



New York State Land Title Association, Inc.
 Tradition, Excellence, Knowledge and Vision

THE Bulletin

Title Insurance: Protecting Your Piece of the Planet

SUMMER 2005 THE JOURNAL OF THE NEW YORK STATE LAND TITLE ASSOCIATION, INC. VOLUME 84, NUMBER 3

MARK YOUR CALENDAR

ALTA Annual Convention
 New York, New York
 October 5-8, 2005

ALTA Federal Conference
 Washington, D.C.
 March 5-8, 2006

NYSLTA 85th Annual Convention
 Colonial Williamsburg
 Williamsburg, Virginia
 August 20-23, 2006

QUARTERLY QUOTE

“The health of the title industry depends upon the integrity of its members, not all of who have been good farmers. There are too many reaping the harvest while too few tend the crop.”

—SHAWN P. ABRAMS
 NYSLTA President
 (See On My Mind, Page 2)

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IN MEMORIAM

GUY D. PAQUIN

New York State Land Title Association officers and executive committee mourn the passing of Guy D. Paquin.

Mr. Paquin, who served as NYSLTA Executive Vice President from 1988 to 1992, died suddenly on May 30, 2005. At the time of his death, he was Executive Director of the Title Insurance Rate Service Association, (TIRSA) a position he held since 1992.

He served as Albany County Clerk from 1977 to 1988. Mr. Paquin was President of the New York State Association of County Clerks in the mid 1980s and lobbied for the group as legislative co-chairman. He was the first recipient of the New York Association of Local Government Records Officers’ annual award for leadership in records management, now called the Guy Paquin award.

Instrumental in the drafting and passage of the Local Government Records Management Improvement Fund Act in 1989, New York’s local governments have since received 7,000 grants under this fund.

From 1963 to 1975, Mr. Paquin served in the Marine Corps. When he retired from the Marine Corps he held the rank of Gunnery Sergeant.

Mr. Paquin is survived by his wife, Nan Hanna-Paquin; his mother, Eve Redfield; son Marc (Melissa) Paquin; daughter Jeanenne (David) Garson; step-children Amber and Gabriel (Ixmucane Vader) Hanna; grandchildren Cole and Ben Paquin, Genevieve Garson, Cirrus and Kai Hanna; sisters Michelle Paquin and Kim Dean; brother Marc (Jeannie) Paquin; brothers-in-law Patrick (Susanna) Adams, David (Stephanie) Cooper; his uncle, Reginald (Claire) Paquin; and several nieces and nephews.

Donations in Mr. Paquin’s memory may be made to Gate-singer Company Ltd., PO Box 95, Pultneyville, NY 14538.



SHAWN P. ABRAMS
President

On My Mind



SHARON SABOL
Executive Vice President

Lessons of the Garden

I was raised in the farm country of northern Columbia County. Each spring and summer I reconnect to my roots by way of growing vegetables, herbs, raspberries and flowers around my suburban “farmlette”. Warrior weekends are spent plowing, pruning, planting, watering, weeding and feeding; interspersed with pitched battles against leafy black spot, mosquitoes and samurai Japanese beetles.

The garden is a demanding mistress, unyielding of her bounty unless paid diligent attention. Ruin — by drought, predators, disease or weeds — is a constant threat. The reward for diligence is a healthy crop. The price of diligence ignored is a ruined crop. These “Lessons of the Garden” apply to other “fields”.

Many would argue the title industry is also a demanding mistress. Failure to protect against “predators, disease and weeds” has it verging on crisis. The health of the title industry depends upon the integrity of its members, not all of who have been good farmers. There are too many reaping the harvest while too few tend the crop. Guilt is shared across the full spectrum of its players: lawyers, brokers, agents and underwriters.

Licensing of title agents will not cure all abuses within our industry. But licensing will be an important step toward curing our industry of its worst offenders. Failure to self-regulate or curb abusive practices makes intervention necessary. The good farmers must wrest back control of the garden to ensure its vitality. Remember well the Lesson of the Garden: “The price of diligence ignored is a ruined crop”.

