



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

THE Bulletin

Title Insurance: Protecting Your Piece of the Planet

WINTER 2005 THE JOURNAL OF THE NEW YORK STATE LAND TITLE ASSOCIATION, INC. VOLUME 84, NUMBER 1

MARK YOUR CALENDAR

- NYSLTA Legislative Day
 State Capitol, Albany
 March 15, 2005
- NYSLTA 84th Annual Convention
 The Sagamore
 Bolton Landing, New York
 August 7-10, 2005
- ALTA Annual Convention
 New York, New York
 October 5-8, 2005
- NYSLTA 85th Annual Convention
 Colonial Williamsburg
 Williamsburg, Virginia
 August 20-23, 2006

QUARTERLY QUOTE

“While we cannot control global trends or forces, we can and must demand the highest ethical ‘practices’ within our industry. As an association we are committed to that goal—indeed we have repeatedly acted against illegal practices.”

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

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**Join NYSLTA Officers,
 Executive Committee and
 Members at the
 NYSLTA 84th Annual Convention**

**The Sagamore
 Bolton Landing, New York
 August 7-10, 2005**

**ALTA President
 Mark Bilbrey will be the
 Keynote Speaker**

**(Additional information and registration
 will be mailed in late Spring)**

www.NYSLTA.org



SHAWN P. ABRAMS
President

On My Mind



SHARON SABOL
Executive Vice President

Cirrus or Cumulonimbus

While preparing for a radio talk show appearance about title insurance, I remembered a letter sent to me by a client from a neighbor asserting a claim. The neighbor had been to see an attorney and had “*told [his] lawyer to put a cloud on [our client’s] title*”. I smiled at the meteorological wizardry required for such a feat — and marveled at the attorney who possessed such skills. Would the cloud be *cirrus* (fair weather) or *cumulonimbus* (thunderstorms)?

It turned out be *cirrus*. A “twelve degree encroachment” disappeared when it was determined surveys performed decades apart in fact showed the same line using then current versions of magnetic north. The nonmagnetic fence and driveways had stayed put.

We need not be fluent in the terminology of economics to know when business is good or bad. Global business trends and market forces operate beyond our control. Interest rates, consumer confidence, state and federal deficits all affect our economy for good or ill. Periodic “booms” in real estate or refinance markets give birth to many new players and new examples of abuse. Historically, slow-downs of the real estate industry weed out “one client” players and some offenders, but create pressure to “capture” remaining market share.

While we cannot control global trends or forces, we can and must demand the highest ethical “practices” within our industry. As an association we are committed to that goal — indeed we have repeatedly acted against illegal practices. The title industry is in the best position to recognize abuse. Are we courageous enough to cure it? How we respond will determine in large measure whether the times ahead for us are *cirrus* or *cumulonimbus*. Inaction, as an option, constitutes a failure of leadership. These concepts all of us can understand.

Please e-mail:

Shawn P. Abrams at Titleguy@nycap.rr.com.

NYSLTA 84th Convention

In just a few short months, we will gather at the scenic Sagamore on Lake George, Bolton Landing, NY for our association’s 84th Annual Convention. We are pleased to once again return to The Sagamore, a popular NYSLTA convention destination in our own New York State.

Highlights of our 84th Annual Convention include a keynote presentation by ALTA President Mark Bilbrey. I am sure you will enjoy meeting Mark, who has been in the title business for 33 years. For more information on Mark, please see page 16 of this *Bulletin*.

Another Convention highlight is the presentation of the NYSLTA Lifetime Achievement Awards. This award recognizes outstanding service and dedication to our association and industry.

As always, we strive to offer a variety of entertaining optional events for you and your family to enjoy. This year, we are pleased to offer these diverse choices, including: Tubing on the beautiful Hudson river; family fun at The Great Escape and Splashwater Kingdom amusement park; Horseback Riding on wooded trails with breathtaking views of Lake George; a visit to the National Thoroughbred Racing Hall of Fame; a ride on the Upper Hudson River Railroad; Kayaking; Hiking; Lunch on the Morgan, The Sagamore’s own luxury cruise boat; Biking; Natural Stone Bridge & Caves exploration; Golf at the Saratoga National Golf Club; and Breakfast at Saratoga, a race day tradition.

