



What's new?

News Release - Officers Elected— New York State Land Title Association

NYSLTA issued a news release on August 29, 2015 announcing the election of the 2015-2016 Officers.

Quoting the release:

"Newly elected president, Marianne Mathieu, of Fidelity National Title, previously served as president-elect, working closely on the Executive Committee with outgoing president Rafael Castellanos, of Expert Title Insurance Agency. ...

Joining Mathieu and Castellanos as officers are Bill Collins, of Frontier Abstract and Research as President-elect and John Martinico of Security Title Guarantee Corporation of Baltimore as Treasurer. The Title Section will be chaired by Marvin Bagwell of Old Republic Title Insurance Company with Mary Jane Keyse of Fidelity National Title Group as Vice-chair. The Abstracter and Agent Section Chair is Richard Giliotti of The Judicial Title Insurance Company; Vice-chair is DeAnna Stancanelli of National Granite Title Insurance Agency.

[Click here for more information](#)



***Congratulations to Marianne Mathieu on
becoming the New York State Land Title
Association President!***

Marianne Mathieu talked of the importance of all segments of title insurance industry working together to shape the industry's regulatory future. She also spoke about refocusing on ALTA's Principles of Fair Conduct that represent the association's commitment to promote behavior within the title industry that serves the needs and interests of consumers.

For a full list of your Associations Officers and Committees, click link below:
http://www.nyslta.org/nyslta_officers

NEWS AND UPDATES

Adverse Possession: In 2008, the New York Legislature enacted sweeping changes to Article 5 of the Real Property Actions and Proceedings Law (RPAPL) that governs the circumstances under which title to real property may be acquired by adverse possession. For an excellent article written by Adam Leitman Bailey and John M. Desiderio reviewing the application of the 2008 amendments to the law see <http://alblawfirm.com/articles/adverse-possession-amendments/>

Albany County: The Albany County Clerk announced their plan to implement a new Indexing/Scanning/Receipting system on November 2, 2015. The Clerk states the new system will have more scanned court records, more records available online, the elimination of Book & Pages for Land Records. Further, the clerk states they plan to participate in e-Recording in the very near future. To allow for a smooth conversion of existing records, there will be a slight interruption of their services on Friday October 30, 2015, from 1:00 -4:30.

CFPB: RESPA Compliance and Marketing Services Agreements (MSA's) – The CFPB issued Compliance Bulletin 2015-05 on October 8, 2015; The CFPB issued a memo stating there are substantial risks posed by entering into MSA's. "The CFPB views MSAs as highly risky ventures often designed to evade the Real Estate Settlement Procedures Act (RESPA) that hurt consumers and are likely to violate Section 8," the memorandum said. [Click here to read the CFPB Compliance Bulletin 2015-05.](#)

Jefferson county/Sales Tax: ST-15-4, Jefferson County Increases Local Sales and Use Tax Rate Beginning December 1, 2015, the sales and use tax rate in Jefferson County increases from 7¾% to 8%. To view the entire document click on the link below:
http://www.tax.ny.gov/pdf/2015/st/st15_4.pdf

Nassau County: The Nassau County Clerk's Office launched a new computer system in early October 2015. Nassau examiners and numerous underwriters have reported that the new system is plagued by numerous malfunctions. (see Land Records Committee Report on page 5)

Payoff Checks: There continues to be incidents of theft of payoff checks. The theft appears to be occurring when payoff checks are sent via overnight delivery; the thieves are intercepting the overnight package and removing the checks from the envelopes; once the check is taken they alter the payees name and the checks are then frequently presented for payment. The payoff lender receives an envelope with no checks. Underwriters are urging all to be vigilant in monitoring payoff transmittals and to confirm receipt of the checks.

