



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

# THE Bulletin

## Title Insurance: Protecting Your Piece of the Planet

SUMMER 2006 THE JOURNAL OF THE NEW YORK STATE LAND TITLE ASSOCIATION, INC. VOLUME 85, NUMBER 3

### MARK YOUR CALENDAR

ALTA Annual Convention  
San Francisco, California  
October 11-14, 2006

ALTA Federal Conference 2007  
Washington, DC  
March 6-7, 2007

ALTA Tech Forum 2007  
Hyatt Regency Denver  
Denver, Colorado  
April 22-24, 2007

NYSLTA 86th Annual Convention  
Halifax, Nova Scotia  
August 12-14, 2007

### QUARTERLY QUOTE

"I entered upon this role in the beginning of a pivotal and challenging time in our industry and I will leave office well before it ends."

—JONATHAN A. RICHARDS  
NYSLTA President  
(See On My Mind, Page 2)

### TABLE OF CONTENTS

On My Mind (Richards, Sabol) ..... 2  
NYC DOB Violations ..... 3  
Opinion/Editorial ..... 4  
Mortgage Tax Increases ..... 5  
Lifetime Nominations ..... 6  
Guest Column ..... 7  
Membership Report ..... 10

*New York State  
Land Title Association  
86th Annual Convention  
August 12-14, 2007  
Halifax, Nova Scotia*

[www.NYSLTA.org](http://www.NYSLTA.org)



**JONATHAN A. RICHARDS**  
President

## On My Mind



**SHARON SABOL**  
Executive Vice President

### Thoughts on Being Your President

**A**s I wind down my term as President of your Association, the first observation that comes to mind is that next year I will be better prepared for the challenges. However, and this may be a blessing for both the Association and for its Presidents, the term of office is one year. Keeping in mind that it is a part-time responsibility it did nevertheless occupy my efforts and thoughts on a full-time basis. I think my colleagues in the Past-Presidents club will agree.

I entered upon this role in the beginning of a pivotal and challenging time in our industry and I will leave office well before it ends. I wish our incoming President and officers my best wishes and my offer to help as I can. But in truth each administration must face every day and every challenge with a fresh outlook and sound judgment.

I am leaving office pleased that we were able to offer the New York State Legislature an Association drafted and sponsored Agent Licensing Bill that incorporated a considered approach to Agent Licensing. If this project seemed to have overly dominated my attention, and that of the Executive Committee, so be it. It is important work and needs our continued support and effort.

To our Executive Vice President, Sharon, I express my deepest appreciation and my best wishes. Through her trials she has not wavered in the exercise of her responsibilities. To our staff, Regina and Ana, I cannot say "thank you" enough.

A last thought. We need more than just the support of our members; the Association also needs their sweat. Committee chairpersons and committee members, these are not mere honorariums, but real jobs with important consequences to our industry.

*(Continued on Page 8)*

### Thank you, Jonathan A. Richards

**A**s another Association year draws to a close, there are many people to thank, beginning with President Jonathan A. Richards. While this past year was a challenging one for our industry, both on a statewide and national level, Jonathan guided us with wisdom, a quick mind, and excellent judgment. We thank Jonathan for his hard work and expertise.

Jonathan, Chair of the Licensing Committee, Co-Chair Stanley Lacher, and committee members, worked extremely hard to introduce an Agent Licensing Bill in the Senate and Assembly. We thank all involved in this process.

Thank you to all our hardworking committee chairs and members for their time and energy. All committees and chairs are listed on our Web site [www.NYSLTA.org](http://www.NYSLTA.org). Please consider joining a committee. It is an excellent avenue for greater Association involvement.

With a new Association year comes a new Convention. We look forward to gathering in Halifax, Nova Scotia, Canada for our NYSLTA 86th Annual Convention. Please be sure to join us August 12-14, 2007.

Halifax, gateway to Atlantic Canada, is a modern port city. Intriguing, beautiful, cosmopolitan, it is filled with culture, heritage, museums, galleries, historic sites, architecture, entertainment and fine dining.

More information will be coming in the next several months about our Halifax Convention destination.

Hoping you had a relaxing, safe and healthy summer.

*Please e-mail:  
Sharon Sabol at [ssabol@NYSLTA.org](mailto:ssabol@NYSLTA.org)*

BY DAVID J. CARROLL

Chair, NYSLTA Municipal Liaison Committee

## New York City Department of Buildings Violations

The New York City Department of Buildings (DOB) issues three types of violations. These violations are: Environmental Control Board Violations, Buildings “DOB” Violations and Electrical Unit Violations.

