



ADVOCATE

The Official Publication
of the New Jersey
Land Title Association

It's Always Sunny in Title

By: Susan P. Bavaro, Esq., Underwriting Counsel, First American Title Insurance Company

Renewable energy is the “hottest” source of energy in the United States, and the popularity of solar energy is “scorching.” Over 3% of electricity generated in the United States now comes from solar energy, which represents an increase of more than 36 times the share of electricity generated by solar energy only a decade ago.¹ In 2020, a new solar project was installed every 75 seconds.² By 2030, the Department of Energy projects that more than one in seven homes in the United States will have a

1 For additional information about the U.S. solar energy industry, see <https://www.seia.org/research-resources/solar-data-cheat-sheet>

2 Id.

rooftop solar system.³

Homeowners have a variety of options for acquiring solar panels, including purchasing the solar panel system outright, financing the system, or leasing it. Title companies typically first learn about the existence of a solar panel system by discovering documents, such as a service agreement with a solar panel company or UCC-1 Financing Statement (“Financing Statement”), in the county land records. However, if you learn about solar panels through another source, such as the contract, the property survey, or directly from the parties or their agents, further inquiry should be made.

In the context of solar panels on residential homes, the Financing Statement

3 <https://www.energy.gov/eere/solar/solar-energy-united-states>

announces the solar panel company’s rights in the system physically attached to the real property and that the system does not become part of the real property as a fixture (nevertheless, one should always thoroughly review the documents as this may not always be the case). Recording the Financing Statement in the county land records provides notice that the solar panel system is encumbered by a loan. The legal description is included in the Financing Statement to provide the real property location of the installation.

The increased demand for solar energy will likewise increase the frequency in which title companies will encounter the unique challenges presented by solar panels. Two of the most common challenges involve the buyer’s expectations and the mortgage lender’s priority. For

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purposes of illustration, let's examine this scenario:

A Financing Statement is discovered in the county land records that identifies the collateral as "Solar panels, inverters, wiring, and associated equipment leased from Secured Party to Debtor. This Security Agreement does not create a security interest in the Debtor's real property." In addition, a solar panel system agreement was recorded in the county land records which states that the solar panels remain the personal property of the solar panel company.

First, what are the buyer's expectations as to the solar panels? Does the buyer understand that there is an on-going agreement with the solar panel company that they must assume to maintain the panels at the property? What does the buyer need to do to assume the agreement with the solar provider? Does the solar panel company have the right to reject the buyer's attempted assumption of the agreement? If so, what happens?

A buyer may not be happy to find that the solar panels (maybe an added inducement to the sale?) can be removed

at the election of the filing party unless the buyer pays for the equipment or for the service. ("What, I thought the solar panels came with the house!")

This scenario is not dissimilar to the situation where the property has a propane-burning stove, and a Financing Statement is found that alerts the buyers and lenders that the fuel is stored in an underground tank still owned by the propane company. Maybe the house doesn't have a separate lien against the real estate, but no buyer is going to be happy with a giant hole in their backyard or a hole in the house where the solar panels used to be. While the buyer's expectation is not covered under the terms of the title insurance policy, a disgruntled buyer may still file a title claim and/or a lawsuit.

A second challenge is the effect of the Financing Statement on the priority of the mortgage lender's new mortgage. This is an issue whether the new mortgage is a purchase money mortgage for a buyer or a refinance by the current owner. Some solar providers take the position that the solar panels are personal property and not fixtures. Therefore, they will not

subordinate the Financing Statement to the lien of a new mortgage. However, other solar providers take the position that the panels are fixtures, but they refuse to subordinate for fear of jeopardizing their security interest. If we're lucky, the solar provider will agree to subordinate or terminate the Financing Statement, and if necessary, re-file it after the mortgage transaction is completed.

Transactions involving solar panels are going to be fact specific. In addition to the challenges discussed above, several other issues involving solar panels may arise, including, but not limited to, easements/access rights and contractual obligations with the solar panel company. You should consult your underwriter to determine if any requirements and/or exceptions are necessary. Whether you become aware of a solar panel system through a document recorded in the county land records, property survey, the contract, or from the parties to the transaction, it is important that you bring it to light or risk getting burned. ■



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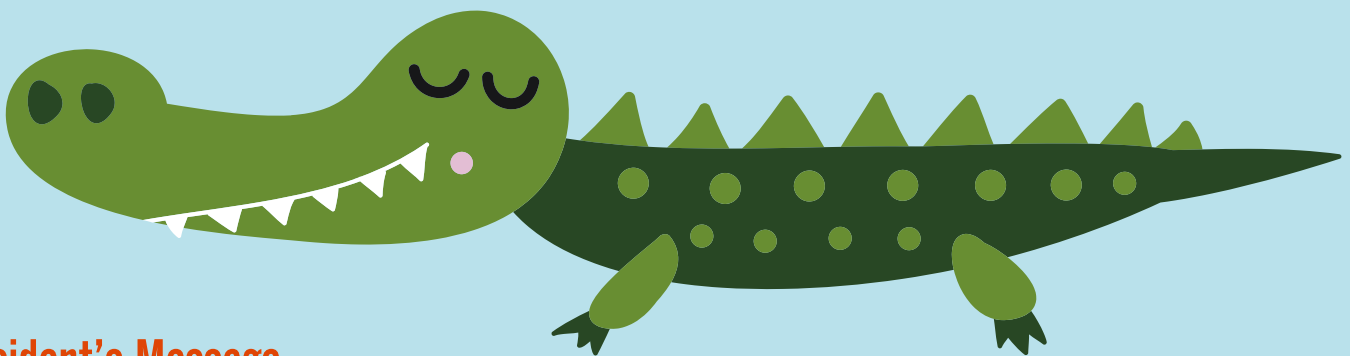
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President's Message



By: Cindy Mills, SVP, WFG National Title

Can I have a do over? Another bite at the apple? How about a Mulligan?

This was not the Presidency I envisioned;

I'm not angry about it, just a little disappointed. We didn't have an opportunity to do the fun stuff: no convention, no in-person meetings and no chance to bang the gavel. A pandemic! Honestly, who could have predicted this? Good thing I have a sense of humor.

"It starts with a dream. Dreams are how we figure out where we want to go. Life is how we get there, allow for traffic."

— Kermit the Frog

In my opening message to this publication last year, I referenced Kermit the Frog. Kermit has been my daily reminder to continue to learn. He has also reminded me that life doesn't go as planned, and we have to allow for traffic. As an industry, we have certainly allowed for traffic during this pandemic and

managed to arrive early! We managed to accommodate and succeed under unimaginable circumstances.

I am truly grateful to my fellow officers with whom I have worked, and thankful for their assistance and understanding as we navigated this crazy year. The various committees led by devoted chairs and guided by Ed Eastman and Louise Haas, as they are the real heart and soul of the New Jersey Land Title Association. I admire them all.

I would like to thank my staff, WFG National Title, my close industry confidants (especially Kristi Kaufman and Meg McKee) and my family for allowing me to pull them into my irrational commitments and schedules.