More Convention details and registration will be mailed in coming months.

In other association news, we will be offering four Spring education seminars in Long Island, New York City, Poughkeepsie and Buffalo.

Your association is here for you. Please contact us with any questions, or comments.

Please e-mail:

Sharon Sabol at SSLibrary@aol.com.

BY NEW YORK STATE LAND TITLE ASSOCIATION
Committee Chairs

Education, Land Records, Law, Legislative and Western New York Committee Reports

NYSLTA Education Committee

By Jacqueline P. Murphy, Chair

Next meeting: To be determined.

1. Renewal of our continuing legal education provider status.
2. NYSLTA Spring seminars are in the planning stages for the following areas: Long Island, New York City, Poughkeepsie and Buffalo (late Spring). The committee is looking for presenters in these areas; we welcome hearing from anyone who would be willing to participate.

NYSLTA Land Records Committee

By Marvin N. Bagwell, Chair

Last NYSLTA Committee Meeting Dec. 2, 2004. Next meeting: 10 a.m. March 24, 2005 at a location to be announced.

1. City Register Annette M. Hill provided the committee with the names of persons in the various offices who could be contacted to address recording problems with a particular document. If a member has a problem with the ACRIS cover sheet, the member should contact the Help Desk.
2. The City Register is still working on an updated list of reasons for document rejections. The list will be disseminated to members upon receipt.

NYSLTA Land Records Committee

**SUFFOLK COUNTY
LAND RECORDS NEWS:**

By Nancy Farrell

Land Records Committee Member

There has been major progress in the communication among the Suffolk examiners, county officers, and NYSLTA. Through the Land Records

Committee, NYSLTA is now being called upon for input as liaison between the county and examiners for the industry. Meetings are continuous. Anything new always has its quirks to be worked out, and some level of patience should be exercised with Suffolk County. There is also the understanding that things were implemented a bit too fast and without the proper forethought. This is where all of the problems presently being dealt with are coming from. This situation is being rectified and continuing to improve. The judgment and lis pendens dates are moving forward and are now at Nov. 14, 2005.

NYSLTA Law Committee

By Barry C. Balonek, Chair

Last NYSLTA Committee meeting: Oct. 7, 2004.

1. The NYSLTA Law Committee discussed the practice of builder discounts for the placement of title insurance and the possible violation on Insurance Law Section 6409(d). On Oct. 24, 2004 the Insurance Department issued an opinion that "such a reduction in costs to a customer/purchaser who utilizes a title agent or title insurer that is owned by, or affiliated with a seller constitutes the giving, directly or indirectly, of consideration or valuable thing as an inducement for, or compensation for such title insurance business."
2. The Law Committee also discussed the disclosure of social security numbers on various search and title insurance products as well as public record closing documents and several pending state and federal legislative proposals to limit the disclosure of social security numbers in a variety of public records.

The Law Committee will soon take

up a discussion of legislation for recording officers to correct indexing as well as renewed efforts to draft legislation to accommodate the affixation of manufactured housing to real property for transfer and mortgage lien purposes.

NYSLTA Legislative Committee

By Harold Boxer, Chair

Next meeting: Not yet scheduled. The committee has been engaged in an e-mail discussion of new bills.

The new legislative session is underway and bills are constantly being reviewed. Some bills of importance are the following:

- escrow seller's funds for real estate broker's commissions;
- mobile housing UCC's;
- requirement that banks issue assignments rather than satisfactions of mortgages;
- allow for filing of successive lis pendens.

NYSLTA Western New York Committee

By John C. Chmura, Chair

Next meeting: The first Wednesday of every month.

1. The committee worked in conjunction with the Erie County Clerk's Office and Surrogate's Court on the renovation of our courthouse in regards to record retention, storage and design.
2. Educate local membership and attorneys about agent licensing.
3. Developed a working dialogue with the Erie County Bar Association.