Transfers of HDFC Property: On July 16, 2015 the New York State Department of Law, in consultation with the City of New York Department of Housing Preservation and Development and the New York State Division of Housing and Community Renewal, published a memorandum providing guidance on restrictions and requirements in connection with the transfer or sale of real property owned by Housing Development Fund Corporations formed, pursuant to the Private Housing Finance Law and the Business Corporation Law, for the purpose of providing low-income housing. To review the memo open the following link: [Attorney General's Website](#)

TRID: ALTA hosted a TRID Townhall on its Facebook page on Tuesday, July 28, to share what industry participants should be doing now to prepare for the implementation of the TILA-RESPA Integrated Disclosures rule.
https://www.youtube.com/watch?v=Mdchholo_pc&feature=youtu.be

Ulster County: The Ulster County Clerk's Office has announced that beginning *January 1, 2016* it will only accept the electronic version of the RP-5217 form for filing with any deed transaction and will no longer accept handwritten or typed carbon copy forms. Information concerning the RP-5217 form as well as the form itself can be found on the clerk's website at www.co.ulster.ny.us/countyclerk



IN A NEW YORK MINUTE...

Marketing Service Agreements: A Question of Value

By Vincent G. Danzi

So called, “Marketing Service Agreements,” (hereafter “MSA” or “MSAs”) have been in the news recently as Wells Fargo, N.A., announced on July 30, 2015, that it would withdraw from mortgage marketing services and desk rental agreements with real estate firms, builders, and certain other referral sources. According to Wells Fargo, “The decision was made as a result of increasing uncertainty surrounding regulatory oversight of these types of arrangements...”¹

The Real Estate Settlement Procedures Act, of course, provides a proscription from paying for referrals of settlement services business involving federally related mortgage loans:

No person shall give and no person shall accept any fee, kickback, or thing of value pursuant to any agreement or understanding, oral or otherwise, that business incident to or a part of a real estate settlement service involving a federally related mortgage loan shall be referred to any person.

RESPA §8(a) (12 USC Section 2607(a))

A natural objection to casting an MSA arrangement as such an agreement is that the parties are not paying for the referral itself, but rather for the services of promoting the provider of those settlement services. Indeed, RESPA goes on to specifically exempt payments for services actually rendered: “Nothing in this section shall be construed as prohibiting... the payment to any person of a bona fide salary or compensation or other payment for goods or facilities actually furnished or for services actually performed”²

Why then would the Consumer Financial Protection Bureau (hereafter “CFPB”) object to MSAs as it did last year in a consent order with Lighthouse Title, Inc.?³ RESPA’s Regulation X contains the beginning of the bread crumb trail on this issue. “If the payment of a thing of value bears no reasonable relationship to the market value of the goods or services provided, then the excess is not for services or goods actually performed or provided. These facts may be used as evidence of a violation of section 8 and may serve as a basis for a RESPA investigation”⁴

¹ Wells Fargo, N.A., press release, July 30, 2015, see URL: https://www.wellsfargo.com/about/press/2015/withdrawal-mortgage-marketing-services_0730/

² 12 USC 2607(c)

³ Administrative Proceeding: In the matter of: Lighthouse Title, Inc., 2014-CFPB-0015, 09/30/2014

⁴ Regulation X §1024.14(g)(2)

IN A NEW YORK MINUTE...

Continued from page 3

What is left unsaid in the regulation, but strongly suggested, and spelled out in other interpretative sources, is that the portion of the payment which exceeds a “reasonable relationship” to the goods or services provided pursuant to the agreement very much appears to regulators as a payment for the referral itself, which is prohibited by Section 8 of RESPA.

The problem with most MSAs between title providers and real estate brokers and lenders is not just that what constitutes a violation is somewhat subjective (i.e. a payment which is not *reasonably* related to the services provided), but that the payment cannot include any value for a referral. The willingness of the settlement services provider to enter into an MSA with a particular marketing services provider begs the question of whether the compensation conceived in the MSA takes into account the ability and likelihood of that marketing services provider referring such work. The problem is therefore one of context.

