REBA NEWS

Fall 2006
Vol. 3, No. 4

The Newsletter of the
Real Estate Bar Association for Massachusetts

REBA launches paralegal/title examiner committee

REBA has announced a new *ad hoc* committee to serve the paralegal and independent title examiner communities following a recent board of directors meeting.

DePALMA

"For a long time we have welcomed non-lawyer real estate professionals in adjacent fields as Associates on our roster of 3,000 members," said REBA President Robert J. Moriarty, Jr. "With this new group we can focus on offering both new targeted benefits as well as the full array of REBA ben-

Continued on page 3

New law streamlines permitting process in Massachusetts

By Greg D. Peterson, Esq. and Brian C. Levey, Esq.

PETERSON

LEVEY

A new law has streamlined and expedited the permitting process in Massachusetts.

The law was signed by Governor Romney on August 2, and takes effect immediately. Here's a summary the changes:

- The Land Court has expanded jurisdiction over a wide range of permitting cases through a separate session called the Permit Session. Aggressive case management will be required. And the Land Court will get an additional judge.
- Special permits under M.G.L. c. 40A will now take effect on issuance, regardless of whether they are appealed. This brings the rule for these permits into line with the long-established rule in Boston zoning and for state environmental permits. This may result in a reduction in special permit appeals, especially those focused purely on delay.
- The Division of Administrative Law Appeals will get over $1.35 million in additional funding, of which $250,000 is

Continued on page 19

Gov. Mitt Romney signed the new law streamlining the permitting process on August 2.

On September 13, REBA hosted a reception for all former presidents of the Association and a dedication of the new Presidents Conference Room at REBA's 50 Congress Street headquarters in Boston. Among the guests were Herbert W. "Wiley" Vaughan, who was president of the Massachusetts Conveyancers Association, REBA's predecessor, in 1963 and 1964. Nearly 20 former Association presidents attended. Pictured (from left to right): former REBA President Daniel J. Ossoff, current president Robert J. Moriarty, Jr., former president Kathleen M. O'Donnell (back to camera), former president Joel A. Stein (partially obscured), and Land Court Associate Justice Leon J. Lombardi.

Division of Banks cracks down on improper mortgage lending

By Michael T. Caljouw, Esq.

The Massachusetts Division of Banks, the state watchdog for the more than 3,000 mortgage lenders and brokers in Massachusetts, took aggressive action on September 8 to address growing problems in the Massachusetts mortgage market.

A special review over the summer by examiners across the state produced troubling evidence that some mortgage lenders and brokers were intentionally steering prospective consumers into loan products by using misleading tactics and, in some cases, committing fraud. The Division was particularly concerned since these bad actors were targeting Massachusetts residents who often were of low or moderate income or limited English speaking and writing ability.

The banking examiners have focused to date on stated income loans, and they have found ample evidence that borrowers' incomes were inflated and borrowers were intentionally placed into loans they could not afford. The Division specifically found: "Over the last few years, with the continued development of the subprime market, reduced documentation mortgage loans are being more frequently marketed to individuals that marginally qualify for mort-

Continued on page 18

What's in this issue…

A Supplement to Massachusetts Lawyers Weekly

Limited review of arbitration awards now available

By the Hon. Peter W. Kilburn (ret.)

There is a tension between two goals in arbitration: One goal is to have finality, to have arbitration serve as a final answer, not just a first stage in a lengthened litigation. The second goal is to come up with the correct resolution of the dispute. The first goal is served by greatly restricting the grounds for upsetting an arbitration award. They are found in sections 12 and 13 of Chapter 251 and they are cold comfort to a losing party – essentially fraud or partiality on the part of a neutral. If the arbitrator made a mistake of law or fact, that's too bad. So you end up with less of a right of appeal than you would have of an errant trial court judgment.

REBA has an experienced panel of neutrals. None of them is crazy. But how can you assure a client that one of them won't produce a crazy award in an arbitration? There are a couple of possible answers. One is to have recourse to the courts in a proceeding which the parties have agreed in advance will be restricted in scope. The problem, as Judge Kass has pointed out elsewhere, is that it is by no means clear that a court will go along with having its jurisdiction tailored by the parties.