This experience will forever be remembered; thank you, NJLTA! ■



2020 President's Award Winner – Maureen Crowley

By: Jason Dombrowski, 2019-2020 President

Maureen Crowley has accumulated over 35 years of experience in the title industry having held numerous roles throughout her career. She got her start back in 1985 at Preferred Land, a NY title agent and shortly thereafter moved over to the Underwriter side of the business. Maureen is currently employed by Fidelity National Financial Family of Companies and currently holds the position of Assistant Vice President – Agency Support Manager.

Through the years, Maureen has tirelessly dedicated her time and talents to the New Jersey Land Title Association (NJLTA). She has served on the following

committees: *Advocate* Committee; Tech-Expo Committee; Convention Committee; Nominating Committee; Planning Committee; Finance Committee; Directory Committee and has been a past Chair to the NJTIPAC Committee.

Maureen flexed her event planning and organizational skills when she chaired the 2003 NJLTA Convention in Vermont at the Equinox Golf Resort & Spa. According to a 2013 *Advocate* article written by George Stickel, Esq., “Maureen chaired the best attended NJLTA Convention in recent memory.”

Maureen was an integral part in the planning and execution of my convention in 2019 at the Otesaga Resort in

Cooperstown, NY, and for that I am forever grateful!

In 2000, Maureen earned her Certified Title Professional (C.T.P.) designation and in 2004-2005, she served as the President of the NJLTA.

In addition to the above, Maureen also serves on the following committees for the American Land Title Association (ALTA): Title Action Network Committee Member; HOP Committee Leader and TIPAC Trustee.

In her free time, Maureen enjoys spending time boating, sailing and traveling with her husband Tom. ■



“the man behind the curtain”

David E. Ewan — 2021 President's Award

By: Cindy Mills, Outgoing President, NJLTA

Allow me to introduce David Ewan, the person I have fondly referred to as the man behind the curtain. This year, David was my saving grace, as I tried to navigate the extensive legislative issues that he manages not only to track but actually understands. For over 30 years, David Ewan has been involved in real estate transactions. His initial involvement was as a practicing real estate attorney in New Jersey and Pennsylvania. He was responsible for examining and clearing title for residential real estate owned or administered by large corporate clients such as Fannie Mae, GE Capital Mortgage Services, and Prudential Relocation.

David is Underwriting Counsel for Westcor Land Title Insurance Company in their New Jersey Regional Office. Previously he was Vice President and Associate General Counsel for New Jersey Title Insurance Company in Parsippany, New Jersey. From September 2001 to July 2007, David was a Consultant to the

New Jersey Land Title Association (NJLTA) where he worked with the Association on recording practices in New Jersey.

After working as the NJLTA's consultant and joining New Jersey Title Insurance Company, David joined the NJLTA's Law Evaluation and Legislation Committee, and currently serves as that committee's Chair. He is also an active member of the American Land Title Association's (ALTA) Forms Committee and a member of the Forms Committee's Style Subcommittee.

David is a frequent lecturer for the New Jersey Land Title Institute, ALTA, and various bar associations on title insurance matters. He was formerly a member of the Property Records Industry Association (PRIA) and was elected to the Board of Directors of PRIA in July 2003. In August 2013, he was elected PRIA's President for the 2013-14 fiscal year. David was appointed the American Bar Association's Section of Science & Technology Law Advisor to the Uniform Law Commission's Drafting Committee for the Revised Uniform Law of Notarial

Acts (RULONA 2010) and was also an observer member of the ULC's Committee on Amending the Uniform Law on Notarial Acts (2018). He is currently an observer member of the ULC's Standby Committee for revisions to the Uniform Law on Notarial Acts.

David received his J.D. degree with High Honors from Rutgers-Camden School of Law, and his undergraduate degree from Dickinson College. He is a member of the Bar in four states (New Jersey, Pennsylvania, Florida, and Colorado) as well as a member of the Bar of the United States Court of Appeals for the Third Circuit. From 1993 to 2007, David was also a Senior Adjunct Professor at Burlington County College where he taught Legal Research and Legal Writing in the College's ABA approved Paralegal program.

For these reasons and many more, I have chosen David as this year's recipient of the NJLTA President's Award. Join me in celebrating all of his many achievements and his unlimited contribution to our Association. ■

An Agent's Perspective

By: Scott Rutkay, President, Concourse Land Transfer, LLC

“Never say never. Never is a long, undependable time, and life is too full of rich possibilities to have restrictions placed upon it.”

— Gloria Swanson

Four hundred and twenty-eight days ago, I was sitting on a barstool at a restaurant steps from Madison Square Park. I was chatting with the bartender about some places I frequent that were closing the day before due to some flu variant. He laughed, said he had heard about it, but that the managers had told him that they were going to be open for the foreseeable future. He didn't seem too concerned. I'm sure he was as surprised as I was when they closed the next day only to reopen on June 10th, one year, two months and twenty-four days later.

Time has been playing tricks on my brain over the last couple of months. It seems to be somewhat fluid, stretching and shrinking, depending on what I am thinking about. Sometimes hours seem longer than years. That cocktail seems like a lifetime ago, but my first day in the title business seems like yesterday.

I remember getting hired to do notary closings, but the title company that hired me required that I obtain a producer's license before they would let me sit at a closing table. They wanted to make sure that someone with title experience was at the closing in case there were issues to solve. What they didn't tell me, and maybe didn't even know, was that the problems that I needed to solve wouldn't be title-related at all.

There were problems like the closing I performed three weeks into my new

job. When I asked the borrower for two forms of ID, he provided a driver's license and a social security card. When I matched the social to the one on the documents, I found that they were two completely different numbers. Mr. Smith, I said, it looks like the bank has the incorrect social security number on your documents, here look. Oh, he said, very seriously, as he reached back into his wallet and provided a social security card with the same number as was on the documents. I still wonder how many cards he had in his wallet – and how many banks he was trying to defraud. I thanked him, had him sign the rest of the documents, and after I left told the bank what had happened. They promptly cancelled the loan.

Or, how about the wife who found out that her husband had racked up eighty thousand dollars of credit card debt on a card she did not know he had. She got madder and madder as he stammered and stuttered as he tried to give an explanation. Suddenly, she threw her coffee cup at him, but he ducked, and it hit my shoulder. She screamed at him for what seemed like an eternity. After she calmed down, she continued to sign the documents. She did not apologize; I remember that distinctly.

Then there was the wife who was running away with her boyfriend, cashing out all the equity from the marital residence while the husband was deployed overseas. I never would have known, except at the end of the closing, the boyfriend gave me his driver's license, not the fake one with the husband's name. I did not say a word, I just wrote down all the information, and when I got back to the office, we called the bank and told them about the fraud. The two were very surprised when the bank cancelled the loan, but when she pressed, they threatened to call the husband, and she dropped it.



Or, most memorably, the woman who called me the day after the closing, telling me that she apologized but she had to fax me over the Right to Cancel for the loan that we had closed about seven hours before in her kitchen. Why cancel now, I asked her, you and your husband are saving a ton of money. You both seemed relieved to be at the end of the process, what changed your mind? My husband, she said, died forty-five minutes after you left the house. Massive heart attack. She had no idea how she was going to pay her bills. She started



crying. Nothing I learned in a title class prepared me for that conversation. I think about it a lot. I did my best to comfort her – told her that everything was going to be alright. I was only ten thousand seven hundred fifty days old – what did I know about how things were going to be.