The most common type of violation issued by the Department of Buildings is called an ECB Notice of Violation. The ECB Notice of Violation contains a notice that a property does not comply with a provision of the New York City Building Code and/or New York City Zoning Resolutions. It also contains an order to correct the violating condition and to certify the correction at the Department of Buildings. ECB violations are resolved at the Environmental Control Board, where a civil penalty may be imposed although the violations are entered against the property. To certify that you have corrected the violating condition(s) described in the Notice of Violation, a Certificate of Correction form and related documents must be filed with the DOB’s Administrative Enforcement Unit, which must approve the dismissal of the violation.

**“Failure to attend a scheduled hearing will result in default; this means the respondent is found in violation (guilty) and in most cases, the maximum penalty is imposed.”**

If the violation is noted as hazardous or is a second offense, you must attend a scheduled hearing. If the violation is non-hazardous you may: (1) contest the violation and attend the hearing; (2) cure the violation by submitting an acceptable Certificate of Correction before the cure date; or (3) file a stipulation. (A stipulation is an agreement between the owner and the DOB in which the owner admits to the violation. DOB allows additional time in order to correct the violating condition(s) and the owner receives a reduced penalty.) Failure to attend a scheduled hearing will result in default; this means the respondent is found in violation (guilty) and in most cases, the maximum penalty is imposed.

**The payment of an ECB fine does not waive the responsibility to cure the violating condition and the curing of a violation does not waive any fines owed to ECB.**

The second type of violation issued by the Department of Buildings is called a Buildings “DOB” Violation. A Buildings “DOB” Violation is a notice that a property is not in compliance with some provision of the NYC Buildings Code and includes an order from the Commissioner

of the Department of Buildings to correct the violating condition. The violating condition can relate to such things as an unsafe building, work without a permit, boiler, elevator and façade problems, just to name a few. In order to remove the violation from the property’s record, you must correct the condition and provide proof of that correction to the Department of Buildings. The specific requirements for dismissal of a DOB violation vary according to the type of violation and it is recommended that you consult a registered architect or professional engineer (All violations entered against a property must be corrected before a new or amended Certificate of Occupancy can be obtained.)

The Electrical Unit of the Department of Buildings, most often, issues Electrical Violations only. There are a number of reasons an electrical violation may be issued. For example: (1) no application on file for electrical work being conducted; (2) defective electrical equipment; (3) non-electrical violations: storage in electrical room, improper signs at electric room or no access to electrical room or equipment.

The Department of Buildings’ Enforcement Division consists of several units whose staff members focus on bringing properties into compliance with applicable laws. Its Administrative Enforcement Unit processes approximately 40,000 ECB Notices of Violation, adjudicated yearly at an administrative court, in addition to maintaining records on the compliance status of those violations.

Fines and penalties associated with violations can vary substantially. In addition, fees and penalties may be assessed when filing a request to obtain a work permit to cure these violating conditions.

Although these fines are not liens on real property, they can mature into liens or civil judgments.

If you have any questions please do not hesitate to contact our office at 718-852-0051. This information is provided for information purposes only. No liability is assumed.

*Please e-mail:*

*David J. Carroll at david@sjcarroll.com*

Please visit ALTA’s Web site:  
[www.ALTA.org](http://www.ALTA.org)<<http://www.ALTA.org>>  
for national title insurance news and information.

BY SHAWN P. ABRAMS

NYSLTA Immediate Past President

## **Fiat Justitia, Ruat Coelum** **“Let justice be done, though the heavens may fall”**

All aspects of the title insurance industry are under nationwide scrutiny, on a scale unprecedented in scope or intensity. Witness our familiarity with the following terms: rebates, controlled business, kickbacks, investigations, blended rates, class action suits, hearings, subpoenas. A combination of national attention, investigations, industry practices, market forces and politics has coalesced into The Perfect Storm. The title industry in New York State is now in the cross hairs of the storm's collective fury. This level of scrutiny ensures it will not go away. Nor should it. The title industry's failure to police itself created an atmosphere ripe for investigation.