But there is a second avenue of relief. That is to have the parties agree in advance that an award may be reviewed by another arbitrator or arbitrators. REBA now provides for that. Here is how it works: When the parties agree to a REBA one-arbitrator arbitration, they can agree that the award may be reviewed at the election of either party. The party seeking a review can decide, after the award, to have the review by one reviewer, chosen by REBA from its panel. Or he/she can elect review by three reviewers, in which event each party names a reviewer from REBA's panel and the two choose the third, also from the panel. All this is set up so as to be done within 60 days of the date of the award.

How can you assure a client that an arbitrator won't produce a crazy award? Now there's a solution.

The review is limited to the record generated by the arbitrator, including any exhibits. The award is confirmed unless the reviewer(s) conclude there wasn't substantial evidence to support the findings of fact or that there was an outcome-determinative error of law. If the reviewer(s) do not confirm, they can vacate, reverse or revise the award. Their action becomes the award for purposes of Chapter 251.

This approach is meant as a safety valve. There is an incentive not to choose review: If you are the losing party in the award and you choose to have a review, you pay for the review if the award is confirmed.

REBA hopes this approach will comfort counsel whose inclination to reap arbitration's savings in money and time has been outweighed by worries about an aberrant award.

A former Chief Justice of the Land Court, Judge Kilborn serves on the panel of neutral mediators and arbitrators for REBA Dispute Resolution, Inc., a subsidiary of REBA. For more about REBA/DR go to www.reba.net.

REBA
THE REAL ESTATE BAR ASSOCIATION
for Massachusetts

REBA News is an official publication of the Real Estate Bar Association for Massachusetts, Inc.

50 Congress Street, Suite 600
Boston, Massachusetts 02109-4075
Tel: (617) 854-7555
(800) 496-6799
Fax: (617) 854-7570

Mission Statement

To advance the practice of real estate law by creating and sponsoring professional standards, actively participating in the legislative process, creating educational programs and material, and demonstrating and promoting fair dealing and good fellowship among members of the real estate bar.

Mentoring Statement

To promote the improvement of the practice of real estate law, the mentoring of fellow practitioners is the continuing professional responsibility of all REBA members. The officers, directors and committee members are available to respond to membership inquiries relative to the Association's Title Standards, Practice Standards, Ethical Standards and Forms with the understanding that advice to Association members is not, of course, a legal opinion.

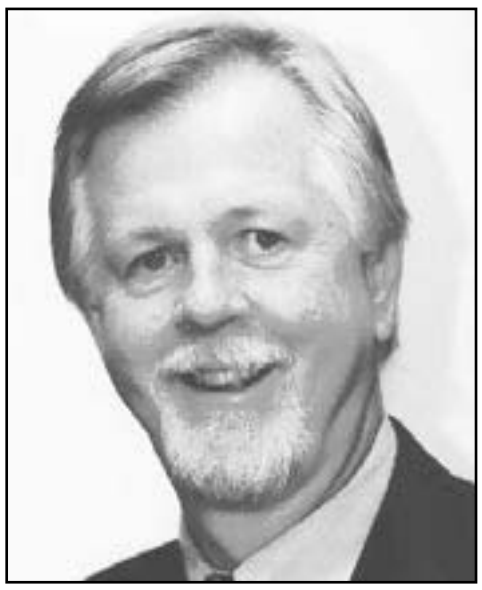
Endorsement Statement

While the Real Estate Bar Association for Massachusetts, Inc. accepts advertising in its publications and educational offerings, it endorses no products or services.

www.reba.net

From the President's desk

By Robert J. Moriarty Jr., Esq.



As I sit down to write this article for the fall edition of *REBA News*, I realize that I have already reached the final column that I will write as President. Because of the publication dates, this column comes a little earlier than the actual end of my presidency. It seems as if I have just begun, and now I am preparing to leave the office.

Fall is a time of transition; summer ends and it begins to become cool again as the days grow shorter, the kids go back to school, the leaves begin to turn colors, and we at REBA begin the transition to new leadership. Transition times are times to look back and take account of what we have done, and more importantly, what still needs to be done. Much has been accomplished in the past year. The Mortgage Discharge Bill was passed, HB 904 was defeated for this legislative session, REBA started a new *ad hoc* committee to work with paralegals and title examiners – much of this the fruit of the labor of those who have served before me. Some of the initiatives that I have begun will flower next year or the year after, through the efforts of those who will succeed me.