The committee is currently working on a local golf tournament to be held in Western New York, tentatively scheduled for Spring 2005.

BY ANDREA LEVINE

Agency Counsel, LandAmerica Lawyers Title Insurance Corporation

Recent Changes to New York State Tax Law Regarding Mortgage Recording Tax

Sections 250 and 255 of Article 11 of the New York State Tax Law were recently amended by Part Q of Chapter 60 of the Laws of 2004. These changes affect the mortgage recording tax imposed on wrap-around mortgages and certain mortgage spreader agreements secured by a mortgage of real property in any city having a population of one million or more. The application of these changes are thus limited to mortgages secured by real property in New York City. Originally, these amendments were to apply to all mortgages recorded on or after Nov. 18, 2004. The effective date was later extended to Jan. 17, 2005.

1. Wraparound Mortgages:

Section 250(2) was amended to impose mortgage recording tax on mortgages secured by real property in any city with a population of one million or more, the proceeds of which are used to reduce all or any part of the mortgagee's equity interest in a wraparound mortgage. In certain commercial transactions, a wrap-around mortgagee may direct its mortgagor to either refinance the underlying mortgage or obtain a new loan, the proceeds of which are used to cash out some or all of the wrap-around mortgagee's equity position in the wraparound mortgage. The wrap-around mortgagee would then subordinate its mortgage to the extent it receives consideration and the new lender would receive a superior position to that of the wrap-around mortgagee. The total overall indebtedness may remain the same; however, such transactions can create a shift in equities among the various mortgages.

The amendment overturns prior case law which provided that once a mortgage was given and recorded it could be changed by a supplemental mortgage and no additional recording

tax would be due so long as the aggregate amount of indebtedness was not increased overall. *City of New York v. New York New York State Tax Appeals Tribunal*, 660 N.Y.S.2d 753 (A.D. 3 Dept. 1997); *City of New York v. State Tax Commission*, 516 N.Y. S.2d 132 (A.D. 3 Dept. 1987). Under the amended statute, mortgage recording tax will be imposed on such a supplemental mortgage to the extent the wrap-around mortgagee reduces some or all of its equity regardless of whether the aggregate amount of indebtedness secured by the mortgage is increased.

The following is an illustration:

Mortgagor purchases real property and gives the Seller a purchase money wraparound mortgage in the amount of \$1,000,000.00. Under the term of the wraparound mortgage, the Mortgagor assumes an underlying mortgage of \$750,000.00 and gives the Seller a mortgage in the amount of \$250,000.00. Mortgage recording tax is paid on the new indebtedness of \$250,000.00. At a later point in time, the Wraparound Mortgagee directs the Mortgagor to take out a new mortgage in the amount of \$350,000.00. The proceeds of the new mortgage are applied to the wraparound mortgage, which is reduced to \$650,000.00, and the Wraparound Mortgagee subordinates its lien to the new lender to the extent of the \$350,000.00. Thus the new lender is in a superior position, the Wraparound Mortgagee has cashed out some of its equity and the overall indebtedness remains at \$1,000,000.00. Prior to the amendment, no mortgage recording tax would be due because no additional indebtedness was created. Under the amended statute, mortgage recording tax is due on the \$350,000.00, the amount received by the raparound

mortgage.

2. Spreader Agreements:

Section 255(1) (a) of the Tax Law was amended, in part, to create Subparagraph (ii). This new subparagraph provides that in any city with a population of one million or more, a supplemental mortgage or spreader agreement which spreads the lien of a mortgage to additional real property will be exempt from mortgage recording tax *only* if the mortgagor of the original mortgage owns the real property that is subject to the lien of the supplemental mortgage.