*Please e-mail:
Shawn P. Abrams at Titleguy@nycap.rr.com.*

NYSLTA 84th Annual Convention

I look forward to welcoming each and every one of you at The Sagamore. As always, we have an excellent business program planned for this year’s 84th Annual Convention.

Speakers during Monday’s business program will include: Howard Mills, Superintendent, New York State Insurance Department; Mark Bilbrey, ALTA President; Peter Romano and Diane Czarnick, New York State Department of Taxation and Finance; Annette Hill, New York City Register; and Rochelle Patricof, First Deputy Commissioner, New York City Department of Finance. Our education seminar on Tuesday will feature Anne L. Anastasi who will talk about “Creating A Compliant ABA”; Bruce Bergman who will present “Title Problems in Foreclosure”; and Todd Pajonas who will speak about “1031s”.

I am sure you will enjoy our social program and evening events. There will be many opportunities to meet NYSLTA officers, executive committee members, committee chairs, members and staff. It has been a busy year, and the convention always provides the perfect backdrop to meet, greet, and exchange important industry information.



I worked with Guy D. Paquin from 1988 to 1992 when he served as NYSLTA Executive Vice President, and will miss him greatly. Many of you knew Guy as Albany County Clerk prior to 1988, and after 1992, as Executive Director of TIRSA. My thoughts go out to Guy’s beloved wife, Nan Hanna-Paquin, their family and friends.

*Please e-mail:
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BY PETER BROGAN

Title Officer, The Judicial Title Insurance Agency LLC

The French and Indian War— The Impact of History on Title Insurance

“It was a feature peculiar to the colonial wars of North America, that the toils and dangers of the wilderness were to be encountered before the adverse hosts could meet. A wide and apparently an impervious boundary of forests severed the possessions of the hostile provinces of France and England.

Perhaps no district throughout the wide extent of the intermediate frontiers can furnish a livelier picture . . . than the country which lies between the head waters of the Hudson and the adjacent lakes.”

So begins the great adventure “The Last of the Mohicans: A Narrative of 1757.” One of the ‘adjacent lakes’ mentioned above is Lake George, the site of our next NYSLTA convention.

For the next five years New York is celebrating the French and Indian War, the backdrop for “The Last of the Mohicans.” As history exists only in the minds of those who perceive it in the present, and clearly there are no eyewitnesses, we must re-enact the past not only in our minds but better, in actuality. A reflection on that conflict and its far reaching global consequences is important, and Gov. George Pataki’s legislation creating a 250th bicentennial anniversary commemoration in New York is laudable, not just for its locale but its importance.

The profile of any former society is a window to subsequent events, as well as the reconstruction of the past, much like a Monday morning quarterback. It becomes an exercise in making some sense of the vast body of facts that we now know.

What James Fenimore Cooper’s Natty Bumppo a/k/a Deerslayer, Hawkeye, and La Longue Carabine did not know about that colonial war of North America was that it very likely was the cause of both the American and French Revolutions. Simplicity and clarity is rarely available in viewing the past, and the French and Indian war is not an exception to this rule.

To posit a direct relationship between the French and Indian War and the American and French revolutions requires faith; history can only be imbibed with an ultimate meaning by investing it with faith. In this context the faith is well regarded by both fact and consequence.

It is undisputed that the French and Indian War in North America was an outgrowth of what history has dubbed the Seven Years’ War on the continent. The duration of the war from 1756 to 1763 was a conflict between Britain and France for control of colonies and command of the high seas.

In America the French had more land mass and the British more people. British military success forced France, in 1763, to sign a treaty ceding all French territory in North America east of the Mississippi to Britain, thus relieving the Thirteen Colonies of any French presence beyond the Alleghenies. One of the important results of the treaty is that we speak English rather than French. Another important ancillary impact of the conflict was the military education of the young George Washington.