Although there has been a recent announcement about Wells Fargo exiting the MSA business with referral sources, MSAs have been sensitive subjects for quite a while. In an Interpretive Rule published in 2010 by the Department of Housing and Urban Development (hereafter “HUD”, the RESPA regulator prior to the CFPB), concerning compensation of real estate brokers and agents by home warranty companies pursuant to MSAs, HUD explained that the fact that the real estate brokers and agents were referral sources, in addition to being marketing service providers under the MSAs, further restricted a permissible marketing arrangement.⁵ “In particular, a real estate broker or agent is in a unique position to refer settlement service business and through marketing can affirmatively influence a homebuyer’s or seller’s selection of a [home warranty company]... Therefore, marketing performed by a real estate broker or agent on behalf of an HWC to sell a homeowner warranty to **particular** homebuyers or sellers is a ‘referral’ to a settlement service provider.” (emphasis in bold added)⁶ Additionally, “a real estate broker or agent actively promoting an HWC and its products to sellers or prospective homebuyers by providing HWC verbal ‘sales pitches’ about the benefits of a particular HWC product or by distributing the HWC’s promotional material at the broker’s or agent’s office or at an open house is considered to be a referral.”⁷ Although this interpretative rule concerned home warranty companies, later in the year, HUD clarified that its reasoning could apply to other types of MSA arrangements between settlement services providers.⁸ In short, MSAs between title providers and marketing service providers who are also possible sources of referrals, have taken place in a demilitarized zone of compliance where certain traditional notions of marketing are, ab initio, problematic.

It is easy to see how the waters get muddied. Payments pursuant to compliant MSAs are payments for **marketing services**, and not referrals. In the real world, many of these MSAs end up compensating realtors and loan originators for services that might be fine if they were provided by a non-referral source but would consequently be of questionable value if provided by such a non-referral source. Oftentimes these services are of value to the settlement services provider as an incident of the main business of the marketing service provider.

The value of a *referral* is readily conceivable, but when the value of that referral must be excluded from a permissible payment for marketing services, and those marketing services necessarily lack certain traditional methods of marketing, it is unclear when the compensation bears a reasonable relationship to the remuneration offered under the MSA. Set the compensation level too low and there will be little interest in the MSA. Set it too high and the CFPB’s imagination of what is being paid for will be set astir. The recent news about lenders withdrawing from MSAs perhaps speaks most to the difficulty in finding the Goldilocks zone for MSAs.

⁵ Vol. 75, No. 122, Federal Register 36272, June 25, 2010

⁶ Id.

⁷ Id.

⁸ Vol. 75, No. 230, Federal Register 74621, December 1, 2010: “The interpretive rule is specifically directed to home warranty company payments to real estate brokers and agents. However, the analysis in the interpretive rule is based on an interpretation of the RESPA statute and HUD’s existing regulations, which analysis may be applicable to payments made by other settlement service providers to real estate brokers or agents.”

From the Land Records Committee

New York City:

The Land Records Committee of the Association had its quarterly meeting with Annette Hill, Assistant Commissioner of the Department of Finance/City Register, her deputies and with members from the Department of Finance and Department of Environmental Protection, on Thursday, September 17, 2015. The following items were discussed:

□ *Rejections*-Annette Hill is aware of the rejections and it appears that many incorrect rejections are made as a result of overzealous employees misinterpreting the law or the scope of the Register's power to review. In order to better educate the examiners and locate and teach the employees that incorrectly reject many documents, the Register has been pulling rejections for review prior to returning same to the submitter. Once again, she hopes the situation will improve (albeit gradually) in the coming months. If you get an erroneous rejection contact the rejections desk and/or Mary Scheman-Stella (Scheman-StellaM@finance.nyc.gov) – the document will be reviewed quickly. Please note – if you send an email disputing a rejection to the rejections desk or to Ms. Scheman-Stella, please attach a copy of the document in question.

□ *Smoke Detector Affidavits* – the ACRIS system creates a Smoke Detector Affidavit whether or not one is required. There is some relief for members that are sick of notarizing such affidavits and attaching same to the deed and ACRIS docs for recording – Smoke Detector Affidavits ARE ONLY REQUIRED for properties improved by a one or two family house or for a residential condominium unit in a building containing three or less condominium units. For all other properties, the Smoke Detector Affidavit is not required and a deed will not be rejected if the submitted docs do not contain such affidavit. Of course, the deed will not be rejected if a commercial property deed is submitted with a Smoke Detector Affidavit

□ *Update of consolidation of Borough Offices to Queens* – No dates yet. The City Register is waiting for approvals to move forward.