The original purpose of the exemption was to allow a property owner to provide additional collateral for his or her mortgage obligation. According to the Memorandum in Support of Legislation submitted with the original bill, the City of New York had encountered situations where property owners, looking to borrow money using their property as collateral, would agree to subject their property to the lien of a mortgage on property owned by an unrelated third party.¹ The unrelated third party's mortgage would be spread to the borrower's property and assigned to the borrower's lender in exchange for its satisfaction. The borrower's lender releases the unrelated third party's property from the spread mortgage, and then has the borrower execute a modification agreement and restated note to show the borrower's property is the sole collateral and that the borrower is the sole obligor. The original borrower and its lender would then claim an exemption from mortgage recording tax since the original mortgage was spread to another parcel. Thus original borrower's property would become subject to the lien of a mortgage without the payment of any mortgage recording tax.

(Continued on Page 8)



(left to right) Assemblywoman Audrey I. Pheffer meets with NYSLTA President Shawn P. Abrams in Albany to review examples of private information recorded in public records.

Indecent Exposure—Working on a Cure

BY SHAWN P. ABRAMS, *NYSLTA President*

In my previous articles on this subject I have described social security numbers, driver's licenses and other private information being recorded as part of the public record. The problem may be national, but in New York State we are working on a solution.

NYSLTA and the New York State Association of County Clerks (NYSACC) are working together on a legislative compromise to protect consumers without hindering the recording and title examination processes. Hon. Thomas Clingan (Albany County) and I met with our respective lobbyists and legislative counsel for Assemblywoman Audrey I. Pheffer to address the issue.

Additional meetings will be held to review legislative proposals. Our goal is to create a bill under which all parties are protected. Rather than "react" our associations will participate in the drafting process. I applaud Assemblywoman Pheffer for her interest, efforts and cooperation.

Please e-mail:

Shawn P. Abrams at Titleguy@nycap.rr.com.

New York State Association of County Clerks Installs Officers for 2005

The New York State Association of County Clerks (NYSACC) gathered in Albany on Jan. 31, 2005 to lobby legislators and install their slate of officers for 2005. NYSLTA sponsored a reception at the Sign of the Tree restaurant in the Empire State Plaza. NYSLTA also sponsored a shrimp and cocktail hour preceding the installation banquet at the Crowne Plaza hotel in Albany. Representing NYSLTA at the event were NYSLTA Executive Vice President Sharon Sabol, NYSLTA President Shawn P. Abrams and NYSLTA Executive Committee member Susan Rhodes.

Hon. Wanda D. Murtagh (*Franklin County*) thanked her fellow clerks for their efforts during her term as president in 2004. Senator George D. Maziarz (*62nd Senate District*) conducted the installation ceremony.

Installed as officers for 2005 were:

President:

Hon. Wayne F. Jagow
(*Niagara County*)

1st Vice President:

Hon. Donna Benson
(*Orange County*)

2nd Vice President:

Hon. Kathleen Marchione
(*Saratoga County*)

3rd Vice President:

Hon. James A. Culbertson
(*Livingston County*)

Recording Secretary:

Hon. Joseph A. Provoncha
(*Essex County*)

Corresponding Secretary:

Hon. Sylvia M. Rowan
(*Herkimer County*)

Treasurer:

Hon. Thomas G. Clingan
(*Albany County*)



(left to right) 2005 NYSACC Officers: Hon. Donna L. Benson (*Orange County*), 1st Vice President and Hon. Wayne F. Jagow (*Niagara County*), President at the Installation banquet Jan. 31, 2005.

The Bulletin

Editor in Chief: Sharon Sabol

The Bulletin is published quarterly by the New York State Land Title Association, Inc., Two Rector Street, Suite 901, New York, NY 10006-1819.

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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Sal J. Turano Appointed ALTA State Trustee

NYSLTA Past President Sal J. Turano has been appointed an ALTA TIPAC (Title Insurance Political Action Committee) state trustee.

Turano is president of Abstracts Incorporated in Garden City, New York. He presently serves on the NYSLTA Executive Committee. He is a past chair of the NYSLTA Abstracters and Title Insurance Agents Section.



IN MEMORIUM

THOMAS W. COLLINS

New York Land Title Association officers extend heartfelt sympathy to William L. Collins, Chair, NYSLTA Abstracters and Title Insurance Agents Section, on the passing of his father, Thomas W. Collins.