The French and Indian War was dubbed by Winston Churchill in his “History of the English-Speaking Peoples” as the very first world war. It touched not only America, but also Europe, Africa, India and the Caribbean.

Of acute interest to us as ‘title people’, the war began in North America as the result of a boundary dispute for control of the Ohio Valley. Recent news stories indicate people are still shooting each other over boundary disputes.

The involvement of Washington in the inception of the conflict is verifiable, and comes as a result of the 22-year-old commander and his Virginia Militia in combination with native American fighters under his command clashing with French forces and killing their leader, Joseph Coulon de Villiers.

The result of Washington’s wartime tutorial combined with England acquiring a colony it could not possibly control, at a price it could not afford, led to unjust taxes on the American colonies and subsequently to a very disenfranchised leader in George Washington.

The people of the Thirteen Colonies, as a result of the French and Indian War, acquired an organizational ability to mobilize troops, as well as a strong affinity for controlling their own destiny. The factors generated by this war made the American Revolution not only possible but also inevitable due to the skills, strengths, and taste for independence acquired by the Americans.

Needless to say the French were unhappy with the result of the war, so unhappy that they seized the opportunity to aid the colonists in their break from England. This break was aided by Britain’s weakened economic position as a result of the Seven Years’ War. The result was American Independence.

Turnabout is fair play, and the result of France’s assistance to the colonies was deep debt resulting in excessively high taxes on an already overburdened citizenry. The consequence was the French Revolution.

The subsequent history of the Indians in New York is a trial of tribulations, treaties, and litigation. As recent as March 11, 2005, litigation was commencing by the Onondaga Nation against the State of *(Continued on Page 9)*

BY DAVID SCHOENFARBER

Financial Representative, New England Financial

Retiring in Comfort— Six Basic Rules for Planning and Saving

When you look forward to your retirement years, what comes to mind? Traveling to those exotic places you dreamt about while you were putting your kids through college . . . enjoying the grandkids and having some spare time to do some volunteer work . . . playing 18 holes of golf and maybe even a vacation home in Florida?

Enter the 21st century. The Social Security Trust fund is on course to run out of funds by the year 2029, just as the last baby boomers reach retirement age (*U.S. News & World Report*, April 20, 1998). Based on recent history it is clear that company pensions are becoming more and more endangered. About one in four pensions have reportedly promised more benefits than it can pay (*The Denver Post*, September 3, 1995, G-03).

But even with all this bad news, many people continue to ignore their retirement needs. This is a generation often caught in the tug-of-war between saving for the children's college education, helping to support their aging parents, and saving for their own future. Saving for retirement may seem a long way off and a lot less urgent than the next tuition payment, the next new car or the next vacation.

In reality, our retirement is much closer than we like to believe and our retirement years could last much longer than we ever thought possible. Many of us will live well into our 80s, and a good number will reach our 90s (*The Facts of Death*, American Demographics, April 1997, by Brad Edmondson), so our retirement nest egg may need to last over 20 years.

As difficult as saving may seem, the sooner you begin, the easier it becomes because your money has more time to grow. For example, if Jill begins investing at age 30 and invests \$2,000 a year for just 10 years, she would have \$542,048 when she retires at age 65 (assuming a 8% hypothetical appreciation).^{*} On the other hand, Jack starts investing at age 40 and invests \$2,000 a year for 25 years, more than twice as long as Jill, he would only have \$196,694 at age 65 (assuming again a 8% hypothetical appreciation).^{*} Time and the power of compounding can make a huge difference to the size of your retirement nest egg.

But if you are hoping for a comfortable retirement, putting money away in a bank account usually won't be enough. Inflation tends to eat into your savings and slash your spending power more than most people realize.

So in order to build your investment, you should choose investments that potentially grow faster than inflation. Traditionally, stocks, bonds and Treasury Bills have outperformed inflation over the last 30 years. While stocks and bonds tend to be riskier in the short-term, they generally

have provided higher long-term returns. Please note that past performance does not guarantee future results.

