

# The ADVOCATE

New Jersey Land Title Association

## Drye v. United States Disclaimers and Federal Tax Liens

By Gary M. Ham,  
State Counsel for Lawyers Title Insurance Corporation

On December 7, 1999 the United States Supreme Court, in *Drye v. United States* (No.98-1101), held that a disclaimer did not defeat or divest federal tax liens which had been filed against the disclaiming party prior to the filing of the disclaimer.

At the time of his mother's death, Rohn Drye, Jr., was insolvent and owed the Federal Government some \$325,000 on unpaid tax assessments, for which notices of federal tax liens had been filed. His mother died intestate, leaving an estate with a total value of approximately \$233,000 to which he was sole heir. Drye disclaimed his interest in his mother's estate, which then passed by operation of Arkansas law to his daughter. The issue before the Court was whether Drye's interest as heir to his mother's estate constituted "property" or a "right to property" to which federal tax liens attached under 26 U.S.C. § 6321, despite Drye's exercise of his state law right to disclaim his inheritance.

The Court determined that under state law, Drye had the unqualified right to receive the interest in the estate or to channel that value to his daughter. According to the Court, the "control rein" he held under Arkansas law, (i.e. his right to either accept the inheritance or disclaim it) rendered the inheritance "property" or "rights to property" belonging to him within the meaning of

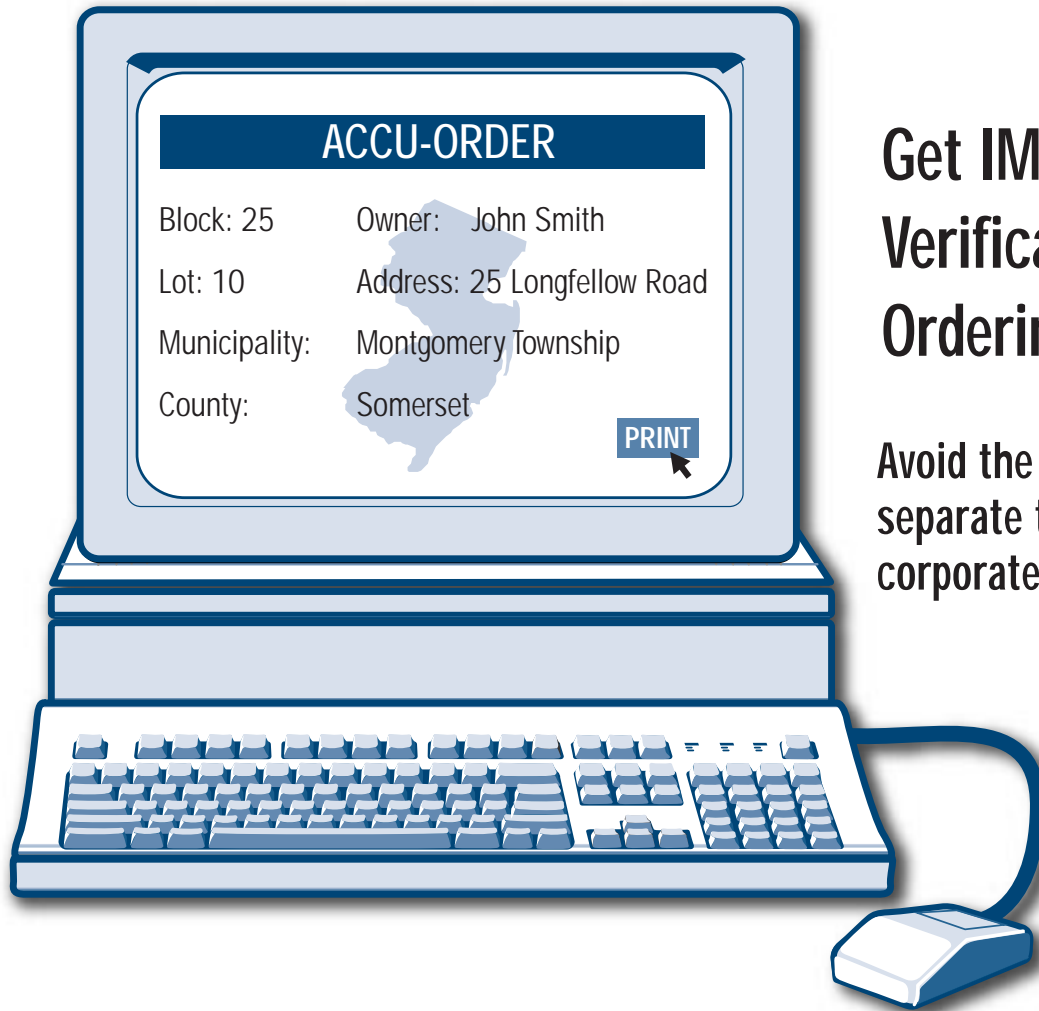
26 U.S.C. § 6321 and hence subject to the federal tax liens already filed against him. Once it had been determined that state law created an interest in Drye sufficient to satisfy the requirements of the federal tax lien provision, state law was inoperative to prevent the attachment of the federal liens.

