industry and someone who stepped in to lend a hand when asked, to offer whatever assistance he could and to flash that big smile when he saw or heard something he liked. He will be greatly missed. My sincere condolences to Diane, Chris and the Eler family. ■

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The ALTA in a . . . “New York State of Mind!”

By: Alfred D. Santoro, Jr., Esq., CTP, Esquire Title Services, LLC

While “...Some folks like to get away, take a holiday from the neighborhood...” Title Insurer’s across the country ‘... took a Greyhound, on the Hudson River Line...’ and cars and planes for that matter and joined the American Land Title Association at their annual convention October 5 – 8, 2005 at the Marriott Marquis in Times Square. Attendees joined 36 different Exhibitors for four days of education and discussion of the state of the Industry.

Actually, the unofficial program started on Tuesday the 4th. That’s when many of the standing ALTA committees met face to face to discuss their assignments from the Board of Governors. Wednesday morning began with the annual Abstractors and Title Agents Section Meeting. This meeting is famous for it’s frank discussions of ALTA Policy, Government Regulation and Underwriter Practices from an agent’s perspective and this year was no exception. In the forefront this year was the HUD reform “Roundtables” held across the country as sounding boards for the direction of RESPA reform. Two primary concerns became clear at the meeting: 1) Will HUD listen to what was said? and 2) There is an ever widening gap between the viewpoints of Agents and Underwriters with respect to things like AfbA’s , bundling of services and Federal preemption of State Law.

The daily program for Thursday and Friday included numerous Professional Development Sessions and Expo Sessions. The former concentrated on matters of urgency to our businesses such as RESPA – Packaging in the Marketplace, Managing Top Talent – Retaining Employees and Mortgage Banking and Title Claims. The Expo Sessions featured presentations by Exhibitors and Sponsors on automation, expanding business opportunities, document management, marketing and other tools for our daily business.

Of particular interest was RESPA – Packaging in the Marketplace. In a packed session, the panel discussion examined HUD’s new proposals to simplify the closing process. Apparently gone are the numerous “ Guaranteed Packages” proposed several years ago. In it’s place, HUD seems to be concentrating on a new Good Faith Estimate form, which has increased in size from 1 to 4 pages! But look closer. The new GFE does “guarantee” closing costs! This is still bundling, in a different guise.

The educational sessions were sharply punctuated by two presentations. On Thursday morning, attendees were treated to the lively and humorous insights of Terry McAuliffe, former chairman of the Democratic National Committee. Saturday morning began with tenor Ronan Tynan singing “America the Beautiful” to a standing ovation. Afterward, we heard from noted economist Robert Schiler on the future of our market. Lastly, keynote Speaker Rudolph Giuliani inspired his audience with his views on Leadership and Courage in today’s world.

Apparently, many in New Jersey find it “...easy living day by day, out of touch with the rhythm and blues...” Especially with this meeting so close, our attendance as a State Association was disappointing at best. Our presence and participation has never been more important. Two years ago,

I sat in an Agent and Abstractors meeting where the ALTA heard the voice of it’s agent membership loud and clear in opposition to the RESPA reform proposals then being sponsored by the Mortgage lending industry. The ALTA’s position changed and proposals that could have been devastating to our industry and the home-buying consumers were defeated.

When “...it comes down to reality...” the ALTA is your future in Title Insurance. You “...don’t have any reasons...” not to participate, just don’t get left behind! Get in an ALTA state of mind and participate.

The next major meeting is the 2006 ALTA Federal Conference at the Fairmont Hotel in Washington DC. March 7-8th. You can get information on the meeting and membership at www.ALTA.org or feel free to contact me at alsantoro@titleesq.com. ■



RESPA Seminar



Rudi Giuliani one of the speakers at the conference



From left to right: Stephen Phillips, Elissa Buonarota, Rick Holder & Pat Roe

A Word from Our Consultant

This issue discusses document rejection.