Most people may not have either the time or the expertise to go it alone in today's complex financial marketplace. Mutual funds can simplify investing by offering diversification and professional management. They have become a popular investment vehicle for retirement because they hold many different securities at one time, reducing the impact of any single investment (such as holding the stocks of only one company) on the total performance of the fund.

The old adage about not putting all your eggs in one basket is especially true with investing. Because the prices of stocks and bonds fluctuate, sometimes in opposite directions, it makes sense to own a variety of investment types at one time. The broad array of mutual funds available allows individuals to do just that. Please note that diversification cannot eliminate the risk of investment losses.

There are six basic rules to planning and saving for retirement.

- Figure out how much money you will need to live on after retirement. The general rule of thumb is between 70% and 80% of pre-retirement income.
- Take full advantage of savings plans that offer tax breaks, such as 401(k) and 403(b) plans and individual retirement accounts (IRAs). In a tax-deferred plan, your investment earnings are not reduced by current income tax.
- Make regular payments to your retirement savings on a monthly or even weekly basis. Many mutual fund groups offer an automatic investment plan that deducts the amount straight from your bank account. Dollar Cost Averaging does not ensure a profit nor does it protect against a loss in declining markets. It involves continuous investment in securities regardless of fluctuating price levels. An investor should consider his/her ability to purchase in periods of high prices.
- Diversify your portfolio of investments between stocks and bonds. A simple rule is to put a percentage equal to your age in conservative investments, including bonds, and the remainder in stocks. As a general rule, the longer you have until retirement, the more aggressively you should consider investing if it is in line with your risk tolerance. If you are close to retirement age, you may want to invest more conservatively.
- Be sure to keep some potential inflation-beaters in your portfolio. Many people make the mistake of becoming too cautious,

(Continued on Page 9)

Legislative News—Mortgage Tax Increases

On April 13, 2005, Gov. George Pataki signed budget bills (S.4271 / A.7298) as Chapter 63 Laws of 2005). This legislation increased mortgage tax rates **effective June 1, 2005** by 0.05% in counties comprising the Metropolitan Commuter Transportation District “MCTD”. MCTD counties include: Bronx, Dutchess, Kings, Nassau, New York, Orange, Putnam, Queens, Richmond, Rockland, Suffolk and Westchester. The “\$10,000 mortgage tax exemption” for one or two family residences in MCTD counties increased June 1, 2005 to \$30.00. The tax increase applies to the *date of recording* — not the date the mortgage was executed.

The state Legislature passed bills to increase mortgage tax rates in the following counties:

Albany (1/4% S.3258 / A.6370) [Tax Law Sec 253-i] passed last chamber 06/30/05
Chautauqua..... (1/4% S.3001 / A.6353) [Tax Law Sec 253-i] passed last chamber 06/21/05
Herkimer (1/4% S.1713 / A.8535) [Tax Law Sec 253-i] passed last chamber 06/22/05
Montgomery (1/2% S.0947 / A.1882) [Tax Law Sec 253-i] passed last chamber 05/25/05
Schenectady..... (1/4% S.2624 / A.5486) [Tax Law Sec 253-i] passed last chamber 05/25/05
Steuben (1/4% S.3270 / A.6367) [Tax Law Sec 261] passed last chamber 05/23/05
Wayne (1/4% S.3121 / A.6214) [Tax Law Sec 253-i] Chapter 164 Laws of 2005
Wyoming (1/4% S.0080 / A.0312) [Tax Law Sec 253-i] Chapter 185 Laws of 2005
Yates (1/4% S.3271 / A.6366) [Tax Law Sec 253-i] passed last chamber 06/15/05

All mortgage tax increases are conditioned on passage of local legislation and must have an effective date on the first day of the month. NYSLTA will track these bills and notify members of effective dates.