Please Join Us . . .

NYSLTA 84th Annual Convention

August 7-10, 2005

The Sagamore

Bolton Landing, New York

Additional information and registration will be available in the coming months.

**NYSLTA Agents Section
Legislative Day – March 15, 2005**

Abstracters and Title Insurance Agent Section members of NYSLTA will hold their annual Legislative Day March 15, 2005. Members will visit the offices of state legislators at the state Capitol in Albany to discuss issues of importance to the land title industry.

A planning dinner will be held March 14, 2005 to discuss issues and arrange final meeting schedules. Following a full day of appointments a reception will be held for legislators and staff members at the Legislative Office Building.

Legislative Day has become a tradition allowing Agent Section members to establish working relationships with legislators. Abstracter or Agent Section members who would like to participate should call:

Bill Collins, Agents Section Chair
Telephone: 585-262-6250
E-mail: bcollins@crossroadsabstract.com.



**Tax Department Forms MRT / RETT
Taxpayer Contact Center**

The New York State Tax Department has established new contact sources for mortgage recording tax (MRT) and real estate transfer tax (RETT) questions. New telephone, fax and e-mail lines connect directly to trained personnel in the Taxpayer Contact Center (TCC). It is anticipated that TCC will handle many routine calls. More difficult matters will be referred to the Technical Services Division (TSD).

NYSLTA discussed the new system with Department of Taxation and Finance personnel. Urgent questions arising during a closing should be faxed or e-mailed with a notation "Closing In Progress". All questions sent by fax or e-mail should include a contact name and telephone number.

New TCC / TSD contact information is as follows:
Telephone: 1-888-698-2914*
Fax: 518-435-2918
E-mail: NYSMortgageandTransferTax@tax.state.ny.us

* Calls made to Technical Services Division at 518-457-0556 will automatically be transferred to the new TCC line.



Mortgage Tax Rate Increases

Mortgage tax increases have been approved for the following counties:

Franklin County
(from 0.75% to 1.00%) pending

Rensselaer County
(from 1.00% to 1.25%) effective March 1, 2005

Updated listings of mortgage tax rates and cover page charges are shown on the NYSACC survey on the association Web site: www.NYSLTA.org.

Advertise in the Bulletin

Contact

Regina Capone at

212-964-3701

or via e-mail

NYSLTA3@aol.com

for details.

ALTA Tech Forum

Orlando, Florida

April 17-19, 2005

Visit www.ALTA.org

for information.

IN MEMORIUM

STEPHEN LEITER

New York State Land Title Association officers extend heartfelt sympathy to the family of NYSLTA member Stephen Leiter, Founder, Co-Owner and President of East Coast Abstract.

Recent Changes to NYS Tax Law

(Continued from Page 4)

The amendment was enacted to prevent property owners and lenders from using the exemption as a tax avoidance tool. To that end, the amended statute grants to the Commission of Taxation and Finance the authorization to disregard a transfer of one or both of the properties in connection with the recording of the spreading agreement if the transfer was undertaken for the purpose of avoiding the tax, rather than for an independent business or financial purpose.

There is also a rebuttable presumption that all transfers of one or both properties to related parties within the 12-month period preceding the recording of the spreading agreement have been undertaken to avoid the tax. For the purposes of this statute, "related" is defined as:

- (i) members of a family, including spouses, ancestors, lineal descendants, and brothers and sisters (whether by the whole or half blood);
- (ii) a shareholder and a corporation more than 25 percent of the value of the outstanding stock of which is owned or controlled directly or indirectly by such shareholder;
- (iii) a partner and a partnership more than 25 percent of the capital or profits interest in which is owned or controlled directly or indirectly by such partner;
- (iv) a beneficiary and a trust more than 25 percent of the beneficial interest in which is owned or controlled directly or indirectly by such beneficiary;
- (v) two or more corporations, partnerships, associations, or trusts, or any combination thereof, which are owned or controlled, either directly or indirectly, by the same person, corporation or other entity, or interests; and
- (vi) a grantor of a trust and such trust.