Exactly three hundred and sixty-five days from that day at the bar, I opened a new business. The irony was not lost on me. I was around six thousand five hundred and fifty-five days older than

the person I was, sitting at the closing with the duplicate social security cards. I was explaining to my new employees why I thought they should become title producers. Aside from the obvious, that learning everything you could about the industry you are a part of is in and of itself worthwhile, I told them that while I was the best boss they'd ever have, that they'd never want to leave, but if they did, they could take the license anywhere they went. That if they ever did closings on their own, they would be able to solve most of the title-related

issues that come up. How they solve the real problems at a closing table is up to them.

Time has been playing tricks on my brain over the last couple of months. I find myself in the same position in reverse that I found myself at my first job. Where will my employees be six thousand five hundred and fifty-five days from now? I truly hope they are in the same position as me. Time will go on for them, and maybe it will stop playing tricks on me. ■

NJLTA LEGISLATIVE UPDATE



BLOCKCHAIN LEGISLATION MOVING THROUGH LEGISLATURE

By: Edward C. Eastman, Jr., Executive Director

In the Summer of 2019, the New Jersey Legislature established a Blockchain Initiative Task Force to study the development of distributed databases, seeking information that would facilitate a transition to more efficient business service models using Blockchain. The task force consists of the following members:

- (1) two members who shall be appointed by the Governor;
- (2) two members who shall be appointed by the President of the Senate;
- (3) two members appointed by the Speaker of the General Assembly;
- (4) one member appointed by the Assembly Minority Leader;
- (5) one member appointed by the Senate Minority Leader; and
- (6) the Chief Technology Officer; the Chief Innovation Officer; the Commissioner of Banking and

Insurance; the Clerk of the County of Bergen, the Clerk of the County of Monmouth; the Mayor of the City of Newark, County of Essex; the Mayor of the City of Jersey City, County of Hudson; and the Mayor of the City of Camden, County of Camden, or their designees, who shall serve ex-officio.

In this Legislative session the Digital Asset and Blockchain Development Act is working its way through the Legislature. The Bill (A2891) is sponsored by Assemblywoman Yvonne Lopez, Assemblyman Andrew Zwicker and Assemblyman Joe Daniels and co-sponsored by Assemblywoman Vainieri Huttie and Assemblyman Johnson.

A2891 has been approved by the Assembly by 73 “yes” votes and no “no” votes. It received approval by the Office of Legislative Services. The Bill has been referred to the Senate Commerce Committee.

The Bill would provide that a person may not engage in a digital business activity unless first licensed by the New Jersey

Department of Banking and Insurance. The Department may license a person to carry on one or more of the following digital asset business activities:

- (1) receiving a digital asset for transmission or transmitting a digital asset, except where the transaction is undertaken for non-financial purposes and does not involve the transfer of more than a nominal amount of digital asset;
- (2) storing, holding, or maintaining custody of a digital asset on behalf of others, exempting all custodians otherwise regulated as a bank, trust, broker-dealer, or financial institution in any State or by the United States;
- (3) buying and selling assets as a customer business;
- (4) performing exchange services of digital assets as a customer business;
- (5) issuing a digital asset; or
- (6) borrowing or lending of, or facilitating the borrowing or lending of, customer digital assets. ■

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Agency Section Update

By: Lisa A. Dombrowski, Agency Section Chair

Real Estate Headlines: “Low Inventory”; “Lumber Shortages & Surging Costs for Materials”; “Low Interest Rates”. This is the recipe for a perfect storm and will continue to push home prices higher.

Social media has been flooded with images of huge lines at open houses and stories of the excessive amounts buyers are paying over asking. One realtor told me her buyer was offering \$50,000. over asking and it was not enough. I have heard of 30, 40, 50 offers on a listing after the first weekend on the market. This is a great time for sellers; however, there are just not enough houses on the market. Sellers are staying put. They have nowhere to go. There are simply not enough homes, and the deficit is growing. I have read that in New Jersey, there are more Real Estate Agents than there are homes for sale.

Why is the residential housing inventory so low? Interest rates are creeping up,

but they are still historically low. With that you have the millennial generation reaching their prime homebuying years and looking to buy their first home. This is causing an abundance of people ready to purchase homes. Let's not forget that apartment living is becoming obsolete thanks to the pandemic. City dwellers are fleeing to the suburbs where they have more open space and a home office to work remotely.

With the residential market on fire, New Jerseyans are contending with lumber shortages and surging prices of materials. According to CNBC, soaring lumber prices are adding approximately \$36,000 to new home prices. Lumber is up 67% this year so far and up 340% from a year ago. When the pandemic hit, lumber production was shut down. It was expected that the housing demand would dry up, but instead after a brief pause, it came back roaring. Experts are predicting that lumber prices will remain high through 2022.

Where does this leave the commercial real estate market? The commercial market seems to be recovering but remains weak compared to pre-pandemic. Multifamily mixed-use, industrial and medical offices continue to grow at a rapid pace while office spaces are downsizing as the need for large spaces has declined due to remote workers.

In the past, most houses were listed for sale in April-June. As the COVID-19 restrictions are lifting and with cases declining as more people are getting vaccinated, the summer market forecast seems to be a hot one! Hopefully, we will see an increase in inventory and agents will be back to their usual business.

Enjoy the warm weather and I hope you can all find some time to relax and recharge. We are looking forward to in-person meeting and seminars this fall! ■

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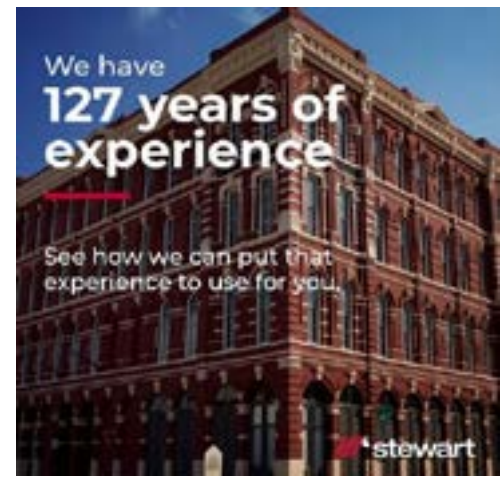
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The Past Presidents Podcast

Conversations with NJLTA Presidents Who Survived to Tell Their Tales

By: Peter Casey Wall, Foundation Title

It is official. Everyone in the world now has a podcast. I hope that this narrow-casted interview show will be entertaining and informative. We are kicking off our series with interviews of some past presidents, but it is our hope that we will use this medium to explore other areas of interest, capture some wisdom, and increase interest and involvement in our association.

In this inaugural episode, I had the honor to sit with the first person to raise their hand in response to my request for volunteers. She's someone you'd expect to jump headlong into a new endeavor and as it turns out, someone with an interesting story to tell and a pleasure to talk to.

Casey Wall (Interviewer) (CW)

Lisa Aubrey (Interviewee) (LA)

CW: How did you find title [as a career]? Is it something you dreamt of doing back in Linden High School...?