ALTA Selects Mandalay Bay Resort & Casino for Tech Forum 2006

The American Land Title Association (ALTA) has confirmed plans to return to the Mandalay Bay Resort & Casino in Las Vegas, Nevada, for the 9th annual ALTA Tech Forum, April 30 to May 2, 2006.

The Mandalay Bay hosted the 2003 Tech Forum, providing space in their new convention center. Tech Forum 2006 will take place in a different part of the hotel — closer to the restaurants, shops, and guest rooms. The Mandalay Bay also offers a new luxury tower — The Hotel at Mandalay Bay. The Hotel is a boutique-style tower where every room is a suite. The Hotel also has a separate entrance, lobby, and concierge.

The ALTA Tech Forum focuses on technology in the title insurance industry. Speakers from Fannie, Freddie, MBAA, MERS, national and regional title underwriters, agencies of all sizes and scopes of business, county recorders, plus the brightest industry experts in technology, management, marketing, human resources, and title operations provide top-rated general and educational sessions. The Tech Forum expo consistently provides the industry's best opportunity for information exchange among vendors, title operation managers, and technology specialists.

Program planning will begin this summer and will include a Call For Presentations on the ALTA Web Site in August. For questions on the ALTA Tech Forum, contact Kelly Romeo at 1-800-787-2582 ext. 224 or Kelly_romeo@alta.org.

Selling Practices: Are Preferred Provider Tie-in Deals Legal?

By Marvin N. Bagwell

Recently, *The New York Times* reported that California is investigating various title underwriters for "overcharging home buyers and splitting the excessive fees with the people who steered them [the title insurers] the business"¹ On the following day, *The Wall Street Journal* reported that "The title insurance industry is under the microscope of regulators for alleged kickbacks that may have cost home buyers hundreds of millions of dollars."² The real gory and lurid headlines, however, have been blaring across the Internet. Industry-related Web sites³ post breaking news whenever rumors arise that another underwriter has agreed to pay a multi-million dollar fine to a state insurance commissioner on account of some new malfeasance. At last count, 16 states were said to be investigating the four largest title underwriters: Fidelity, First American, LandAmerica and Stewart.⁴ How did the industry get to this point?

Profit Sharing

In the old universe, builders and developers constructed the properties, underwriters and agents searched and reported on the titles, lawyers represented clients who were either buyers or sellers of the properties, real estate agents brought buyers and sellers together, and mortgage brokers and lenders found the financing. Then, very bright people noticed that the consumer paid fees to all of the foregoing real estate transactional "providers." The bright people made it their business objective to keep all of those fees within the same family of providers. Although many of the resulting business plans to keep the consumer dollar in house were perfectly legal, others involved steering the consumer, or even other providers, to certain preferred providers of real estate services. For example, primarily in the West, business practices developed which forced title companies to re-insure their claims risk through captive re-insurers owned by builders. Unfortunately for the title companies, the Colorado Insurance Department figured out that the re-insurance premium paid by the underwriters bore no relation to the risk which the re-insurers assumed. In effect, the premiums were an illegal method of sharing the profits, possibly at the consumer's expense. It turns out that the Colorado agency was not amused.⁵ It did not take long for other states to jump on the bandwagon.⁶

Although the New York regulators have been uncharacteristically quiet, partially because one glance from the Attorney General's Office could net more in fines from other insurance lines than from the total capital of the title industry, we should not assume that we are so virginal. Fortunately, many relationships are coming into the open and are being scrutinized. This "transparency" and sanitizing sunlight is coming from our very own Insurance Department in response to questions posed by persons and entities in or impacted by providers within the New York title industry. Many common practices have not stood the test.