One of the goals that has been advanced this year, and hopefully will bear fruit in the coming years, is to further the work of those who came before me to fight against the unauthorized practice of law, particularly in the area of unregulated "witness closings." We have opened up dialogue with the Massachusetts Bar Association to encourage the MBA to again consider the adoption of a definition of the practice of law. We have presented our concerns with respect to harm to consumers being caused by out-of-state lenders violating the Good Funds Statute and through witness closings to Commissioner of Banks Steven Antonakes. We continue to gather evidence of that harm and will shortly make a presentation of this evidence to the Commissioner. The Commissioner's office recently announced a series of closures of improperly operating mortgage companies. REBA expects to participate in educational outreach programs concerning mortgage origination with the Commissioner's office this fall.

In addition to our lobbying activities against HB 904, a select committee comprised of our UPL Committee, the Executive Committee and our legislative and litigation consultants has been meeting this summer and fall to formulate a program to address the concerns of our members concerning unauthorized practice and witness closings. We are reviewing proposed legislation for which we can lobby, instead of waiting for our opponents to make the first move. We are also reviewing litigation options against offenders to establish the legitimacy of our position in a court of law. We will continue to be a presence at the State House and in every available forum to make known our position that the closing of a consumer loan is the practice of law, and only licensed, trained professionals may practice law.

On a lighter note, this past week REBA held an open house to celebrate the opening of our expanded conference space at 50 Congress Street in Boston and to dedicate the Presidents Conference Room. I hope that you have an opportunity to take advantage of our newly expanded space – for a mediation with REBA DR, to attend one of the many committee meetings that are held there, or if you need a conference room while in tow. During the dedication I had the opportunity to greet and recognize nearly 20 former presidents of the association who were in attendance, dating back as far as Herbert "Wiley" Vaughn who was president in 1963-1964. All my predecessors are remarkable persons who were, and are, leaders of the conveyancing bar. It was a humbling experience to realize that I have also been privileged to serve this association, following in the tradition of these great leaders. It was striking for me to realize how involved many of the former presidents remain and how fortunate we are to have their experience and knowledge on our side.

As I leave office I am comforted by the knowledge that the Nominating Committee led by Dan Ossoff has assembled a slate of officers and directors who will continue the tradition of leadership at REBA. Sami Baghdady will soon become President. Tom Bussone and Paul Alphen are ready to move up to even more prominent leadership roles, and we have a Board of Directors who cannot be surpassed in terms of dedication to the association. REBA has a strong core of dedicated individuals who are ready and able to continue leading our bar association through the challenges and opportunities that will come over the next few years. I hope that I may be able to follow in the tradition of my predecessors and can continue to play even a small role in that leadership.

A founding partner of Marsh, Moriarty, Ontell & Golder, P.C., Bob was a member of the Association's Title Standards Committee from 1984 through 2003. He concentrates in commercial and residential title matters including the review of title abstracts, title reports, title insurance commitments, title certifications and the resolution of title issues on behalf of title insurance underwriters, law firm clients, developer clients and institutional lenders. He is a graduate of Boston College and the University of Connecticut School of Law. He can be reached at rmoriarty@mmoglaw.com.

REBA launches paralegal/title examiner committee

Continued from page 1

efits to our independent title examiner and paraprofessional members."

The *ad hoc* committee will be co-chaired by Jackie Waters Adams, a paralegal, and Colby D. Welch, and independent title examiner. Adams is a real estate paralegal at the Natick law firm of Zaltas, Medoff, Raider & Levoy, LLC. Welch is the owner of Colby D. Welch & Associates, a firm specializing in title examination services statewide, based in Melrose. Welch is one of the original members of MITEA, the Massachusetts Independent Title Examiners Association.

The REBA Board has asked at-large member Karen R. DePalma, a Cape Cod-based real estate lawyer, to serve as a liaison to the new committee. DePalma will work with the two co-chairs in developing an array of new member benefits for paralegals and title examiners including educational programs and seminars, networking opportunities, mentoring, and a job referral service on the REBA website, www.reba.net.

"I'm delighted to be working with this group," DePalma said. "Paralegals and title examiners have long been key members of the Association, and this new committee will allow them to organize and become active within the real estate bar."

New ALTA loan policy should be a hit with lenders

By Edmond R. Browne Jr., Esq.

New basic title insurance forms and endorsements were adopted this summer by the American Land Title Association (ALTA). This is the first comprehensive revision to the standard policy forms in nearly two decades. By way of background, there are numerous ALTA policies in use today dating back to the 1970 policy. Although most of the older policies have been officially "decertified" by ALTA, some lenders and their counsel prefer the older versions for various reasons. The current standard ALTA policy was last revised in 1992.