By: Dave Ewan, Esq.

reject

transitive verb [ri jekt] (*past and past participle re-ject-ed, present participle re-ject-ing, 3rd person present singular re-jects*)

1. **not accept something:** to refuse to accept, agree to, believe in, or make use of something, e.g. because it is not good enough or not the right thing

noun [r? jekt] (*plural re-jects*)

something or somebody not wanted: somebody or something that is refused as not meeting a required standard or is otherwise unsuitable

[15th century. < Latin *re-ject-*, past participle of *re-icere* “throw back” < *jacere* “to throw”]

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Background

We all know how it feels to be rejected. Life’s experience teaches that nothing is certain, especially when we are dealing with other people. Our opinions, philosophies, and our work products are all subject to being rejected by others.

Although not a psychologist, I would venture to say that there is not one person reading this article who could honestly say “I enjoy being rejected.” Most of us desire to be accepted by others (well, at the very least not to be rejected by them).

We also know through experience that some of the documents we send for recording will be rejected by the Clerk or Register. Many times, we review the rejection letter and curse ourselves for not spotting the obvious reason that the documents were rejected. Other times, we review the rejection letter and can only think “huh?”

If it is any consolation, New Jersey is not alone in its document rejection problem. Nationally, this is seen as one of the biggest inefficiencies in the recording system. One national study has concluded that, on average, a rejected document costs \$50.00 more to process than one that is not rejected. The cost allocation is roughly \$40.00 to the document’s submitter (cost associated with processing, correcting, and resubmitting) and the remaining \$10.00 to the recording official (cost associated with returning the document, additional processing due to rejection, and also re-examination upon resubmission).

While this cost may not seem to be great, it is the scale of the problem that really hits home. It has been estimated that the national average for document rejections is around 18 percent (i.e. almost one of every five documents submitted for recording in the land records will be rejected). At times, here in New Jersey, we have had some counties estimating that their document rejection rate was as high as 33 percent – fully one of every three documents would be rejected.

Why?

Seeing rejection rates of 33 percent certainly begs the question of why these documents are being rejected. Virtually everyone

who has examined the document rejection problem concludes the same two reasons account for the bulk of all rejections. In order of precedence, the two top rejection reasons are: (1) improper fees submitted with the documents; and (2) a flaw in the document’s acknowledgement. These two reasons also appear to account for the vast majority of rejections in New Jersey as well.

The New Jersey statute specifying the requirements for document recording is N.J.S.A. 46:15-1.1, entitled Prerequisites to recordation, which provides:

- 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:
 - (1) the instrument is in English or accompanied by a translation into English;
 - (2) the instrument bears a signature;
 - (3) the instrument is acknowledged or proved in the manner provided by this title;
 - (4) the names appear typed, printed or stamped beneath the signatures of any parties to the instrument and the officer before whom it was acknowledged or proved;
 - (5) any required recordation fee is paid; and
 - (6) if the instrument is a deed conveying real property,
 - (a) it fulfills the requirements of P.L.1968, c.49, s.2 (C.46:15-6),
 - (b) it includes the name and signature of its preparer on its first page and
 - (c) it includes a reference to the lot and block number of the property conveyed as designated on the tax map of the municipality at the time of the conveyance or the account number of the property. If the property has been subdivided, the reference shall be preceded by the words “part of.” If no lot and block or account number has been assigned to the property, the deed shall state that fact.
- b. An instrument, to be entitled to recordation, whether made by an individual or by a corporation or other entity, is not required to be executed under seal, or to contain words referring to execution under seal.

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A Word from Our Consultant (continued)

Thus, even though the statute contains six enumerated requirements for documents to be recorded, only two of these account for the bulk of the documents being rejected, namely items (3) (acknowledgements) and (5) (fees).

What Can Be Done?

So, now knowing why documents are being rejected, what can be done to remedy the situation? As stated, the primary reason for a document being rejected is improper fees. Space does not allow me to discuss acknowledgement problems and all the various permutations of acknowledgements or proofs. Besides, we have a big enough problem with improper fees since, for us here in New Jersey, “fee” encompasses both the recording fee, applicable to all documents, and the Realty Transfer Fee, applicable to deeds.

1. The Recording Fee

As for recording fees, we simply have an archaic system in place. Our original recording fee structure, based on the length of the document being recorded, was formulated to compensate the Clerk or Register for the time and effort of copying into the official record books (in longhand by quill pen) word for word, the text of the document presented. Needless to say, this type of fee structure has very little bearing when documents are scanned or imaged by machine, and even less bearing when electronic documents are considered.