LA: No, it actually starts before that, but I didn't know it started before that... at an early age... and I am the daughter of two renters... my parents still to this day rent an apartment, so I did not know homeownership... that was foreign to me. I, very young, remember seeing a Century 21 ad. There were gold blazers that they wore... this was probably a late '70s commercial... and I thought that was the coolest thing ever, that they could wear a blazer... from early on I had a sense of independence... the allure of the gold blazer and the clipboard... I just thought that was so cool. I watched my grandmother wear suits to work. I did not know what she did, I just knew she was a businesswoman and I just said I want to one day be like Grandma, and I want to wear a suit and I want to work in "business."



CW: What did she do?

LA: She was actually a lead secretary, and I can't remember at the moment the name of the company she worked for, but she used to work on a WANG computer, so that's really dating now. So, she was ahead of her time, especially as a woman of her generation to be working in a business world... my grandfather was so supportive of my grandmother having a career, and I thought that's what I want. I don't know what it is, but it looks cool. She gets to dress up and wear nice clothes, so yeah, I want that.

So that Century 21 commercial, I think, is what launched my career because what happened is unlike most girls, I did not play school, and my mother was a teacher... I had the benefit of having her appointment book, and her red pencils and red pens, but I used that to schedule "open houses" ... I did not know what I was doing, I was just paraphrasing and parroting what was on the commercial, and I would play Century 21 so....

When I was in college, I still didn't know that title insurance even existed, but I thought I was going to be on the path for either an environmental lawyer... or I thought I would be a planner or an organizer... and it was my roommate from college who told me about a position... I had graduated from Montclair with a communications degree and a history minor... so I had been working as a receptionist at the Woodbridge Center Mall... but then Patty my roommate was working at a North Jersey title agency and there was an opening for a "copy-girl" because that's what it was called... and that was the beginning...



As of March 11, 2021, the date of this recording, Lisa is the State Agency Manager for the Fidelity family of companies in New Jersey and an active member of several NJLTA committees. The excerpted transcript above is just a taste of our conversation. For the full talk, you can listen at <https://njltapp.podbean.com/e/episode-1-lisa-j-aubrey-president-2015-2016/>.

I hope you enjoy it and I look forward to hearing from you with comments and suggestions. ■

2021-2022 BOARD OF GOVERNORS

Dawn Lagowski — President



Hello, I am a 39-year veteran in the title insurance industry. My time started working for an underwriter in 1982. Since then, I have worked for various companies in New Jersey, some being the largest agencies and others being small offices and companies.

I opened my own agency, New Dawn Title Agency in 2010 and since that time I have been very active in the New Jersey Land Title Association and a member of the American Land Title Association. I am grateful for the opportunity to be member and President of the current Board of Governors and looking forward to a successful year for our industry and New Jersey.

Jack Sudol — First Vice President



Jack is a title insurance industry veteran having worked for multiple national underwriters during his 18-year career. Jack has held various positions including State

Auditor, Director of Business Development, Sales Representative, and New Jersey State Manager. Jack is currently the Senior New Jersey Agency Representative for AmTrust Title Insurance Company.

Peter Casey Wall — Second Vice President



Casey has 18 years of experience as an examiner in New Jersey. He serves as a NJLTI Trustee and Instructor. He is the Director of Technology and Compliance and a Senior Examiner for Foundation Title, LLC, in Marlton.

John Crowley — Secretary/Treasurer



John Crowley is New Jersey State Counsel and Associate Senior Underwriting Counsel for Stewart Title Guaranty Company. Before moving to underwriting, John spent two years as Claims Counsel for New Jersey, Pennsylvania, and Delaware. Prior to joining Stewart, John was an associate at a law firm in Boston, MA, specializing in real estate and conveyancing, and was lead counsel for resolving all title issues for residential and commercial files in the Greater Boston area. John is a member of the New Jersey Bar, the New York Bar, and the Massachusetts Bar. He received his B.A. from Florida State University and his J.D. from Suffolk University Law School.

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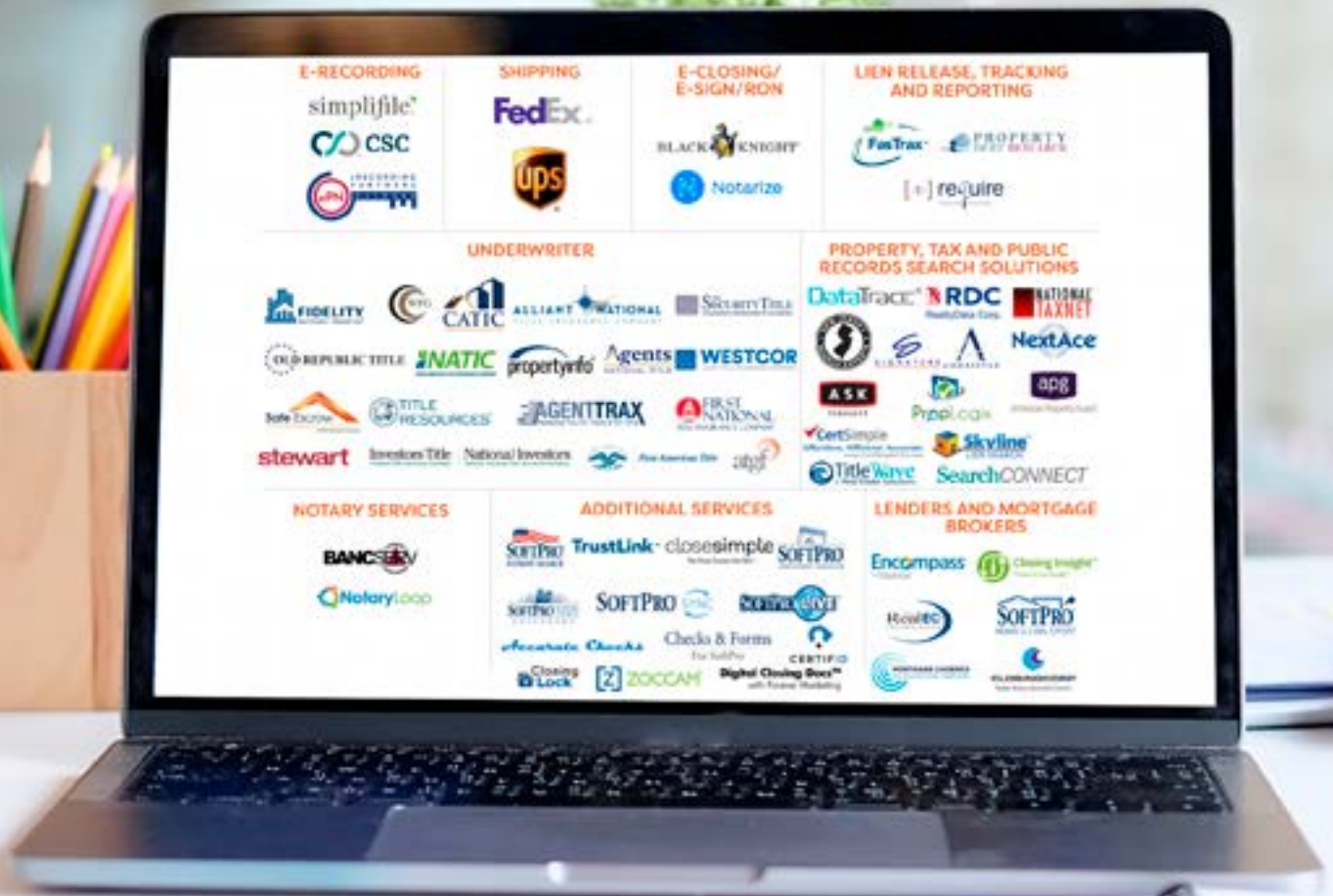
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OVER THINKING

& Clearing My Conscience

By: George A. Stickel, Esq., C.T.P.