According to the Memorandum in Support of Legislation submitted with the original bill, it is estimated that the City of New York will retain \$5 million annually in lost mortgage tax revenue.²

The following example illustrates the situation the amended statute now prevents:

A seeks to borrow money using his property, (Property 1) as collateral. B, an unrelated third party owns real property (Property 2) that is already subject to a mortgage (for which mortgage recording tax has been paid) and is seeking to satisfy its obligation under its mortgage. A, B and B's lender execute and record a spreading agreement to spread B's Mortgage to Property 1. B's lender assigns its mortgage to A's lender and is satisfied. A's lender then releases Property 2 from the spread mortgage and releases B's obligation under the note and mortgage. A's lender will amend and restate the note to show that A is the sole obligor, and will record a modification agreement to show that A's property is now the sole collateral for the loan. Prior to the change in the statute A and its lender would claim an exemption of mortgage recording tax as part of a transaction to spread B's mortgage. Under the amended law, mortgage recording tax will be imposed on the mortgage that is now secured by A's property.

¹ New York State Assembly Memorandum in Support of Legislation for Bill Number A11372, Part A

² New York State Assembly Memorandum in Support of Legislation for Bill Number A11372, Part A

NYSLTA 85th

Annual Convention

Colonial Williamsburg

Williamsburg, Virginia

August 20-23, 2006

BY MEMBERSHIP COMMITTEE CONTRIBUTORS

New York State Land Title Association

Proudly Welcomes New Members

We welcome our
newest NYSLTA members:

KINGS COUNTY

First Metropolitan Abstract Corp.
(Regular Member)
Stephen R. Larocca, President
478 Bay Ridge Parkway
Brooklyn, NY 11209
718-238-6800

NASSAU COUNTY

The Ultimate Agency, LLC
(Regular Member)
Cary Scott Goldinger, Esq., President
100 Quentin Roosevelt Blvd.
Garden City, NY 11530
516-832-8833

OTSEGO COUNTY

Advantage Abstract Company, Inc.
(Regular Member)
D. Chad Davis, President
258 Genesee Street, Suite 309
Utica, NY 13502
315-732-0324

QUEENS COUNTY

Executive Title Agency, LLC
(Regular Member)
Lawrence K. Gross, Esq.
108-18 72nd Avenue
Forest Hills, NY 11375
718-896-1600

RICHMOND COUNTY

Integrity Title Agency, Inc.
(Regular Member)
Jonathan Boxman, President
654 Sharrotts Road
Staten Island, NY 10309
718-701-6500

SUFFOLK COUNTY

Alpha Abstract, LLC
(Regular Member)
Evan M. Pomerantz, President
122-A Remington Blvd.
Ronkonkoma, NY 11779
631-471-4888

American Dream Settlement Services

(Regular Member)
Claudia J. Harrington, President
684 Sunrise Highway
West Babylon, NY 11704
631-321-8585

Hamlet Title Agency, Inc.

(Regular Member)
Michael Harrison, President
755 Waverly Avenue, Suite 405
Holtsville, NY 11766
631-654-5666

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.

ALTA President Mark Bilbrey to be Keynote Speaker at NYSLTA 84th Annual Convention at The Sagamore August 7-10, 2005

Mark Bilbrey is President of Warranty Title & Abstract, Inc., located in El Reno, Oklahoma. Bilbrey has worked in the title industry for 33 years, including the last 23 years at Warranty Title. He also serves on the ALTA Planning Committee, and the Research Committee-Abstracter/Agent Subcommittee and is a member of the TIAC Board of Directors.

Bilbrey was President of the Oklahoma Land Title Association from 1993 to 1994 and continues to serve as Chair of the Legislative Committee for the association. He revised Oklahoma's Political Action Committee ten years ago and has served as its chairman until this year. Bilbrey has served on the State Auditor's Abstract Advisory Committee and was a founding member of the Oklahoma Insurance Commissioner's Title Insurance Task Force. He received the William "Bill" Gill Award as Oklahoma's Outstanding Title Person of the Year in 1996.