The Arkansas disclaimer statute is similar in certain respects to the New Jersey disclaimer statute, N.J.S.A. 3B:9-1 et seq. Both statutes allow the filing of a disclaimer within 9 months after the death of the decedent and both create the legal fiction that the disclaimant predeceased the decedent; consequently, the disclaimant's share of the estate passes to the person next in line to receive that share (see N.J.S.A. 3B:9-5 and 9-8).

Under New Jersey law, The Statute of Devise and Descent (N.J.S.A. 3B:1-3), provides that upon death, title to decedent's property devolves by operation of law to his heirs at law (intestacy) or to his devisees (testacy). It is clear, therefore, that under N.J. law upon death of the decedent, an heir or devisee has a property interest which would qualify as "property" or "rights to property" under 26 U.S.C. § 6321 and consequently be subject to attachment by federal tax liens.

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# Good Funds

*By Frank Melehoir, Vice President, Associate Regional Counsel for First American Title Insurance Company*

The “Good Funds” law has been in effect for some time now. A reading of economic forecasts and news indicate that interests rates have gone up – and are likely to continue rising – with the resulting pressure on some lenders causing a potential for serious losses to persons who ignore the law and sound underwriting principles. It has become apparent from claims experience in the industry that a reminder is now timely.

Simply stated the law (N.J.S.A. 17:46B-10.1) provides that, as to insurance producers, (a) all settlement funds must be maintained in a trust (escrow) account and shall not be commingled with other funds of the title entity and (b) no disbursement shall be made on closings settlements unless the funds have been deposited in the trust account by cash, electronic wire transfer, or certified, cashier’s, teller’s or bank check, or other collected funds, except for amounts not exceeding \$1,000 which may have been deposited in un-collected funds. The act goes on to define a “bank check” as a negotiable instrument drawn by a state or federally chartered bank, savings bank or savings and loan association on itself or on its account in another state or federally chartered bank, savings bank or savings and loan association doing business in this State. A “teller’s check” means a draft drawn by a bank on another bank, or payable at or through a bank. It is noteworthy that the act does include checks from other title companies nor from attorney trust accounts as “good funds”.

The Department of Banking and Insurance (“DOBI”) has informally indicated that it may issue Regulations which include these two sources as “good funds” or, in the event that DOBI’s analysis leads them to believe that they lack the statutory authority to so regulate, that they will probably agree to proposed legislation to add these two categories to the list of “good funds”. DOBI has indicated that it will not include Realtor trust account checks in the “approved” list because these accounts are not audited on a regular basis.

A separate statute, N.J.S.A. 17:11C-22(k) requires mortgage bankers and brokers to furnish “good funds” or a “teller’s check”, which is defined as a “draft drawn by a bank on another bank, or payable at or through a bank” prior to, or at, the closing.

As interest rates rise, some lenders may find themselves in a financial “squeeze” resulting from the change in interest rates between the time they committed for the loan and the rate prevailing at the time of delivery of the loan. This may – if past experience is a predictor of future events – cause some thinly financed loan originators to run out of money. Should that occur, the settlement agent who closed on a promise of future collection of funds might find that these funds would not materialize. Should this happen, ask yourself just whose money you disbursed. You may find that (a) it was your own money or (b) that, by disbursing someone else’s money out of the trust account, you may have (legally speaking) embezzled the funds belonging to the other person(s). This, in addition to the potential monetary liability, can be criminally prosecuted.

Is all of this conjecture? NO!!! There is presently pending a small matter in which an agent closed deals for a “good customer” (mortgage broker) who did not furnish good funds and – after his checks “bounced” – has been found by government investigators to be “short” in excess of \$2,000,000. Needless to say, this title insurance producer is now having to deal with the problem, a heavy burden, . . . all because (s)he tried to appease a “good customer”.