About a year ago I decided that the Summer 2021 issue of *Advocate* would be the last time I would be writing about the title industry. Having retired 6 years ago I found myself drifting from relevancy. The industry has changed. I also fear I may have begun to repeat myself (but quickly dismissed that concern realizing that since it was unlikely anyone actually read my articles in the first place, repetition would not even be noticed).

In the 10 years I have been writing for *Advocate* I have accumulated a great deal of material that has never appeared in articles. In fact, I have over 5 legal pads filled with hand-written notes of random thoughts, or articles I started and never finished or articles not worthy of finishing. In short, over the years I had a lot of thoughts in my head that never went anywhere. This is my one last opportunity to clear them all out.

So, in no particular order, I offer you the ramblings of a former (but still licensed) title attorney, taking one last stab at entertaining an audience of fellow title people. If my successor in this space chooses to take any of these ideas and develop them into articles, I would be flattered and impressed.

One article I sincerely regret not finishing was my take on ancient forms of land conveyancing. I was starting way before the years Joe Grabas covers in

his book Owning New Jersey (available on Amazon, only 5 copies remaining; more on the way). The article was to be my take on what it might have been like to run a real estate settlement service in Biblical times. I direct your attention to Ruth 4:7, Jeremiah 32:9-15 and 43-44, Ezekiel 45:1-9 and Matthew 27:7-10. There is much discussion of witnesses and sandals and pottery jars, but not a mention of notaries, acknowledgments or GIT/REPS.

A Christmas issue story began with Ebenezer Scrooge as proprietor of a title agency. Jacob Marley made his appearance heavily burdened by chains (and links).

I started an article entitled "Integrity." That's as far as I got.

Greg Savad and Ron Axelrod offered me boxes of past newsletters from the Title Abstractors Association of New Jersey, an organization founded in the basement of the Hall of Records in Newark in 1931. My grandfather was a founding member. I wish I'd taken the time to go through those materials to write about the vital role of the independent title searcher to our industry. I fear I've let down my father and grandfather by not pursuing that project. And I've let down Greg and Ron by not getting those boxes out of their basements.

I've thought about discussing how often, just when I felt I was at the point in my

career that I knew everything I'd receive a wakeup call that I did not. This would probably need to be a continuing series.

In the past I have written about nightmare closings and there is still much material I could mine. The key to closings is to not leave anything until the closing itself. Everything, and I mean everything, needs to be pre-planned. I still remember the multimillion-dollar warehouse closing that was scheduled for the day before I was to leave on a cruise. I had been asking for the land survey for weeks and repeatedly was told it was not yet ready. I saw the survey for the first time at closing. It revealed the central sewer line for the city running directly under the building. And, oh yes, my insurer and the bank were demanding affirmative insurance to confirm the sewer was not a problem. I had a roomful of people staring at me to resolve this issue or the failure to close was going to be my fault. After many tense hours we were able to craft language acceptable to all parties. And I did not miss the boat.

If you are ever called to testify as an expert in court or at depositions, sometimes the best answer is "I don't know." I remember serving as an expert witness in a case about "Sonman's Patent Line" (please don't ask me to explain). I was on the stand for 14 hours over two days. At the end of the first day, I was exhausted and was challenged by a question on cross examination.

I'd spent the afternoon sparring with opposing counsel and felt truly confused. I ducked and dodged until even the judge recognized my discomfort and leaned over to advise me "if you don't have an answer just say you don't know," and then he adjourned for the day. We won the case (probably because the expert witness for the other side was even more confused than me). Remember, even experts can't know everything.

Some people, including attorneys and title folk, are just not nice people. Fortunately, they are far outnumbered by the dedicated, friendly and helpful members of our industry. When confronted by an idiot, just smile and nod.

I have half a legal pad filled with the reasons I hate the use of Powers of Attorney in real estate transactions. I could never find a way to make that funny. I started with: How did we as an industry ever get to the point that we are willing to accept any document that in the least resembles a Power of Attorney? See; not funny.

I'd still like to write that article, even if unfunny.

I hate to lose. Particularly when I know I am right. Sometimes you just have to suck it up. Many men learn this principle in marriage. With me it was on the job training.

Here is a list of other story ideas that never got off the ground.

1. Things to do in my retirement (like reading Owning New Jersey, now only 4 copies remaining; more on the way).
2. The best speeches I wrote, but never gave.
3. The best punchlines in search of a story (in law school I was voted most likely to need a lawyer, but you should have met the student most likely to incite a riot).
4. The many uses for a rubber mallet.
5. The Ten Commandments of the title industry (thou shall not covet...).
6. The NJLTA Roast.

7. Things I should have done as NJLTA President but did not have the nerve.

8. And, finally, you know you've been in the title industry too long when....

After reading all the above I realize I still have more stories to write. So, I rescind my resignation in hopes that Heather will accept further articles from me for future issues (and that someone, anyone, reads them and tells me if I am repeating myself). Or if you see me in person, just smile and nod.

George A. Stickel, Esq., C.T.P. is a Third Generation, 45-year veteran of the title industry, now retired. He is a Past-President and Honorary Member of the New Jersey Land Title Association and has been (is) a contributing writer for Advocate. This was to have been his final article, but the editors accept his non-resignation. As always, his articles represent his own opinions, recollections and proffering and do not represent the views of the New Jersey Land Title Association or Advocate. ■



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Simon v. Cronecker -Alive & Well

By: Stephen McNally, Esq., & Paige M. Bellino, Esq.

One of the benefits of the authors' combined thirty-some years of experience addressing title-related matters is the opportunity to witness title claim trends unfold in real time. One disturbing recent trend pertains to claims arising from the 2007 New Jersey Supreme Court decision *Simon v. Cronecker*¹.

While the *Cronecker* decision was issued more than 13 years ago, the significance of the decision laid relatively dormant until recently. The authors have seen as many claims related to the *Cronecker* decision over the last six (6) months, as we had seen over the previous six (6) years combined. Discussions with claims counsel have confirmed this trend. This begs the question, why now? Moreover, how can claims related to the decision be avoided? To answer these questions, one must understand the background and purpose behind the decision.