Those of us in the title insurance profession have long known of the misconceptions about our industry. To some extent we are the victims of our own success. Now we are faced with the task of defending our “worth” while fending off charges of abuses—real or imagined. That defense is hampered by very real instances of greed and corruption, which have tarnished the reputation of our entire industry. Abuses in our industry are not new. However the levels of abuse have grown exponentially. The numbers of title “agents” swelled dramatically as lenders, brokers, realtors, builders, attorneys and settlement factories eagerly signed up to “cash in” during the extended financing boom. Agencies were handed out faster than Halloween candy. Intense competition fueled unabashed demands for kickbacks, captive business and referral fees. In the battle between greed and honor, honor is losing ground out of need to survive.

**“A leaner, cleaner, more professional title industry will be to the benefit of our profession and the consumers we serve. There is a noble purpose for title insurance. There is also a burden on title insurers and their agents to ensure the integrity of their product.”**

Ethical title professionals, unwilling to participate in illegal schemes, have suffered. For years we railed against the abuses within our industry to seemingly deaf ears. Now it seems our complaints are being redressed by a full-scale invasion. I am reminded of my late Uncle Charlie's response to startling news: “*I am both surprised and pleased.*”

*However, I am more surprised, than pleased.”* The investigations of the title industry have come as the financing boom has cooled. But we have seen these cycles before. Booms lure fast-buck players with little concern about professional or ethical standards. Those who jumped into our industry for quick profits during boom times will move on to other schemes when business wanes. Left to the surviving ethical professionals will be the task of dealing with the aftermath, once again.

*How our industry emerges from The Perfect Storm* remains to be seen. It is certain our profession will not emerge unchanged. I hold hope that professionalism and integrity will be restored to the title industry. Support must build for licensing of title insurance agents in New York. Licensing will not curb all abuses, but will raise professional standards and provide enforcement mechanisms against violators, even if only as an incentive to behave. Title underwriters must become more circumspect in their own activities and more responsible in their selection and monitoring of agents. A leaner, cleaner, more professional title industry will be to the benefit of our profession and the consumers we serve. There is a noble purpose for title insurance. There is also a burden on title insurers and their agents to ensure the integrity of their product.

Let justice be done. But let it be done fairly. Genuine reform, not political posturing, is what is needed. A healthy measure of “the heavens falling upon us” may prove the best cure for the ills of our industry.

*Please e-mail:*

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Please visit [www.NYSLTA.org](http://www.NYSLTA.org)  
for additions and  
updates to NYSACC Survey.

## Mortgage Tax Increases Pending

The Legislature passed bills for mortgage tax increases in four counties, which Gov. George Pataki is expected to sign. All bills have time frames and local law requirements meaning implementation would not be effective until this fall.

The mortgage tax increase bills are as follows:

Essex County:		
S.6388-c / A.9616-c	Additional	0.25%
Hamilton County:		
S.6387-b / A.9569-b	Additional	0.25%
Schoharie County:		
S.6677-a / A.9477-b	Additional	0.25%
Tompkins County:		
S.6542-a / A.9740-a	Additional	0.50%

Bills were also introduced for a local transfer tax in Columbia County (S.7972-a / A.11533-a). The bills would add a local transfer tax of \$2.00 per thousand of the sale price with a single-family residential exemption for the first \$150,000. The Senate passed the bill June 23rd, but it stalled in the Assembly.

## 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.

### Association Staff:

Executive Vice President..... Sharon Sabol  
Executive Assistant..... Regina Capone  
Receptionist.....Ana Jimenez

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Web Site: [www.NYSLTA.org](http://www.NYSLTA.org)

# NYSLTA 85th Annual Convention

Thank You to  
All Convention Prize Fund Contributors,  
Sponsors, Raffle Prize Sponsors  
and Exhibitors.

## **Congratulations to Lifetime Achievement Award Recipients— Joseph Friedman and John Maddie**

The NYSLTA Awards Committee has given Lifetime Achievement Awards to Joseph Friedman and John Maddie. These awards were presented during this year's 85th Annual Convention in Williamsburg, Virginia. Every recipient of a Lifetime Achievement Award becomes an Honorary Life Member of NYSLTA.



### **NYU Courses by NYSLTA Member**

NYSLTA Member William Colavito will be teaching the following courses at New York University:

**1. Residential Real Estate Surveys  
(R62.9501.301)**

Day: Saturday

Time: 9:30 a.m. to 1:30 p.m.

Start/End: 11/4-11/4

One session

**2. Understanding the Title Insurance Policy  
(R62.9502.301)**

Day: Saturday

Time: 9:30 a.m. to 1:30 p.m.

Start/End: 11/11-11/11

One session

**3. How to Handle a Real Estate Closing  
(X62.9590)**

Day: Wednesday

Time: 6 to 8:30 p.m.