New York's Approach

When a person looks out into the title universe and particularly at how conveyances are closed, one thing becomes obvious immediately: New York is different. We do not "steer" consumers here. That is too messy and déclassé. Instead, we have "relationships" Leave post-closing re-insurance arrangements to Midwesterners and West Coasters. The objective here is to capture the customers for all parts of the real estate transaction when the customer first comes into the door. The customer's first contact with the real estate world is usually with a Realtor, mortgage broker or attorney. It then becomes the first contact's duty to hold on to that particular customer and more importantly, the customer's wallet until the transaction is closed, and thereafter

if at all possible. That often means tying the customer to certain providers throughout the transaction.

Forming joint ventures or affiliated business arrangements with the providers of other real estate transactional services which the consumer will need are a way of accomplishing this objective. Both of these formations are a perfectly legal and acceptable way of keeping the customer in the fold provided that certain well-defined and generally understood rules are followed. A full discussion of those rules is outside the province of this article, but generally as long as the joint ventures or affiliated business arrangements are true business ventures, the relationships are disclosed to the consumer, the joint ventures or affiliated business arrangements have multiple sources of business other than the referrals made by the co-owners, and the co-owners receive compensation in terms of profits that is based upon their ownership interest in the joint ventures or affiliated business arrangements and not upon the amount of business that they refer, the relationships are probably valid as far as the Real Estate Settlement Procedures Act and the New York Insurance Department are concerned.⁷ However, the state is beginning to draw a bright line as to which tools the first contact can use to keep the consumer or customer in the fold. And that is where we are about to boldly go.

In three recent opinions, the Office of the General Counsel of the state Insurance Department has addressed the propriety of three common tie-in arrangements. Although the opinions do not have the force of law, attorneys who ignore the guidance provided by the department do so at their peril, or more properly at their clients' peril.

Inquirers posed the following questions to the department: Is it a violation of New York insurance law (1) for a mortgage bank which is the co-owner of a title agency (i.e. the title agency would be a typical joint venture or affiliated business arrangement) to charge the bank's customers a reduced fee if they use the title agency; (2) for a seller of real estate who is affiliated with a title agent or title insurer (again, a typical joint venture or affiliated business arrangement) to offer reduced settlement costs for the seller's customers or purchasers if they use the title agency and (3) for a seller to require the purchaser to pay a fee for using a title company chosen by the buyer while exempting a buyer who uses the title company chosen by the seller from paying such a fee? In this day of inundating the consumer with choices, it should come as no great surprise to anyone that the insurance department found that each practice violated New York law.

Any analysis of a particular practice must begin with §6409(d) of the Insurance Law:

No title insurance corporation or any other person acting for or on behalf of it, shall make any rebate or any portion of the fee, premium or charge made, or pay or give to any applicant for insurance, or to any person, firm, or corporation acting as agent, representative, attorney, or employee or the owner, lessee, mortgagee or the prospective owner, lessee, or mortgagee of the real property or any interest therein, either directly or indirectly, any commission, any part of its fees or charges, or any other consideration or valuable thing, as an inducement for, or as compensation for any title insurance business. Any person or entity who accepts or receives such a commission or rebate shall be subject to a penalty, equal to the greater of one thousand dollars or five times the amount thereof.

The mortgage bank which made the first inquiry to the insurance department

noted above believed that its joint venture with a title company led to savings which the bank wanted to pass on to its customers. For example, the mortgage bank said that the employees of the joint venture/title agency could perform many of the procedures which the bank's outside counsel would normally perform such as preparing and reviewing the title commitment, title report and other ancillary documents. In addition, according to the bank inquirer, the automated and standardized reporting processes used by the title company would further reduce the time that the bank's counsel would need to review the title documentation. Presumably, the savings of time and money would not be available when the bank's customer submitted a title report or commitment from an outside agency. Therefore, those customers would not be entitled to a discount but would have to bear the full freight of the bank's counsel's time and fees.