The adoption of the new forms is the culmination of a three-year project involving all the major title insurance underwriters who make up the ALTA Forms Committee and its key customer groups, including lenders, real estate lawyers, Fannie Mae and academicians. Modern business practices (including the advent of electronic commerce), the passage of new laws and regulations, and a strong desire to better serve the industry's customers were the main drivers for change.

The primary advantages of the new policy forms are that they are easier to understand and provide new coverages. Although over the past few years ALTA has adopted various forms specifically for residential transactions, the 2006 forms are intended to be used for both commercial and residential real estate transactions.

Since it is not possible in a brief article to provide a comprehensive overview of all of the new policy forms, a few of the most significant changes to the loan policy are highlighted below. Future articles will focus on the owner's policy, revised endorsements, and advising your clients about how to choose the right policy.

Loan policy highlights

Easier to Understand

One of the most significant changes is that the new policy states more clearly what risks are insured, i.e. the Covered Risks. The familiar eight insuring clauses in the 1992 policy have been expanded to 14 and the Exclusions have been reduced. New definitions have been added and many provisions have been rewritten with clarity in mind. One example is the new definition of Insured, which includes a variety of successors and grantees to accommodate common estate planning structures and incorporate various government entities, thus obviating the need for an endorsement to the policy.

Electronic Documents

The policy also makes clear that there is coverage for a variety of potential defects involving the documents and parties to a transaction, including many related to the creation, execution and recording of electronic documents. The new policy insures the validity of electronic documents, signatures and recordings.

Gap Coverage

A new Covered Risk expressly provides coverage for certain losses that occur during the "gap" between the effective date of the policy (typically the closing or funding date) and the recording of the security instrument. However, this gap coverage does not apply to a lien for real estate taxes that becomes due between the policy date and the date of recording.

Expanded Mechanic's Lien Coverage

Another coverage of interest to lenders involves mechanic's liens. The 2006 loan policy makes it clear that it insures the priority of the lien of the mortgage over mechanic's liens for construction advances for work contracted for before the policy date or financed with the proceeds of the loan. The new policy also removes

Continued on page 16

Ed Browne is Vice President, Legal and Industry Relations at CATIC in Rocky Hill, Conn. He is a member of the American Land Title Association (ALTA) Title Insurance Forms Committee. He was formerly General Counsel of ALTA. More information about the new policy forms is available at www.alta.org. Ed can be reached at edbrowne@catic-e.com.

HUD reaches more settlements in East-West Mortgage kickback case

By Joel A. Stein, Esq.

It was previously reported in this publication that 1-800-East-West Mortgage Company reached a settlement agreement with the Department of Housing and Urban Development (HUD) and agreed to pay $150,000 to settle charges that it accepted gifts and tickets in return for the referral of mortgage business.

In a news release dated September 6, HUD announced that it has reached a separate agreement for related RESPA violations with a real estate appraisal company in New England and a Worcester-area attorney who is also a director of East-West.

The attorney paid for tickets to a Boston Red Sox game, tickets to a New England Patriots event and upscale restaurant certificates, which HUD found were provided to East-West and its employees to promote a referral of loan closings from East-West to the attorney's firm. The appraisal company was charged with providing restaurant gift certificates in exchange for the referral of appraisal business.

The attorney agreed to pay $15,000 and the appraisal company agreed to pay $4,000. Both parties agreed not to give gifts and things of value to settlement service providers in exchange for business referrals, to comply with RESPA and to cooperate with the agencies' ongoing investigation of other settlement service providers who provided kickbacks to East-West. The settlement agreements can be found on the Internet at http://www.hud.gov/offices/hsg/sfh/res/peters.pdf and http://www.hud.gov/offices/hsg/sfh/res/grasso.pdf.

Brian Montgomery, HUD's Assistant Secretary, stated, "Regardless of the size of the business, kickbacks and referral fees ultimately hurt the consumer. The law is clear – it is illegal to give or to get anything of value in exchange for the referral of settlement service business. For HUD's part, we will continue to take a hard line against these sorts of artificial influences on the cost of buying or refinancing a home mortgage, whether from those who pay or receive referral fees in violation of RESPA."