The *Cronecker* decision was intended to offer an interpretation of the New Jersey Statute, N.J.S.A. 54:5-89.1 ("section 89.1"), which provides that redemption of a tax sale certificate ("TSC") must occur within a pending foreclosure action of the subject TSC. Section 89.1 further provides that a party acquiring an interest in real property while a tax sale foreclosure is pending must establish that

it acquired such interest for "more than nominal consideration". Section 89.1 was enacted after the New Jersey Supreme Court decided *Bron v. Weintraub*². In *Bron*, a developer who had acquired a large tract of land through foreclosure of a TSC by Woodbridge Township realized that the Township had failed to include an heir to the property in the action. Woodbridge Township instituted an action to foreclose out the interest of the missing heir. A third-party investor tracked down the heir and, through a deceptive correspondence, purchased the interest for \$400.00. The trial court concluded that the third-party investor (also described as an "heir hunter") should be precluded from garnering the benefit of the dishonest transaction and created a constructive trust for the benefit of the developer. Section 89.1 was intended to address the competing interests of the TSC holder and the third-party investor. In a 1990 decision, *Wattles v. Plott*³, the New Jersey Supreme Court applied Section 89.1 to the matter where a third-party investor searched out an heir to a property subject to foreclosure of a TSC, and offered to redeem the TSC, sell the property and split the profits. While the terms of the arrangement between the owner and the third-party investor were significantly

less egregious than the terms struck in *Bron*, the Supreme Court still disallowed redemption by the investor, suggesting that all efforts by heir hunters would be proscribed.

Simon v. Cronecker involved efforts by the third-party investor, Cherrystone (also an heir hunter) to redeem two (2) separate TSCs on two (2) separate properties. Cherrystone did not intervene in the pending foreclosure actions, and when it went to redeem the TSCs, the tax collector in one instance rejected the attempted redemption and the other redemption was rejected by the TSC holder. The TSC holders then filed motions to bar redemption and to impose a constructive trust. The Supreme Court, in considering the case, answered a series of

¹ *Simon v. Cronecker*, 189 N.J. 304 (2007).

² *Bron v. Weintraub*, 42 N.J. 87 (1964).

³ *Wattles v. Plott*, 120 N.J. 444 (1990).

questions seemingly left open after the *Bron* and *Wattles* decisions. First, it concluded that, notwithstanding the suggestion in *Wattles*, third-party investors (or heir hunters) were not, as a matter of course, precluded from redeeming; and recognizing that such investors offered a societal benefit in potentially salvaging equity in a home for an individual otherwise subject to a tax sale foreclosure. Second, the Court considered an appropriate approach in defining "more than nominal consideration." After considering a number of options, including a fair market value approach and a windfall analysis (from the perspective of the investor), the Court opted for a "...flexible, under-all-the circumstances approach..."²⁴ The Court further observed that "...more than nominal consideration under N.J.S.A. 54:5-89.1 means consideration that is not insubstantial under all the circumstances; it is an amount that, given the nature of the transaction, is not unconscionable."²⁵ Finally, the Court considered the consequences of the Third-Party Investor not intervening in the foreclosure action, concluding that the result is the creation of a constructive trust to the benefit of the TSC holder. The constructive trust allows a TSC holder to step into the shoes of the

Simon v. Cronecker...cont. on page 22

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Simon v. Cronecker

continuation from page 20

third-party investor after reimbursing a third-party investor for the purchase price and the redemption amount. This aspect of the decision has had the greatest impact on both title agents and underwriters. Title agents must be prepared to take appropriate action when there is a pending tax sale foreclosure

when insuring a purchase. The following is offered for the title agent in addressing a tax sale foreclosure.

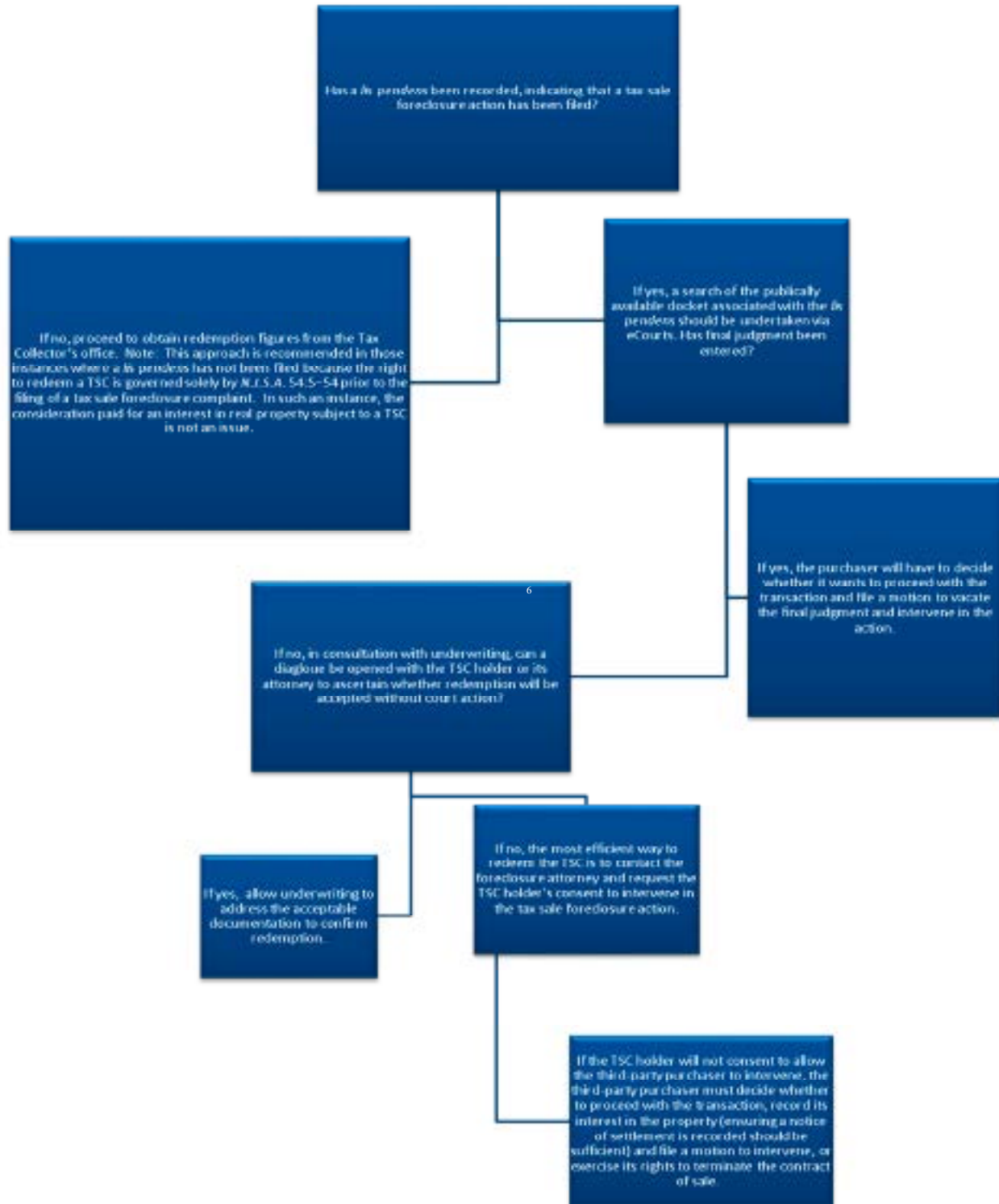
In a typical real estate transaction, a title agent orders a title search upon receipt of a title order. Upon receipt, the title agent should review the title search closely for all potential title issues, including but not limited to the presence of a recorded TSC in the county

land records. If there is a recorded TSC, the authors suggest that the title agent engage in the below flow chart's analysis to determine next steps.