Don’t let this happen to you. ■

# Who Wants to Be a Scholarship Winner?

**By: Laurence J. Usignol**

**State Counsel, First American Title Insurance Company**



The New Jersey Land Title Association takes great pleasure in announcing that Elliot Fineberg of Highland Park, Middlesex County, New Jersey is this year's

winner of its John R. Weigel Scholarship Award. This Award, named in honor of the Association's Director Emeritus who served the title insurance industry for over twenty years with great distinction, provides an \$8,000 scholarship to Elliot, now in his senior year at Hillel Yeshiva High School in Deal, New Jersey. Elliot is planning to pursue an Aviation Management major at Ohio State University.

"Elliot Fineberg was clearly the most qualified applicant which the Association reviewed this year, and we have every confidence that he will enjoy great success at Ohio State," said Allen J. Exelby, the current President of the Land Title Association. "The Land Title Association is very happy to be of financial assistance to one of its own, especially someone with such sterling credentials as Elliot."

Elliot Fineberg was eligible for consideration because of his father's employment by an underwriter member of the New Jersey Land Title Association. Elliot's father, Lawrence J. Fineberg, serves as Vice President and New Jersey State Counsel for Chicago Title Insurance Company. Larry Fineberg is admitted to the practice of law in New Jersey and New York, is a member of the Middlesex County and State Bar Associations, and is a past Chairman of the Real Property, Probate and Trust Law Section of the New Jersey State Bar Association.

Elliot is the beneficiary of the generosity not only of the Board of Governors of the NJLTA, but also of the Agency Section of the NJLTA. The Agency Section matched the usual \$4,000 Scholarship bestowed by the NJLTA Board of Governors with another \$4,000, doubling the prize to \$8,000 over a four (4) year period.

Elliot Fineberg joins a growing list of previous Weigel Scholarship Award winners whose high school careers epitomized academic excellence. The first Weigel Scholarship was awarded in 1998 to Katherine A. Ramler. Ms. Ramler's application was sponsored by Agency Section member Anthony F. Gerike of Mohawk Abstract Company, Medford Lakes, Burlington County. Ms. Ramler is a sophomore at Clemson University where she is enjoying success in a math major.

The 1999 Weigel Scholarship was awarded to Theresa E. Hayes, sponsored by underwriter member Stewart Title Guaranty Company. Stewart employs her father, Harold C. Hayes, as its NJ District Manager. Ms. Hayes, who was also named a National Merit Scholar, is in her freshman year at Rutgers, The State University. She is enrolled in the University's Honors Program at the College of Engineering where she is pursuing a degree in Biomedical engineering. ■

## CONTINUING EDUCATION COURSES

**The Title Academy of New Jersey, L.L.C.**  
is offering the course

*"Deeds, Judgment and Tax Liens"*  
July 20, 2000

**New Jersey Land Title Institute**  
video presentations

*"Commercial Real Estate Transactions"*  
July 18, 2000

*"Surrogate Court Proceedings"*  
August, 2000

# The Forum in Las Vegas

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*By: Michael Kehol, Eastern Title Agency, Inc.*

Like everyone else in Las Vegas, I wanted to go home a winner. Not getting the right vibes at certain tables, I passed, seeking those where I felt more comfortable. There was a lot of money riding on this, so I wanted to make the right choice. If I were lucky here maybe it would carry over into the casinos. You see I was in the ballroom for ALTA's Tech Forum 2000, not the gaming floor. This well attended Forum was held at the Mirage in Las Vegas from the evening of March 13th through the afternoon of the 15th. It consisted of a CE seminar, 20 educational sessions, eight vendor overviews, three general meetings, participation from over 40 vendors and all the private demos that you could arrange in a 48-hour time slot.

While the obvious thrust of the event was technology, related matters also proved interesting. Carol Foglesong, the Clerk for Orange County, FL., gave some officials' perspectives on the Clerk's Office of the future at the Recorders' Technology Strategies Session. Carol stated that she did not want us (title people) in her office; she has neither the space nor the money to accommodate us. She claims that a document sent electronically to her office for recording can be returned with its recording information within five hours. She is creating an office where all documents are available via the web.

However, as with all changes, there are some trouble spots, most notably the privacy issue. For example, Florida, like New Jersey, requires the addresses of the parties on the deeds. Ms. Foglesong receives numerous calls from people asking that their address not be shown; generally the calls are from law enforcement officials. Legally the address on the deed is part of the record and available to the public, as is the information on mortgages, judgments, etc. The old system requires some skill and personal initiative to obtain this data, but the Internet grants accessibility to the lowliest of couch potatoes. It appears that this privacy matter has no simple answer and will most likely be dealt with by legislative action.