Added to the already archaic fee structure is an overabundance of document types, each with its own fee idiosyncrasies. Take, for instance, removing a mortgage from record. You can “cancel” the mortgage by presenting the original mortgage in its entirety endorsed for cancellation and paying the \$20.00 cancellation fee. Or, you could obtain a discharge of the mortgage and pay \$30.00 for the first page of the discharge, \$10.00 for each additional page, plus the \$10.00 marginal notation fee.

The only modern fee structure that appears to meet the needs of all involved parties is that of a “fixed fee” or “per document type” recording fee structure. While not eliminating rejections due to improper fee submission, such a recording fee structure would drastically reduce the number of this type of rejection. This would be especially so, if the number of document types were kept to a minimum (i.e. by not having one document type named “deeds” and another named “easements” with differing fees, but by having one document type encompassing both these types of documents).

The other salient point of a “fixed fee” or “per document type” fee structure is that it works exceedingly well with all types of electronic documents – an electronic deed is still a deed, and should be charged accordingly, even though the space it occupies is an order of magnitude less than that of a paper-based deed. Such a fee structure also obviates the need to address how many “pages” are in an electronic document.

2. The Realty Transfer Fee

As for the Realty Transfer Fee, while it is not archaic, it is arcane. Other states (e.g. Pennsylvania) have easily calculable transfer fees, usually based upon a percentage of the consideration paid for the transfer. I know of no other state that imposes a transfer “fee” based upon increments of \$500 of valuation, let alone the number of differing effective rates based upon (1) the status of the grantor (e.g. whether the grantor is a senior citizen or disabled); AND (2) the status of the property (e.g. low/moderate housing); AND (3) the sales price of the property (e.g. sales in excess of \$350,000 impose an effective tax tier retroactive to the first dollar of consideration; in excess of \$1,000,000.00 an additional “fee” is imposed on the grantee retroactive to the first dollar of consideration).

Legislative revamping of the Realty Transfer Fee is the only real cure available. Hopefully, someone will take up this cause in the near future. Until that point, however, perseverance and vigilance are the orders of the day.

An interesting note on the correlation of the recording fee and the Realty Transfer Fee: if the consideration of the transfer is less than \$100.00, an exemption to the Realty Transfer Fee can be claimed by the grantor. Assuming consideration of \$99.99, the grantor would be exempt from a \$2.00 Realty Transfer Fee. To claim the exemption, an Affidavit of Consideration (RTF-1) must be completed and attached to the deed. The cost to record the Affidavit as part of the deed is \$10.00. Thus, it costs \$10.00 to be exempt from a \$2.00 tax. Go figure.

What Can You Do About Document Rejection?

The NJLTA is conducting a study aimed at classifying and quantifying document rejections. The type of rejections we are looking for are not those which fall into the realm of the obvious, but those to which your response is “huh?” If you have any documents rejected and cannot figure out why they were rejected or think that they should not have been rejected to begin with, please submit them for our study. You may submit by either fax or email, and your submission should consist of: (1) the rejection letter or form from the county specifying why the document was rejected; and (2) the page(s) of the document referred to in the rejection letter. Fax to 866-340-5267 or email to dewan@speakeasy.net. ■

Selecting the Best Off-Site Records Center – Do it Right the First Time

By: Joseph Germinario and Clara O'Boyle

Here's a secret most people don't know, there are no national standards for archival companies. Most firms select an archive company to prevent losing valuable office space. However, choosing the best vendor with the services you need is not easy.

When collecting bids, be sure to visit every company that is quoting. This allows you to review: location, building structure, security, environmental controls, fire suppression systems, customer service and value.

Frequently, companies will not permit you to tour the areas where your boxes will be stored. If that's the case, run! There's something they don't want you to see. Check for security breeches like open windows or doors. Look for water leaks, cleanliness and neatness. Boxes should never be stacked more than 3 high; otherwise crushing can result.

Archive firms will have a maximum travel radius for guaranteed deliveries. Be sure that your organization's pick-up location lies within that radius if emergency deliveries are important for the operation of your business.