The department first concluded that the mortgage bank as co-owner of a title agency came within the ambit of §6409(d). Since the bank is the co-owner of a title agency and, albeit indirectly, has its customers place title insurance orders with the title agency, it comes within the purview of §6409(d).⁸ Then in short order, the department concluded, "This reduction in fee to customers/applicants for insurance who use the Joint Venture Title Agent constitutes, at the very least, the giving of 'other consideration or valuable thing, as an inducement for, or as compensation for' the purchase, by such applicants, of title insurance business from the Joint Venture/Title Agent."⁹

In the second example referenced above, a seller of real estate utilized sales contract which provided a financial incentive for customers to use a specified title company. The contract in effect provided that if the purchaser selected a certain title company, the seller would receive a \$10,800 financial incentive which could be applied towards a morning room. If the purchaser used another settlement company, the \$10,800 incentive would be reduced by \$8,800 and to add insult to injury, the purchase price would be increased by \$8,800 as well. It took the department little time to find that the offer of the financial incentive was "giving a consideration or valuable thing as an inducement for, or as compensation for . . . title insurance business" in violation of state law. Ominously for the real estate seller, the department noted that it had contacted the seller's general counsel regarding the business practice, and even though the counsel informed the department that the real estate company had discontinued the practice effective immediately, the department still had referred the matter to its consumer services bureau for investigation.¹⁰

Cost of Purchaser's Choice

Ah, but we never learn. In the third instance where the department was called upon render an opinion, the seller's purchase agreement contained a provision which permitted the purchaser to use a title company of the purchaser's choice, but if the purchaser exercised their choice and did not use the title company selected by the seller, then the purchaser in effect waived any right to demand that the seller clear title objections. As a result, the seller would require the purchaser to pay seller's attorney \$350 to review the title. This the insurance department deemed to be a clear violation of §6409(d) because the practice requires those purchasers who choose not to use the suggested title company to pay a legal fee but assessed no such fee on purchasers who used the seller's selected company. The department also referred this practice and the practitioner to its consumer services bureau for further investigation.¹¹ The bureau must be quite busy these days.

While certainly dispositive to the legally faint of heart, the fact that the department of insurance has determined that a seller of real estate and mortgage banker violate §6409(d) when they attempt to bind the purchaser or borrower to a particular title company, still begs the question. Does the law make sense? Is the law unduly restrictive? After all, the mortgage lender in the first example set forth above had a valid point. There may indeed be inefficiencies and duplications in the system which could be eliminated by having one company perform several functions. The savings could then be passed on to the consumer. To counter this argument, all that one would have to do is to

focus on the operative word "could." There is no guarantee that the savings wrung out of the system would be passed on to the consumer. The consumer might still be stuck with the same price structure while any savings go directly to the provider's bottom line. The provider and not the consumer would profit. For providers and their lobbyists, that is not a bad thing, but the jurisprudence behind the law is not to protect providers but consumers.

Further, companies which create the agreements that tie the consumer to a particular title provider are doing so for their mutual profit. They are certainly not doing all the work and incurring legal fees for their health. Not to be cynical, but the entire arrangement may be an effort to cover an illegal kickback with the trappings of a legitimate business arrangement. In other words, the transactions fees that the consumer formerly paid to an outside provider are now brought in-house. Instead of making a cash payment for the business, the cash is laundered through a joint venture or an affiliated business arrangement. The Real Estate Settlement Procedures Act rules and regulations as well as §6409(d) are all geared towards preventing kickbacks by insuring that the joint venture or affiliated business arrangements are valid, free standing businesses.

Another reason in support of the position articulated by the Insurance Department is that arrangements which bind the consumer to a particular title provider deny the consumer a choice in the conduct of his or her business affairs and as such, are inherently anti-competitive. When there is no competition, the consumer's transactions costs are bound to go up. There are few politicians and regulators who think that it is a proper function of government to do what it can to keep prices down for the consumers. Such persons are obviously not employed as lobbyists for the credit card industry.