The software portion of the Forum featured numerous known products and a few new ones. With the notable exception of a home grown package, all of the large vendors fail to offer a solution that can accurately calculate the New Jersey rates and produce an invoice. But there is one new area that is very intriguing: web-based software.

A presentation by a web-based vendor struck me with its focus. He began by stating that the biggest hindrance to getting work done is the telephone. By permitting clients to access their files and determine their status, numerous interruptions could be avoided. This self-service method of placing orders, amendment requests and getting the product is very attractive. Besides being web-enabled there are other advantages: automatic (silent) upgrades, secure back-ups, redundant systems (no more hard drive failure), accessibility (Internet access translates to 24/7-file access) and lower hardware requirements. While there is no perfect solution, this type of product does appear to best meet the industry's expanding needs.

The Tech Forum is an ideal way for determining what is available in the marketplace, finding new marketplaces and keeping up with what your competition is providing their clients. Next year I hope to see an automated closing with digital signatures, smart cards, video conferencing and electronic transfer of both funds and documents. If you are curious about the latest in title technology and have an idea of what you'd like to see, make sure you attend next year's Tech Forum. ■

# The Legislative Committee – How it Works

*By: Gary M. Ham, State Counsel,  
Lawyers Title Insurance Corporation*

Staying abreast of proposed and recently enacted legislation is just one of the many ways the New Jersey Land Title Association benefits its members. The Legislative Committee, working with the Association's lobbyist, The Marcus Group, reviews and identifies state legislation impacting the title industry. The review process is a tedious one and requires the reading of all bills introduced in both the State Assembly and Senate. No less than 3 employees of The Marcus Group handle this initial review process. The Marcus Group, after identifying those bills which may be of interest to the Association, sends full copies of the selected bills to the Legislation Committee Chairman for review. In addition, the Chairman receives a daily session service report which lists all legislation introduced in both houses that session day. The Chairman uses this list to request copies of any additional bills which, because of their title, deserve review.

The Legislative Chairman reads the proposed legislation and selects those which may be of interest to the Association. The NJLTA Board of Governors is notified of the selected bills either through a special mailing or at the regularly scheduled Board of Governors meetings. The Chairman renders a brief synopsis of the selected legislation and recommends a position on each. The Board of Governors votes a formal Association position, which position is subsequently communicated to our lobbyist by the Chairman. Should the Association vote to oppose or support a particular bill, the lobbyist attempts to contact the bill's sponsor(s) and communicate the New Jersey Land Title Association's ideas and concerns.

If necessary, the Association's Executive Director (or another representative of the Association) will testify at State Senate or Assembly Committee hearings on behalf of or in opposition to legislation of particular interest to the Association.

Of the numerous bills that are reviewed each month, routinely four or five pertain to matters of interest or concern to the title industry. Obviously, each carries a varying degree of impact with the more significant commanding more of the Association's attention. Set forth below are two examples of legislation which exist as a direct result of the Association's efforts:

A-161 signed into law 3/12/99 as P.L. 1999, c.40. The Association worked extremely hard to get this law passed and now we have an alternate method of canceling mortgages of record (see N.J.S.A. 46:18-11.5 to 11.7).

S-928 signed into law 1/8/98 as P.L. 1998, c. 290. This is the "Good Funds Act" (see N.J.S.A. 17:11C-22(k) and N.J.S.A. 17:46B-10.1).

Of course there are many more bills which have been passed, amended or defeated as a direct result of the Association's input and tenacity.

We have recently established a legislative reporting site within the NJLTA website ([www.NJLTA.ORG](http://www.NJLTA.ORG)) which we hope will keep our members up to date on legislative matters.

You may also track bills by going to the [www.njlawnet.com](http://www.njlawnet.com) website and clicking "Legislature" or by going to [www.njleg.state.nj.us](http://www.njleg.state.nj.us). ■

## NJ LAND TITLE ASSOCIATION MEETINGS:

June 6, 2000      Annual Convention

## AGENCY SECTION MEETINGS:

June 4-7, 2000      Annual Convention  
October 12, 2000    4:00 pm  
                                 Victorian Manor

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*Who the industry looks to*



## **John R. Weigel Scholarship Review Committee**

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***By: Laurence J. Usignol  
Vice President, State Counsel for  
First American Title Insurance  
Company***