Start/End: 10/18 - 11/8

Four sessions

### **CIRCLE THIS DATE**

NYSLTA 86th Annual Convention

August 12-14, 2007

Halifax, Nova Scotia

## **NYSLTA Web site**

[www.NYSLTA.org](http://www.NYSLTA.org)

Visit our Web site for

the new Member Directory

online, news, services

and information.

BY JAMES M. PEDOWITZ, ESQ.

Counsel to Berkman, Henoch, Peterson & Peddy, P.C.

Garden City, New York

## Joint Tenants vs. Tenants by the Entirety: What's the Difference?

(Editor's note: Mr. Pedowitz was associated with Title Guarantee and Trust Company (later Tigor Title Guarantee Company) for 43 years, their Chief Counsel from 1969 to 1979, and was an active member of NYSLTA for many years. He is also the Editor-in-Chief of Real Estate Titles, published by the New York State Bar Association.)

Yes, there are differences, and they can be quite substantial.

Too many lawyers and title examiners mistakenly believe that because both estates have the element of survivorship as against the tenant who dies first, that they are basically the same, but they are **WRONG!**

The primary difference, of course, is that any two or more people can become joint tenants if their estate is created with the four (4) unities: 1. Time—that they acquire their interest at the same time; 2. Title—that they acquire title by the same instrument; 3. Interest—that each has the same interest; and 4. Possession—that they each are entitled to possession of the whole. If any one of the four unities is missing, there can be no joint tenancy. *In Re Sutter's Estate*, 138 Misc. 85, 245 N.Y.S. 636, Aff'd 232 A.D. 45, 248 N.Y.S. 642, Aff'd 258 N.Y. 104. It is sufficient merely to describe the grantees as "joint tenants" when the four unities exist.

The second essential difference is that, in addition to the four (4) unities, only husband and wife can be tenants by the entirety. The important element is their actual marriage—not what they call themselves (E.P.T.L. 6.2.2 (b)). If they describe themselves as husband and wife, and they are not married, they do *not* become tenants by the entirety, but they are joint tenants (E.P.T.L. § 6-2.2 (c)). Even if they do not describe themselves as husband and wife in the deed into them, and they are actually married to each other, they are tenants by the entirety.

A married couple need not be tenants by the entirety, if they prefer to become either joint tenants, or even tenants in common. In that case the conveyance into them must clearly and specifically provide that they are not taking title as tenants by the entirety, but as tenants in common, or

joint tenants, see E.P.T.L. § 6-2.2 (b).

The third and critical difference is that in a tenancy by the entirety, each spouse owns 100% of the property, but subject to their survivorship of the other spouse, but in a joint tenancy each joint tenant owns a fractional interest, the exact fraction depending on how many joint tenants there are. If there are two, they each own one half, and if

there are four they each own one quarter. This difference is explained in the decision of Mr. Justice Copertino in *Kozyra v. Goldstein*, 146 Misc. 2d 25, 550 N.Y.S. 2d 229 (1989), citing several authorities.

As a result, as was explained both in the *Kozyra* case, *supra*, and in *Matter of Granwell*, 20 N.Y. 2d 91, the death of a joint tenant results in a "transfer" to the surviving joint tenant or tenants, unlike the death of a tenant by the entirety where there is no "transfer" on death because the survivor already owned the entire property prior to the death.

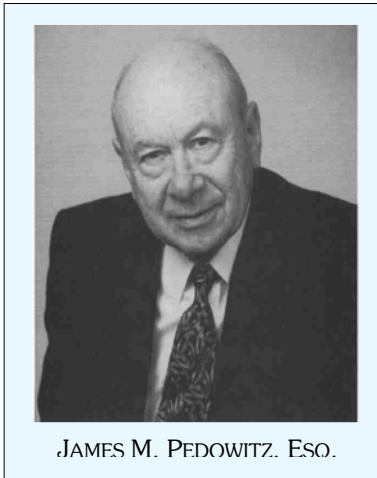
This fact that a "transfer" takes place as a result of the death of a joint tenant has several results that do not occur by the death of a tenant by the entirety.

In the highly likely event that there was no consideration for the "transfer" to the surviving joint tenant, and if the estate of the deceased joint tenant is insolvent, the death may be considered as a fraudulent transfer under Sec. 273 of the debtor-creditor law, as in *Matter of Granwell*, 20 N.Y. 2d 91, 281 N.Y.S. 2d 783 (1967).