Examine the street location of the building. It needs to be above street level and not in a flood zone. Building structure should appear sound. Look for the obvious- holes in the walls, cracked foundations, etc.

Employees handling your confidential files need to be bonded. Review how access to the record center is restricted. Are all entrances locked? Which areas and vaults are restricted by keys, combination locks or access cards?

Some companies offer document vaults for the special needs of vital and historical records. There should be a UL® label on the vault door that will tell you its time and temperature rating, not just a "fire rating". Environmental levels for paper documents in a vault should be 68°F with 38% relative humidity. Inappropriate temperature and humidity will damage records very quickly.

Fire suppression should be designed to not only extinguish the fire but to limit collateral damage. Some complexes have installed in-rack sprinklers. For limited damage in a fire, the building should be compartmentalized with fire walls.

If you need 24/7/365 access to your information assets, make sure access is available and learn the procedures for after hours' service. Ask what rights you have as a customer if your boxes or files are not delivered on time.

Some data management firms offer viewing rooms where you can examine your files. Look for viewing rooms that are secure and large enough to handle pallets of boxes inside.


An exceptional archive company will have a customer service department that puts the customer first. When critical files are off-site, a professional, knowledgeable and courteous person on the other end of the phone is paramount. If a problem or an emergency were to arise, a well trained employee would keep you informed of the status of your request until everything has been resolved.

Evaluate the firm's services for value. Storage companies with a dynamic filing system can find your files quickly. Consider how much time you spend in your office looking for files and how frustrated you get when they are not easily found. Boxes stored off-site allow you to use your valuable space for revenue generation.

These 7 categories will help you evaluate archival companies thoroughly. The best data management company for you should save you retrieval and filing time, valuable space, and finally – money. ■

Joseph Germinario is Vice President and founding partner of Allstate Business Archives in Paterson and Pennsauken, NJ. Joe is a committee member with Professional Research and Information Services Management (PRISM) and the Association of Records Managers and Administrators (ARMA).

Clara O'Boyle is the Marketing Coordinator for Allstate Business Archives.

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Report from the Legislative Committee

By: Frank Melchior, Esq., CTP

The Legislative Committee has, with the capable assistance of the Marcus Group, your association's lobbyist, monitored many bills, made recommendations and testified before legislative committees during the last year. Generally speaking, we have been successful in either keeping "bad" bills from being enacted or have been able to get the legislation modified to prevent damage to our industry.

One bill which was intended to permit substantial bankruptcy exempt homestead exemptions, was so poorly drafted that, even with changes we recommended, is so fraught with problems that we still oppose it, was passed by both houses of the legislature and is now on the Governor's desk awaiting his signature. Having helped to arouse other opposition to the bill we are now hopeful that the governor will veto the bill and return it to the legislature where, hopefully, it may die or be substantially re-written.

Another bill, which we have heard will not be acted on during the current legislative session but will be re-introduced in the next session, is S-1800 which we **strongly favor**. In conjunction with the Recording Practices Committee, we have prepared a legislative summary sheet which we hope will inform our legislators as to the importance of passing this bit of modernization. The summary sheet states substantially the following substantive (with a little more detail added) changes.

The bill is based upon the New Jersey Law Revision Commission Final Report relating to Title Recording and updates our practices to recent federal legislation and addresses the methods of recording and indexing in the electronic (as well as paper) age. References to separate sets of books or separate databases for different kinds of documents have been deleted, since with modern technology, an index serves the same function. Requirements for marginal notation of documents also have been deleted; computerized indexes serve the same purpose.

There are provisions allowing format requirements for documents. The problem of formatting being more acute if electronic equivalents to paper documents are to be accepted. Format requirements will be standardized throughout the State so that recording offices can accept electronic documents from a variety of sources and that persons will know and be able comply with them regardless of the office in which they are being recorded.

The bill also provides for the following items of interest to the title industry:

Per Document Recording Fee: Because electronic documents do not contain pages the Bill provides a per document recording fee rather than the current per page recording fee. This will also decrease rejections by the recording office, thus lowering operating costs for the recording official and reducing returned instruments.