⁴ *Id.* at 334-35.

⁵ *Id.*

While the bottom flow chart will help title agents and underwriters spot thorny issues related to TSCs, it is not a panacea. Additionally, it is important to



consider that a transaction is not dead merely because a TSC is found in a title search. There is always a possibility that a TSC holder will consent to redemption without intervention, or alternatively, sign a consent order allowing intervention. However, if it does not, then court action will be required. Such court action is problematic, because a title agent cannot file the necessary legal documents as it would constitute the unauthorized practice of law. Additionally, litigation could delay the closing or potentially result in termination of the agreement of sale altogether. The best advice that can be offered under these circumstances is this: be sure to open up a line of communication with underwriting, so that appropriate and timely action can be taken. ■

6 *Cherokee Equities, L.L.C. v. Garaventa*, 382 N.J. Super. 201, 209 (Ch. Div. 2005)



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ALTA

Advocacy Update

By: Dave Penque

**From: Diane Tomb,
Chief Executive Officer**

**Subject: ALTA Advocacy
Update – June 2, 2021**

I hope everyone had a peaceful Memorial Day. To all of those in our industry who have lost loved ones who served, we owe you a debt that can never be repaid.

I married into a Navy family; my son is the fourth generation to serve and the third to attend the Naval Academy, where he just finished up his Plebe year and next year will be a Youngster, Third Class at Annapolis. I learned very quickly when you are part of a naval family, the core values of the Navy are part of your everyday experience and lexicon. Honor. Courage. Commitment.

They are simple words, but they convey so much to those who exemplify them—similar to ALTA's core values of lead, deliver and protect. Both sets of values embody what it means to serve others.

At last month's ALTA Advocacy Summit, Our Values were on full display. We told the story of how we used our real estate expertise to find safe and secure ways to protect our customers during closing (both financially and physically). A major part of that story—and central to our industry's leadership—is remote online notarization (RON) and the Securing and Enabling Commerce Using Remote and Electronic (SECURE) Notarization Act. Our main ask during the ALTA Advocacy Summit was for our senators and representatives to co-sponsor this legislation. The bill permits immediate nationwide use of RON and includes national standards for consumer protection while providing legal certainty for the interstate recognition of RON.

The Senate bill was reintroduced in

mid-May as S. 1625 and already has four sponsors. The House bill will be introduced shortly. As we continue to ramp up momentum for the legislation, the Title Action Network (TAN) sent out an alert last week. I hope you received it and acted. If not, now is your chance to do so.

We need strong bipartisan support for S. 1625 for the Senate to act. Please contact your senator today and ask them to co-sponsor this important piece of legislation. If your senator is already a co-sponsor, a thank you message will automatically populate for you to send.

Contact Your Senator About S. 1625, the SECURE Notarization Act. <https://tinyurl.com/5ejf2cuh> It is in our nature to lead, deliver and protect our customers. As we move toward the digital age, the best way to live those values is to help us advocate for the passage of the SECURE Notarization Act. As Roy Disney said, "It's not hard to make decisions
ALTA Advocacy Update...cont. on page 26



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ALTA ADVOCACY UPDATE

continuation from page 25

when you know what your values are.” I contacted my senators about SECURE—will you?

Next, I'd like to take a minute to congratulate ALTA's Communications team. Under Chris Morton's leadership, the team—Jeremy Yohe, Megan Hernandez and Shawn Sullivan—as well as our advertising firm, Marathon Strategies, placed Bronze in two categories of the Telly Awards: Campaign—Branded Content and Campaign—Branded Content, Not-for-profit. The awards were presented for ALTA's video campaign, “Our Title is Protection.” (<https://tinyurl.com/sepunbpz>). The Telly Awards annually showcase the best work created within television and across video, for all screens. There were more than 12,000 entries from all 50 states and five continents that were submitted this year. Telly Award winners represent work from some of the most respected advertising agencies, television stations, production companies and publishers from around the world. As a Telly winner, we are the



standard bearer of excellence in our industry.

Finally, now is the time to sign up for ALTA ONE! We would love to see you in person in New Orleans, Oct. 12-15; however, if you aren't quite ready to travel, a virtual option is available. As gas prices go up and businesses try to recoup losses incurred during the COVID-19 pandemic, the cost to fly is rising. Grab your ALTA ONE Early Bird discount (<https://tinyurl.com/2xuhvs8j>) and reserve your flights now before prices go up!

Biden Administration Releases \$6 Trillion Budget Proposal

At the end of last week, President Joe Biden proposed his administration's first budget for fiscal year 2022. The \$6 trillion federal budget blueprint does not have the force of law but serves as a starting point for Congress to do its work. The blueprint lays out an ambitious agenda to build on the American Jobs and American Families Plans and increase the government's role in infrastructure, housing and other services.

Along with the budget came the Treasury Green Book. This document is a supplement to the budget and includes a detailed list of tax proposals that the administration currently supports. The Green Book estimates that a complete

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repeal of 1031 exchanges would raise \$19.55 billion over 10 years. This is much lower than past estimates from Congress' Joint Committee on Taxation.

Meanwhile, the Green Book (page 84) has more details about the administration's proposed \$500,000 cap on deferrable gains under 1031 exchanges. Most notably is that it says it would only apply to post-2021 transactions. The proposal would allow the deferral of gains up to an aggregate amount of \$500,000 for each taxpayer (\$1 million in the case of married individuals filing a joint return) each year for real property exchanges that are like-kind. Any gains from like-kind exchanges in excess of \$500,000 (or \$1 million in the case of married individuals filing a joint return) during a taxable year would be recognized by the taxpayer in the year the taxpayer transfers the real property subject to the exchange.

CFPB Releases Manufactured Housing Report

On Thursday, the Consumer Financial Protection Bureau (CFPB) released a

report on manufactured housing. Manufactured housing is a small segment of housing supply, but it provides an important affordable option. Manufactured housing makes up 13% of the housing stock in small towns and rural America.

With the growing focus on affordable housing, expect policymakers to push for more support for manufactured housing. The report found that manufactured housing loan borrowers face higher interest rates, risks and barriers to credit. Homeowners seeking a loan on a site-built home are approved more than 70% of the time, but less than 30% for manufactured home loans. CFPB Acting Director Dave Uejio said, "Much more work needs to be done to understand the options available to these families and how best to help ensure that manufactured housing homeownership can be a path to financial stability for the rural and lower-income families who depend on it."

Tell Your Friends and Colleagues it's Time to Do a Little Bragging
Don't let the extraordinary ALTA

members in your life go unnoticed: Nominate someone for the ALTA Our Values Awards today! Our Values describe who we are as an industry and encapsulate our promise to our customers. Celebrate your friends and colleagues who showcase what it means to Lead, Deliver and Protect in the best possible ways! Up to four awards are up for grabs: three for individuals and one for an entire ALTA member office or operational team.

Winners will be recognized during ALTA ONE, Oct. 12-15 in New Orleans, and receive scholarships to fly to and attend the event, awards to display, digital badges for a company website and the street cred that they deserve.