□ *Condominium Floor Plans/Maps* – The Register is looking into the feasibility (i.e. cost) of having Condominium Floor Plans/Maps that were recorded before 2009, available on ACRIS. An RFI will go out to potential contractors for the project within the next six to eight weeks. *Condominium Floor Plans/Maps recording* – This is an issue only if you e-record. Lately, recording of Floor Plans have been rejected even though the “oversized” box is checked when preparing Cover Pages for Floor Plans. Most, if not all Floor Plans are 11 X 17 and are scanned (when e-recording only) horizontally before submitting to the City Register. The City Register then turns the document vertically before accepting for recording. During this process part of the Maps are cut off and the City Register then rejects the Maps. A solution has then been to reduce the Maps to 8.5 X 11 and scan vertically, and then submit same for recording. However, quality is lost and you have already paid for a larger document. We will work with the City to figure out a solution to this problem. Any member that has had Floor Plans/Maps rejected for this reason should notify Mary Scheman-Stella (Scheman-StellaM@finance.nyc.gov).

Nassau County:

On October 26, 2015 the Title Insurance Section sent a delegation to meet with Nassau County Clerk Maureen O'Connell, her senior staff and the Xerox project team. The purpose was to discuss and resolve concerns about the land records computer system transition on October 1, 2015. Ms. O'Connell affirmed that the current transition to the new computer system will bring the county “cutting edge technology” and that in a transition of such magnitude, some “glitches” will occur. The Clerk and representative of the software advised that all data transferred from the old (BrownTech system) to the new (Xerox ACS system) should be certified accurate by mid-November. It was mutually agreed that the Land Records Committee would meet with the Clerk's Office on a quarterly basis, the first meeting to be planned following the full implementation of the ACS system.

New York State Land Title Convention/Conference

HUDSON SEARCH

NYSLTA 2015 CONFERENCE WRAP-UP

BY PAT COTTER

Po co nos – From the Munsee Native American word ‘Pokowochne’, meaning “creek between 2 hills”, that’s where we had our annual NYSLTA Conference. Actually, to be more precise, it was at Skytop Lodge and we have Rafael Castellanos to thank for picking such a great venue. We had a ball!

Of course the important thing is the money collected for charity. This year’s donations will go to Gilda’s Club for cancer victims and their families. The NYC branch and the Rochester branch will each receive a share of the proceeds. There was a film presentation of Gilda’s Club and the wonderful work they are doing. Kathy Roper Kathy Roper (AIS) & Monica Malagon (FNTG) decided on this charity because it’s local and our dollars will make a difference. I learned that at least three attendees were currently dealing with this disease and we have all been touched by it.

Now for the Business Report. Sunday, there was the PAC Reception - and it’s purpose was business. Those who contributed to the Agents PAC were invited and De Anna Stancanelli, Chairperson of the agents PAC was grateful for all of our contributions. She stressed the importance of us reaching state legislators in order to explain our needs. She was followed by Marianne Mathieu, incoming NYSLTA President, who also stressed the importance of TIPAC, the ALTA PAC which represents our interests in Washington.

Monday Morning, Agents Chairperson Richard Giliotti told us that the DFS Reg 206 had expired and will be replaced by 206E (emergency) and that item 35.4 requiring “multiple and significant business” was on the Governor’s desk. There is a draft of reg. 206 in the governor’s office and it may be waiting for a new DFS Superintendent to be announced. He said the DFS Superintendent had resigned and Anthony Albanese is the Acting Superintendent. Whenever a new reg. comes out, there will be another 30-45 day comment period. Scott Wexler, association lobbyist, said there is no timeline for regs. 206-208. His advice: “stay engaged”. Richard asked that all stakeholders let us (NYSLTA) know about anything sent to DFS on the reg. 208 rule.

Richard also reminded us that every penny collected for the agents PAC goes to the PAC. No money is used for expenses. He said that the agents section dues collected was well over the required amount. He said this prompted the agents to ask the underwriters for a voting change at EC meetings. The amendment passed and there is a new structure in place that allows agents’ votes to count the same as underwriter votes in most situations.

Douglas Duncan was the Keynote Speaker at Monday’s General Session. He is the Senior Economist for Fannie Mae. There are slides of his presentation on the members’ website.