The NJLTA established the John R. Weigel Scholarship Award in honor of its Director Emeritus who served the title insurance industry in New Jersey for over twenty years with great distinction. The Scholarship offers financial support to the most qualified candidate for a particular application year, taking into account academic achievement, extracurricular activities, public service experience and other factors. The NJLTA “takes care of its own” by requiring that the eligibility for this Scholarship be limited to those persons with a minimum of five years experience in the title industry, currently working in the New Jersey title industry for an employer who is either an Active Member or Agency Member of the NJLTA. The eligibility also extends beyond the eligible title industry employee to include the spouse and children of the qualifying employee. The Committee for the 2000 Scholarship Award consisted of Underwriter and Agency Section Members. The Weigel Scholarship Committee is a Temporary Committee appointed by the President of the NJLTA, and serves at the pleasure of the President. Members interested in serving on this Committee should contact the President. ■

## **Surveyor Liaison Committee**

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***By: Laurence J. Usignol, Vice President,  
State Counsel for First American Title Insurance Company***

The Surveyor Liaison Committee was established by the NJLTA to be “the front man” for a dialogue with the surveying industry. The Committee periodically meets with its counterparts from the New Jersey Society of Professional Land Surveyors to discuss common problems and issues. The conferences are scheduled on an as-needed basis, and can be triggered by any new developments or questions arising from either industry. The NJLTA Committee consists of

## **The Advocate**

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***By: Kevin S. Cairns, Editor***

During the past year you have been receiving complimentary issues of the New Jersey Land Title Association’s (NJLTA) newsletter called “THE ADVOCATE.” The Advocate is a quarterly publication produced for the members of the NJLTA. It is designed to provide agency, underwriter and affiliate members of the Association with relevant information about the title industry. The articles and information in the Advocate are provided by the members of NJLTA and ALTA.

In this edition and the next, we will introduce you to the various committees within NJLTA and their functions. One of the primary functions of these committees is designed to investigate issues that affect the industry and report same to members of the Association. The ADVOCATE is one source used to disseminate the information produced by these committees.

This publication will be the last complimentary edition received by you unless you become a member of the Agency Section of the NJLTA. I hope you have enjoyed reading the timely and relevant information provided.

Enclosed within this edition is an Application for Agency Membership. Please complete the application and return to the appropriate address stated thereon. If you have questions or wish to know more about the Agency Section of the NJLTA please visit their web site at [NJLTA-AGENTS.ORG](http://NJLTA-AGENTS.ORG) or contact Robert Palmisano Membership Committee Chairperson at (908) 298-9090.

both Underwriters as well as Agents. All members of the NJLTA are invited to participate in the work of the Committee, as well as to bring to the Committee’s attention any matters requiring the Committee’s intervention or initiative. The Surveyor Liaison Committee is a Temporary Committee appointed by the President of the NJLTA, and serves at the pleasure of the President. Members interested in serving on this Committee should contact the President.

**QUESTIONNAIRE AND APPLICATION  
FOR AGENCY MEMBERSHIP IN  
THE NEW JERSEY LAND TITLE ASSOCIATION  
AGENCY SECTION**

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*(Full Name of Company & Producer License Number)*

being a Title Insurance Producer duly licensed by the New Jersey Department of Insurance, does hereby make application for Agency Membership in the New Jersey Title Association (NJLTA) and Agrees to comply with all provisions of the Association's Constitution, By-Laws and Code of Ethics.

In support of our request, we submit the following information:

Name of person completing application \_\_\_\_\_

Signature \_\_\_\_\_

Business Address \_\_\_\_\_

City, State, Zip, County \_\_\_\_\_

Telephone \_\_\_\_\_ Fax \_\_\_\_\_

Name the authorized officer of your comp[any to whom official correspondence should be directed:

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First Name	Middle Initial	Last Name
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Names and titles of owners and officers of applicant and License Number:

Name	Title	License Number
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List below all Title Companies for which the applicant is an agent.

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Year in which the applicant was first licensed as a title insurance agent/producer by the Department of Insurance \_\_\_\_\_

What other states besides New Jersey is the applicant licensed as a insurance agent/producer?

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Is applicant a member of the American Land Title Association (ALTA)?  Yes  No

Is applicant licensed to engage in any other class of insurance other than title insurance?

Yes  No

Please list below all licensed title producers employed by the applicant, not previously set forth herein:

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A minimum of three references are required, ONE must be an ACTIVE MEMBER (Title Insurance Company) for which applicant is an agent, and TWO must be AGENCY MEMBERS in good standing with the NJLTA.