I hope this ALTA Advocacy Update is useful to your work this week. Your comments and questions are always welcome. I can be reached at dtomb@alta.org. ■

Best regards,
Diane Tomb
Chief Executive Officer



LINDSAY ANN CANNON AWARDED 2021 JOHN R. WEIGEL SCHOLARSHIP

The New Jersey Land Title Association is pleased to announce that Lindsay Ann Cannon of Holmdel, New Jersey, is this year's winner of the John R. Weigel Scholarship Award. Named in honor of the Association's Director Emeritus who served the title insurance industry with great distinction for over twenty years, this award will provide Lindsay with an \$8,000.00 scholarship, which will be paid over 4 years.

Currently a senior at Holmdel High School in Holmdel New Jersey, Lindsay will be attending the University of Tennessee. She hopes to ultimately pursue a career as a nurse practitioner or physician's assistant. The Title Association connection which made her eligible for this scholarship award is through her mother, Danielle Cannon, who is presently employed by NJLTA Agency Section member Two Rivers Title Company, LLC.

Announcing the award, NJLTA President Cindy Mills said, "The applicants really made it tough on the Scholarship Committee again this year. Our kids are so smart and accomplished!"

An Honors with Distinction student, Lindsay was a member of the National Honor Society and the Spanish National Honor Society where she served as Vice President. She was Holmdel High School's nominee for Monmouth University Women's Leadership Award, as well

Scholarship Winners

as serving as Secretary of Holmdel High's Youth Alliance. She was Holmdel High School's female athlete representative to the NJSIAA Shore Conference Student Ambassador Program. A well-rounded student, Lindsay is also an athlete lettering in 4 varsity sports in her years at Holmdel playing on the girls' basketball (co-captain), lacrosse (co-captain) and soccer teams in all 4 years and, thanks to the pandemic and the NJ State Inter-scholastic Athletic Association's decision to create a second "winter" season, the girls' varsity volleyball team in her senior year. Lindsay is the first and only student to graduate from Holmdel with 13 varsity letters! She received honorable mention for the All-Shore Varsity Girls' Basketball team and was named to the All-Shore Varsity Girls' Basketball Pod 5 Second Team. Lindsay also made time for community service activities serving as a coach's assistant for the HYAA and a teen helper at St. Catharine's Summer Religious Ed program.

The John R. Weigel Scholarship, which was inaugurated in 1998, is awarded once per year to a qualified candidate

for higher education arising out of a title industry connection. Academic achievement, extracurricular activities and public service experience are all required of eligible candidates. In addition, award winners must continue to satisfy the eligibility requirements throughout the four-year period during which their scholarship is paid. The scholarship is underwritten by both the Underwriter and Agency Section members of the New Jersey Land Title Association. ■

Lindsay joins past scholarship winners, Katherine Ramler (1998), Theresa Hayes (1999), Elliot Fineberg (2000), John T. Wenzel (2001), Kathryn Anne Cannito (2002), Lauren Usignol (2003), Alex Fineberg (2004), Pamela Kubinsky (2005), Danielle Panccione (2006), Kyle Wilson (2007), Michael Ham (2008), Brielle Grabas (2009), Kacie Baker (2010), Alexis DeCarvalho (2011), Samantha Huddleston (2012), Andrew Martini (2013), Michael Kaspar (2014), Rachel Swope (2015), Giulia Gargano (2016), Katherine "Katie" Scott (2017), Francesca Menard (2018), Hailey Carroll (2019), and Shannon Dobres (2020).





ANTHONY MONDERINE RECEIVES MARILYN A. HENSHAW SCHOLARSHIP

The New Jersey Land Title Association is pleased to announce that Anthony Monderine of Sayreville, New Jersey, will receive the 2021 Marilyn A. Henshaw Scholarship Award. This award will provide Anthony with a \$2,500 scholarship toward the expenses of his freshman year at college.

Currently a senior at Sayreville War Memorial High School in Sayreville, Anthony plans to study business at Villanova University. He hopes to ultimately pursue a career in title insurance. The Title Association connection which made him eligible for

this scholarship award is through his mother and stepfather, Lisa and Jason Dombrowski, who own and operate NJLTA Agency Section member Vintage Title Services, LLC.

A member of the National Honor Society, National Business Honor Society, Math Honor Society, Spanish Honor Society and English Honor Society, Anthony excelled academically. Also an athlete, Anthony was a varsity starter for Sayreville's varsity golf team and a member of their baseball team. Active with the Future Business Leaders of America (serving as treasurer), Anthony received the FBLA's Gold Member of the Year and was the 1st place winner of the "Partnership with Business Project" at FBLA's State Leadership Conference. Anthony also participated in DECA and the International Club at Sayreville.

"Anthony's qualifications are so impressive," said NJLTA President Cindy Mills after the award was announced. "It is great that he is thinking of following in Lisa's and Jason's footsteps!"

The Marilyn A. Henshaw Scholarship was established in 2019 by an anonymous benefactor who wished to honor Marilyn's years of dedication to the title insurance industry in New Jersey. It will be awarded once per year in 2020, 2021, 2022, and 2023 to a student entering college or university as a freshman and who has a title industry connection. Academic achievement, extracurricular activities and public service experience are all required of eligible candidates. The 2020 recipient was Gabriella Barbarisi. ■

DATES TO REMEMBER

September 2021

22nd NLTA Board of Governors
www.njlta.org for location and/or login information

October 2021

6th NJLTA Agency Section Meeting and Seminar
www.njlta.org for location and/or login information

12th – 15th ALTA ONE
New Orleans, LA
www.ALTA.org to register

November 2021

17th NLTA Board of Governors
www.njlta.org for location and/or login information

December 2021

8th NJLTA Agency Section Meeting and Seminar
www.njlta.org for location and/or login information

January 2022

19th NLTA Board of Governors
www.njlta.org for location and/or login information

February 2022

2nd NJLTA Agency Section Meeting and Seminar
www.njlta.org for location and/or login information

March 2022

15th-16th ALTA Springboard
Tampa Marriott Waters Street Hotel,
Tampa, Florida

16th NLTA Board of Governors
www.njlta.org for location and/or login information

Would you like your event or continuing education class included on this calendar? If so, please contact Maureen Crowley-Unsinn (Maureen.Crowley@fnf.com or 732-545-1172) for information. Thank you!

On the Move

WELCOME NEW MEMBERS:

Individual:

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Congratulations to Counsellors Title Agency, Inc. on being recognized by Old Republic Title Company with its highest honor, the Premier Agent Award for 2020. This is the fourth year in a row that the agency has received this commendation. "Premier Agent" Award from Old Republic Title is a designation that identifies agents and agencies for their outstanding work and production.

Notes from the Editor

By: Heather R. Manfredi, Editor-in-Chief

I hope this finds you lounging by the pool with a cold drink in your hand, sun in the sky and relaxing through the dog days of summer. I can't think of better reading material than this issue of *Advocate!* Solar energy, block chain legislation and a famously familiar tax sale case. Although we had to forego another Convention, this issue is chock full of the awards and officer announcements we usually receive while eating dinner together. Hopefully next year we can do this in person! See you in the fall and enjoy your summer.

We are always on the lookout for the next agency for our Agent Spotlight Interview.



Please reach out and let me know if you are interested in being interviewed and

having your company under the spotlight for our next issue. ■

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