Vincent G. Danzi, First Nationwide Title, was the next speaker along with panelists that included Penny Reed of Wells Fargo, Ruth Dillingham of First American and Charles Cain of WFG. Vince led the discussion with questions about how the CFPB would operate.

Another discussion was regarding Tila Respa Integrated Disclosure (TRID). The time periods regarding the new Loan Estimate & Closing Disclosure forms were discussed,

RESPA forms are still applicable to HELOCS and reverse mortgage transactions, so please keep those forms handy. Additionally, the three-day right of rescission is still applicable to refinances, and the three-day right can be waived only in the event of an emergency; the borrower must state the nature of the emergency in **his/her own handwriting** which is a change from the TILA/RESPA rules.

Bill Burding, a member of ALTA's Board of Governors, made the ALTA presentation which also included TRID & CFPB! Bill spoke about lobbying efforts to further our industry and to try to keep the "regulations bear" away from our door. He stressed the importance of TAN and agents staying involved. Agents should go to ALTA's website for forms and information. <http://alta.org/>

Bob Treuber, Executive Director of NYSLTA, told us there will be two association websites. One will be public and open to everyone. The other will be for members only. Do you need another reason to join? Well here it is: The industry and the association is becoming more complex. Please note that NYSLTA will be the place to go for CE credits needed by agents and the DFS will be asking the association for advice on licensing education and testing.

To read the entire article send an email request to Patrick Cotter at PCotter@hudsonsearch.com.

THE CHARITABLE WORKS CORNER

NYSLTA raises \$20,000 for Gilda's Club!



On August 17th, at the NYSLTA annual convention, the Charitable Works Committee held a raffle and auction to benefit Gilda's Club of NYC and Rochester.

Gilda's Club mission is to create welcoming communities of free support for everyone living with cancer – men, women, teens and children – along with their families and friends.

The NY title community generously donated prizes that were raffled and auctioned during the event. These donations, coupled with the benevolence of the attendees buying raffle tickets or bidding on auction items, led the spirit of giving to a new level! During a fun evening of laughs among friends and competitors, the association raised \$20,000 to be split between Gilda's Club NYC and Gilda's Club Rochester.

Great work to all the committee members for another memorable and successful year. Thank you to each which include:

Kathy Roper, Monica Malagon, Helen Powell, Suzanne Schirtzer, Grace Mistretta, Robert Martyn, Rina Barbaccia, Nick Coffaro, Brian Tormey, Maria Douaihy and John Piccirillo.

Convention 2015



WHO DO YOU KNOW?

Decisions that affect nearly every aspect of the title industry are made by our elected officials. It's important that these officials hear directly from us, their constituents, about the issues impacting our industry.

The New York State Title Agents PAC would like to know *who you know*.

Are you acquainted with any New York State elected officials? If so, can we call on you when we have issues that require contact with these officials? It could mean a phone call, an email or attending an event.

Please email me at dstancanelli@nationalgranite.com or call 845-639-1415 with your contact information together with the name(s) of the officials you know and we'll get back to you to let you know how you can help.

Please take a few minutes to respond; everyone's contribution adds up to our collective success!

Thank you for your support,

DeAnna Stancanelli; Chair - NYS Title Agents Political Action Committee

In THE Zone

Bill Collins of Frontier Abstract was a speaker at the County Clerks annual convention. Below is a summary of his excellent presentation:

There was a good attendance at the convention in Canandaigua - 39 County Clerks were represented either by the Clerk or a deputy.

Topics the CCA Committees are now considering (that I was present for):

- Real ID requirements for NY Drivers Licenses. NY has finally gotten a one year extension from DHS to continue to allow the use of regular NY Licenses to board domestic airline flights and enter Federal Buildings (NYS "enhanced" licenses are already Real ID-compliant). They will probably not enforce against the regular licenses for another year after that. That gives NYS and the CC's two years to get people to upgrade their licenses- a very short time to have MILLIONS of people change their licenses. It is unknown at this time if the State will waive the fee to upgrade or not. If they do, the CC's are worried that their workload will increase exponentially (they say it takes ~45 minutes of Clerk time to switch licenses) with no additional funding to pay for it.
- Court records electronicization. Accept exhibits or not? Accept CD's/DVD's or not?
- The creation of a NYS CC "Best Practices" survey and possibly handbook (I have offered NYSLTA's input regarding land records for this).