There are also other significant differences, all based upon the fact that the death of a joint tenant results in a "transfer", while the death of a tenant by the entirety does not.

A judgment against both H and W is a valid lien on the property. A judgment against only one is a lien on that judgment debtor's interest only, i.e., if the property is sold

(Continued on Page 8)



JAMES M. PEDOWITZ, ESQ.

## Thoughts on Being Your President

(Continued from Page 2)

We value that service and hope that many will step forward and serve, and will do so with a true commitment.

I thank each of you for your trust, your confidence, your suggestions and your criticism. Without that the job would lack real context.

*Please e-mail:*

*Jonathan A. Richards at JRichards@fnf.com*



## Joint Tenants vs. Tenants by the Entirety: What's the Difference?

(Continued from Page 7)

on execution against the property of H only, purchaser acquires the interest of H only. If H survives W, the purchaser will get a fee; otherwise, nothing, *Finnegan v. Humes*, 252 A.D. 355, 299 N.Y.S. 501. For that reason, a judgment or any other lien created by one tenant by the entirety alone, can be disregarded after that tenant dies, but a judgment or other lien created by a joint tenant cannot be disregarded on his or her demise.

In another vein, the divorce or annulment of the marriage of tenants by the entirety automatically converts the estate into tenancy in common, but marital change has no effect on joint tenants or the joint tenancy (*Stelz v. Schreck*, 128 N.Y. 263). The same result can occur after a judicial separation (*Kahn v. Kahn*, 43 N.Y. 2d 203, 401 N.Y.S. 2d 47(1977)).

In the event that a tenancy by the entirety or a joint tenancy is terminated by the wrongful act of one of the tenants, such as a murder, the wrongdoer survivor will not succeed to the interest of the deceased innocent tenant, whose estate will retain that interest (*Riggs v. Palmer*, 115 N.Y. 506).

Notwithstanding that both tenancy by the entirety and joint tenancy contain the element of survivorship, they are distinct and separate from each other in many respects.

*Please e-mail:*

*James M. Pedowitz at j.pedowitz@bhpp.com*

The NYSLTA officer, circa 1979, printed on page 20 of the Spring Bulletin 2006 is President Jonathan A. Richards.

## YOUR ADVERTISEMENT COULD BE HERE.

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the official publication of  
The New York State  
Land Title Association, Inc.

For additional information,  
rates and schedule, please contact  
NYSLTA Executive Assistant  
Regina Capone.

Phone:  
212-964-3701

E-mail:  
rcapone@NYSLTA.org

# **YOU HAVE A LOT TO SAY.**

Do you have industry news or  
updates to share with NYSLTA members?

Write a Guest Column in The Bulletin,  
the official publication of  
The New York State Land Title Association, Inc.

Do you have strong views regarding the title industry?

Write an Opinion/Editorial article.

Please send all inquires and articles to

NYSLTA Executive Vice President

Sharon Sabol at [ssabol@NYSLTA.org](mailto:ssabol@NYSLTA.org)

BY MEMBERSHIP COMMITTEE CONTRIBUTORS

## New York State Land Title Association Proudly Welcomes New Members

We welcome our  
newest NYSLTA members:

### NASSAU COUNTY

**James Chiarello**  
*(Associate Member)*  
78 Catherine Street  
Valley Stream, NY 11581  
516-384-0966

**Dollinger, Gonski & Grossman**  
*(Associate Member)*  
Michael J. Spithogiannis  
Old Country Road, Suite 102  
Carle Place, NY 11514  
516-747-1010

**EAM Land Services, Inc.**  
*(Regular Member)*  
Eric Fein, President  
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Syosset NY 11791  
516-677-9757

### NEW YORK COUNTY

**C & C Research Services, Inc.**  
*(Regular Member)*  
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**Property Research Services, Inc.**  
*(Regular Member)*  
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**Tarter Krinsky & Drogin LLP**  
*(Associate Member)*  
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### SUFFOLK COUNTY

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**First Place Abstract, Inc.**  
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**Robert Palmer**  
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### WESTCHESTER COUNTY

**Security 1031 Services, Inc.**  
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### NYSLTA Member Directory Corrections:

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[www.nytitle.com](http://www.nytitle.com)

Please forward members news or updates to New York State Land Title Association via e-mail to [info@NYSLTA.org](mailto:info@NYSLTA.org) or fax to 212-964-7185. Visit our Web site: [www.NYSLTA.org](http://www.NYSLTA.org) for updated member listings, New York State Land Title Association news, services and information.