Class action in New Hampshire

A class action suit has been filed in the U.S. District Court for the District of New Hampshire, alleging that First American Title Insurance Company charged premiums and amounts exceeding its filed rates for refinance transactions. (Case No. 1:06-cv-286-JD.)

Unlike Massachusetts, New Hampshire provides filed rates. This lawsuit concerns the "re-issue rate," which applies if a borrower refinances within 10 years of the first mortgage. First American's rate filing provides that, "if the prior policy was not a First American policy, you must obtain a copy of the prior policy to qualify for the re-issue rate."

Typically, a closing attorney will send a borrower a form letter prior to closing that enumerates the items necessary to complete the refinance transaction. These letters produced by my office as well as letters I have seen from other law firms will request the borrower to produce a copy of the title insurance policy and inform the borrower that if the title policy is provided, the re-issue rate will be applied.

The attorney who prepared the complaint in the New Hampshire case misconstrues at least two essential facts. First, he claims that First American necessarily must have relied upon the existence of an acceptable prior policy in making its decision to obtain a shortened title examination. A shortened title examination is based simply on the fact that the agent was issuing only a lender's policy, which would result in a claim only if the lender foreclosed on the mortgage. Second, the complaint states, "First American's rate manual requires its own agents to obtain the prior policy and they elected not to do so." However, the rate manual requires the agent to obtain the prior policy *to qualify for the re-issue rate*.

Despite these issues, the plaintiff bar is becoming increasingly active throughout the country. It is only a matter of time before we see these types of cases in Massachusetts. This is a situation that should be taken into account when determining whether to charge the re-issue rate even if a copy of the prior policy has not been obtained.

Joel Stein served as REBA president in 1994 and has chaired the REBA Title Insurance and National Affairs Committee for over 10 years. He practices with Friedman & Stein, P.C. in Braintree. He is a serious pianist and classical music aficionado. He can be reached at jastein@friedmanstein.com.

Environmental insurance makes it easier to close deals involving brownfields

By Kathleen J. Freeman, Esq.

Environmental insurance is increasingly the key to real estate deals involving "brownfields" – underused industrial or commercial facilities with real or perceived environmental contamination and the associated liability, cleanup costs and stigma.

Recently, insurance underwriters have developed a variety of affordable and flexible products that allow a buyer to transfer many of these risks for a one-time premium. For many of the brownfields transactions I handle, insurance is the glue that holds the deal together.

These products include:

- "Pollution Legal Liability" coverage for unknown pre-existing conditions or conditions that arise during the policy term. This coverage typically includes property damage, cleanup costs, personal injury claims and business interruption.
- "Cleanup Cost Cap" coverage, which protects against cleanup costs that exceed estimates.
- "Secured Creditor" coverage, which protects lenders.

In Massachusetts, state-subsidized insurance is available for certain projects under the Brownfields Redevelopment Access to Capital program. For more information, contact Thomas J. Barry, Senior Vice President, Director of Environmental Programs, Massachusetts Business Development Corp. (781-928-1100 or tbarry@mass-business.com) or www.mass-business.com.

Negotiating the best insurance arrangement is usually a group effort that involves the insured's broker, the insurance company risk analyst/underwriter, and legal counsel and environmental consultants for both the insured and the insurance company.

Finding the right product at the right price typically requires some shopping around. Six carriers write some 90 percent of all environmental policies in the U.S. – AIG, XL, ACE, Chubb, Zurich, and Quanta. In choosing a carrier, besides policy terms and price, be sure to consider its financial strength and rating (AM Best and Standard & Poor's), whether it specializes in environmental products, its flexibility to modify standard policy conditions, its claims payment history, and its longevity in the environmental insurance market.

The application process

For most transactions, insurance companies want to see, at a minimum, a Phase I investigation report. As a result of new EPA rules that take effect November 1, 2006, insurance companies will likely want Phase I reports to satisfy the American Society for Testing and Materials updated Standard E1527-05.

For Cleanup Cost Cap coverage, the insurance company is likely to require some form of remedial plan, such as a Phase IV Remedy Implementation Plan.

Because insurance carriers form opinions about a site's risks early in the process, it is important to view the site from the underwriter's perspective when compiling the reports and data that go into your application. You should ask yourself: What information about the site or deal would the insurance company want to see? What affects premium costs and claims payments? Is this a "hot button" site, such as a gas station, dry cleaner, or photo lab? If so, the insurance company will likely want to see recent soil, groundwater, and air testing results.