Cover Sheet: A cover sheet summarizing the contents of the underlying document is provided for to enhance data quality and expediting recording of the document.

Index: A single index for all documents, regardless of type, is provided for to simplify searching for multiple document types and also to enhance the reliability of the recording system by indexing all documents in only one place; eliminating the possibility of an instrument being recorded in an inappropriate book.

Marginal Notations Eliminated: Marginal notations are eliminated. Better indexing makes marginal notations redundant and also reduces the possibility of error in the public record (i.e. a marginal notation is made on the wrong document). The recording system's quality increases by eliminating marginal notations

Notice of Settlement: The Notice will be a recorded (not filed) document with a 60 days "life" rather than the current 45 days and authorizes recording a discharge thereof.

"Recorded" Defined as being (1) indexed and (2) imaged and placed in the permanent records of the recording office. Prior to both conditions being met it would NOT impart constructive notice.

Per Document Recording Fee: A flat "per document" recording fee would replace the "per page" fee. This will decrease rejections for improper fees and equalize paper and electronic (which has not "pages") recording charges.

Electronic Recording Specifications: There are no direct specifications for electronic recording, leaving regulation of this area to the Division of Archives and Records Management thus providing flexibility and the ability to react quickly to changes in technology as they occur and are implemented.

Additionally, there are benefits to the lending industry and to consumers as good faith estimates and other HUD requirements can be more accurately met. ■



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IN MEMORIAM

The past several months have seen the passing of two outstanding members of the title community. Both will be remembered not only as true professionals but more so as wonderful friends.

John D. Eler, the president of State Capital, passed away on November 6th, after losing his fight against cancer. John comes from a family that has participated in and shaped our profession for nearly a century. He will be sorely missed by his family and all of us who knew him. The family has asked that all memorial contributions be sent to: The New York Brain Tumor Project of Weill Cornell Medical College, c/o Dr. Susan Pannullo, Director of Neuro-Oncology, New York Presbyterian Hospital – Weill Cornell Medical Center, 525 E. 68th Street, PO Box 99, New York, NY, 10021.

James, “Jim” Homiak, of the Trident Land Group of Prudential Fax & Roach, and formerly of Sharpe Title, Inc., died on October 30th. For over 5 years Jim fought his battle with cancer. Jim’s family has asked that those wishing to make a contribution in his memory send it to Princeton Healthcare System Foundation, 253 Witherspoon St., Princeton, NJ 08540, Attn: James Homiak Hospice Memorial Fund or contact www.princetonhcs.org/page1395.aspx.

**As our 1st anniversary approaches,
all of us at Priority Search Services, LLC would like to say,**

Thank You

**to all of you for all of your warm-wishes and support this past year.
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Wishing you and all your families a Happy and Joyful Holiday
Season and a Happy, Healthy and Prosperous New Year.**



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COMING EVENTS

NJLTA Agency Section Meeting

January 12, 2006, 4 PM
Holiday Inn
Jamesburg, NJ

NJLTA Agency Sponsored Seminar

January 12, 2006, 6 PM
Holiday Inn
Jamesburg, NJ

NJLTA Board of Governors Meeting

January 18, 2006, 10 AM
Sheraton at Woodbridge Place
Iselin, NJ

NJLTA Board of Governors Meeting

March 15, 2006, 10 AM
Sheraton at Woodbridge Place
Iselin, NJ

ALTA Federal Conference

March 7-8, 2006
The Fairmont Hotel
Washington, DC

RESPRO Annual Conference

April 3-5, 2006
Mandarin Oriental Hotel
Washington, DC

NJLTA Agency Section Meeting

April 13, 2006, 4 PM
Holiday Inn
Jamesburg, NJ

ALTA Tech Forum

April 30 – May 2, 2006
Las Vegas, NV

On the Move

Camelot Title Agency, LLC, of Woodbridge, NJ, has announced the appointment of **Troy Cavallaro** as Executive Sales Director. Mr. Cavallaro comes from Centrix Financial. He will be concentrating on the company's core target market. **David Colletti**, also of Camelot, has been named Senior Account Executive. Mr. Colletti was previously with Accredited Home Lenders and Wells Fargo Financial.

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