My talk was about the licensing and regulations that the Land Title industry in NYS have been dealing with over the last two years, and how these may affect how we deal with the CC's. They seemed interested in the presentation; there were a few questions after it was done, and several CC's asked for copies afterwards. A friendly reception overall!

ANNOUNCEMENTS

Sutton Alliance expands with a new branch office in Westchester. Senior VP, Ken Ford made the announcement in August explaining that the new location in West Harrison will be a full service facility offering residential, commercial title insurance, 1031 tax deferred exchanges and settlement services. Sutton Land Title Agency's new West Harrison branch is located at 1 New King Street, Suite 211, West Harrison, New York 10604. Sutton Alliance will maintain their current headquarters in Valley Stream, New York.

Zodiac Title welcomes Marilyn Price, Esq. Melville, New York, August 12, 2015: Ztitle is pleased to announce that Marilyn Price, Esq. has joined the Ztitle team as Sr. Vice President of Regional and National Business Development, bringing with her a depth of knowledge in all aspects of commercial and residential real estate transactions, commercial mortgage lending, property development (including the sale of new homes in homeowner's associations, condominiums and cooperative corporations) and lease transactions.



Bob Picone on the Paul Feiner Show

The "Bobs"

By Suzanne Schirtzer

Bob Picone of Keppler Title appeared as a guest of the Paul Feiner show. Paul Feiner is the Greenburgh Town Supervisor and radio host.

Bob Picone is vice president and founder of Keppler Title which opened in April 2005. He is also an active member of the New York State Land Title Association.

Bob Picone and Bob Keppler are both owners of Keppler Title. People occasionally call them "the Bobs".

The show aired on June 26, 2015 and outlined what title insurance is, the industry and why it's so important to purchase title insurance.

Mr. Picone explains that consumers have a choice to shop around. "A consumer can shop around price wise, however, relationships and service are the way to sell title insurance."

He then explained the fee and mortgage policies and reiterated that with title insurance, it's only a one time fee/owner premium and that's it!

The other discussions were regarding all of the industry changes. One change in particular that all title agents had to endure as of January 1, 2015 was that all title agents in the state of New York are required to be licensed.

One of the questions Paul Feiner asked was "now with agent licensing, should the state offer a program/degree in the title industry?"

What are your thoughts? Send your comments to News@NYSLTA.org

Word Search

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S O B R E G U L A T I O N F T X S L R D B N Q E O
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Words

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PROUD TO BE A MEMBER

New Members of the New York State Land Title Association

⇒ Title Closer	Susan Bank	Nassau County
⇒ Borders Title Agency, Inc.	Tara Fortunato	Nassau County
⇒ Capital Abstract Co.	David Rosenberg	Kings County
⇒ Classic Abstract Ltd.	Lori Larson, President	Suffolk County
⇒ Downtown Abstract	Roy Girtz, President	Nassau County
⇒ Law Office of Alice M. Breeding, Esq., PLL	Alice Breeding	Saratoga County
⇒ Title America	Melissa Gavin	Nassau County

**New York State Land Title Association, Inc. is the
statewide voice of the Title Insurance Industry.**



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**Have an idea or an article to
submit?????**

Please send to:

NEWS@NYSLTA.ORG

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Jean Partridge, Vice-Chair

Benchmark Title Agency, LLC

Vincent G. Danzi, Editor-in-Chief

First Nationwide Title Agency, LLC

Dawn Pereyo, Committee Member

First Nationwide Title Agency, LLC

BECOME A MEMBER.....

All title professionals in New York State – members and non-members - benefit from the work of the NYSLTA. The work we do and the things we can accomplish are only limited by the will, resources and support of our members. By joining the NYSLTA and supporting your professional association, you help us accomplish more and accelerate progress toward a business environment optimized for the secure conveyance of title to real property. There are also competitive advantages and direct benefits to you and your company. Most of our benefits and services are exclusively for Members.

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