1. Name of Title Company \_\_\_\_\_

Name of personal reference \_\_\_\_\_

2. Name of Title Agent Member \_\_\_\_\_

Name of personal reference \_\_\_\_\_

3. Name of Title Agent Member \_\_\_\_\_

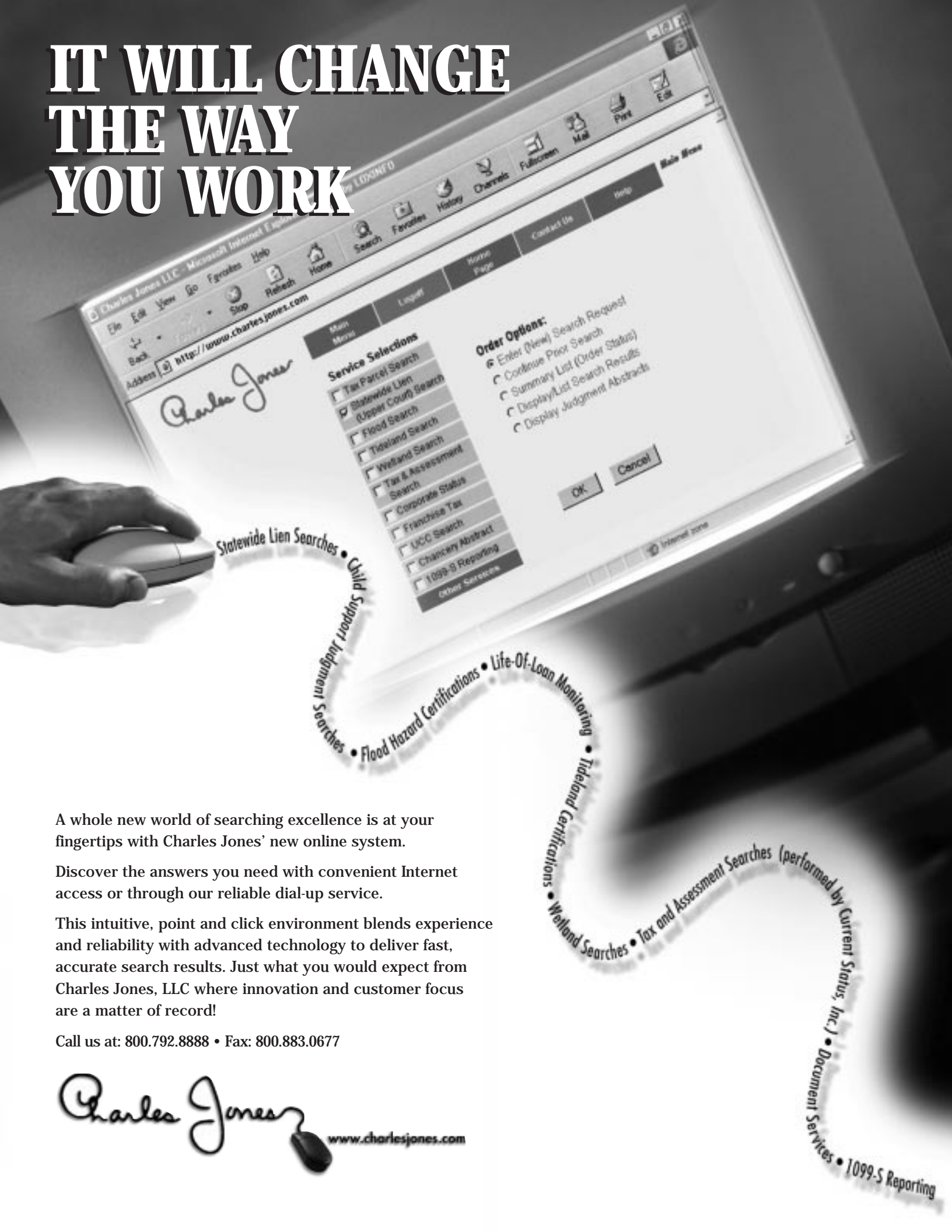
Name of personal reference \_\_\_\_\_

Send application to Joseph M. Clayton, Jr., Executive Director, New Jersey Land Title Association Monmouth Executive Center, 100 Willowbrook Road, Building 1 Freehold, NJ 07728 along with membership dues for the current year made payable to: NJLTA, Agency Section, in the amount of \$125.00.

*Membership is subject to approval by the Agency Section Membership Committee and the Board of Governors of the NJLTA.*

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