In summary, the department's interpretations of §6409(d) are reasonable and would most likely survive judicial scrutiny. Although some in the title industry disagree with the rulings and are doing what lawyers like to do, i.e. find loopholes, the rulings provide guidance regarding what is and what is not acceptable behavior. And, we need all the guidance we can get.¹²

¹ Mary Williams Walsh, "California Examines Title Insurers in Free Splitting", The New York Times, Feb. 23, 2005, p. C2.

² Heather Draper, "Title Insurers Are Scrutinized", The Wall Street Journal, Feb. 24, 2005, page D4.

³ The leading websites are thelegaldescription.com and thetitlereport.com.

⁴ In the interest of full disclosure, the author is employed by United General Title, which is a fully owned subsidiary of First American Title Insurance Company.

⁵ "Live Coverage: Toll promises to 'peel back the layers' to get to the bottom of captive reinsurance", The Legal Description, March 10, 2005.

⁶ "Title Companies Testify at Garmendi Hearing," The Title Report, April 18, 2005, p 1.

⁷ State of New York Insurance Department, Opinions of the General Counsel (hereinafter, "General Counsel's Opinion"), March 10, 2005.

⁸ General Counsel's Opinion, 02-11-32, (Nov. 13, 2002).

⁹ General Counsel's Opinion, 04-12-21, (Dec. 27, 2004).

¹⁰ General Counsel's Opinion, 04-10-29, (Oct. 24, 2004).

¹¹ General Counsel's Opinion, 05-01-14, (Jan. 20, 2005).

¹² The author would like to dedicate this article to the late Thomas P. Moonan, former president of Monroe Title Insurance Company, a true gentleman of the highest ethical standards, who, before his untimely passing, asked the author to write this article to better inform the members of bar of their "obligation of fairness."

Marvin N. Bagwell is vice-president and eastern divisional counsel of United General Title Insurance Company in White Plains, N.Y.

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BY MEMBERSHIP COMMITTEE CONTRIBUTORS

New York State Land Title Association Proudly Welcomes New Members

We welcome our
newest NYSLTA members:

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Please forward members news or updates to New York State Land Title Association via e-mail to NYSLTA@aol.com or fax to 212-964-7185. Visit our Web site: www.NYSLTA.org for updated member listings, New York State Land Title Association news, services and information.

The Bulletin

Editor in Chief: Sharon Sabol

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NYSLTA members are invited to contribute articles and reports regarding title industry issues. NYSLTA reserves the right to edit all materials submitted.

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NYSLTA 85th
Annual Convention
Colonial Williamsburg
Williamsburg, Virginia
August 20-23, 2006

The French and Indian War

(Continued from Page 3)

New York. The relief sought is a declaratory judgment rendering certain treaties null and void. It is likely for such litigation to last a decade before a final decision is known.

Of particular interest to the title insurance community and as a direct result of the culmination of the American Revolution the ensuing peace treaty in 1783 property lines, most notably those bordering on navigable bodies of water were established. Land belonging to private parties such as Lords Huntington and Dongen continued their chains of title through individual ownership. Lands held by King George were acquired by conquest and treaty by the colony and ultimately by the State of New York.

This August, while you are in Lake George for our convention, take the opportunity to visit two forts that figured prominently in the war, Fort Ticonderoga and Fort William Henry.

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Retiring in Comfort

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allowing inflation to eat away at the nest egg you have worked so hard to accumulate.

- Of course, the single most important investment rule is to stay fully invested over the long term and do not try to time the market.

**Rates of return are hypothetical and are provided for illustrative purposes only. Actual results will vary. Rates of return do not reflect past or future performance of any specific product. Investment return and principal value will fluctuate with changes in market conditions. Mutual funds are offered by prospectus. The prospectus contains important information on risks, fees, and expenses and should be read carefully before investing. Securities products offered through New England Securities, 501 Boylston Street, Boston, MA 02116, phone 1-800-225-7670.*

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The opinions expressed in this article are for general information only and are not intended to provide specific advice or recommendations for any individual. We suggest that you consult your representative, attorney, or accountant with regard to your individual situation.

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October 5-8, 2005