The scope of the insured's pre-purchase due diligence plays an important role in making the insurance company

Continued on page 15

Kathleen Freeman is a partner with the Real Estate & Environmental Practice Group at Bowditch & Dewey, LLP (Boston, Framingham, and Worcester). She has been an environmental professional (with degrees in science, environmental engineering, and law) for over 30 years. She can be reached at kfreeman@bowditch.com.

Other states grapple with non-lawyers at real estate closings

By Richard A. Hogan, Esq.

Throughout the nation there has been a great deal of focus on what constitutes the practice of law in the context of a real estate transaction.

A recent report by the ABA's Task Force on the Model Definition of the Practice of Law recommended that each state adopt its own definition of the practice of law, keeping in mind "the basic premise that the practice of law is the application of legal principles and judgment to the circumstances or objectives of another person or entity."

Richard Hogan serves as legislative and regulatory counsel for CATIC, New England's largest bar-related® title insurance underwriter. He advises the company on a wide range of issues relating to corporate, real estate, legislative and regulatory matters. He is also a member of the Legislative Committee and the National Affairs Committee of REBA. Rich can be reached at rhogan@catic-e.com.

Here in Massachusetts, the Suffolk Superior Court stepped into the fray in 2001 in *Massachusetts Conveyancers Association et al. v. Colonial Title & Escrow, Inc. et al.* The Court held that the conduct of real estate closings by non-attorneys violated the Commonwealth's statutes governing the unauthorized practice of law. The defendant was enjoined from performing certain activities, notably the evaluation of title to real estate; the preparing, drafting and reviewing of legal documents affecting title to real estate or the parties' obligations with respect to that real estate; the explanation at closing of the import of the documents; and the issuance of title insurance. It remains to be seen whether there will be further consideration in the court system of the traditional role of the attorney in real estate closings.

Many other jurisdictions in recent years have addressed the same issue, with varying results. The Rhode Island General Assembly, for example, has considered legislation in the last four legislative sessions that would define the practice of law to include the evaluation of the legal rights and obligations of real estate buyers, sellers, lenders or borrowers in real estate transactions. Each time, CATIC sent a representative to the General Assembly to testify in support of the bill. Unfortunately, none of these bills was enacted, and the state's definition of the practice of law, §11-27-2 R.I.G.L., still contains no specific mention of the attorney's role in real estate closings.

The Connecticut Supreme Court has been reluctant to give a precise definition of the practice of law, but has instead depended upon a case-by-case approach when confronted with the issue. The most recent treatment of the issue is *Statewide Grievance Committee v. Patton*, 239 Conn. 251 (1996), where the Court held that the preparation of legal documents is understood to be the practice of law. The Court enjoined a document preparer from preparing legal documents for its customers.

A June 1999 article in the Vermont Bar Association's *Vermont Bar Journal & Law Digest* laments the inroads made by non-lawyers into areas traditionally viewed as constituting the practice of law. (Clarke A. Gravel, Esq., "We Are Under Attack!" 25 *Vermont Bar Journal & Law Digest* at 41.) The author refers to a 1962 Vermont Supreme Court decision, *In re Welch*, where the Court held that preparation of legal instruments securing legal rights was the practice of law, and that the respondent non-lawyer was engaging in the unauthorized practice of law in preparing deeds, advising parties as to the legal implications of those deeds, and supervising the execution of those deeds. The author notes the general lowering of the barriers to non-lawyer activity, specifically mentioning a recent Washington Supreme Court decision that document preparation does not constitute the practice of law. The author questions whether the Vermont Supreme Court would hold to the *Welch* reasoning if the Court were to face the issue again today.

Like Connecticut, Maine has no specific definition of the practice of law and relies on a case-by-case assessment of whether a particular activity requires legal knowledge and skills. Nor does New Hampshire have a definition; in fact, a 2002 task force appointed by the New Hampshire legislature to define the practice of law ended up issuing a final report stating that it was "unable to reach a con-

Continued on page 17

New formatting rules for deeds take effect Jan. 1

First page must have three-inch top margin

By Richard P. Howe Jr.

A handcrafted deed that arrived in the mail from Florida caught my attention yesterday. Among several problems with the document were margins barely one-sixteenth of an inch wide. After grudgingly granting permission to record it, my thoughts turned to document formatting.

The Massachusetts Deed Indexing Standards include a set of Document Formatting Standards. Under these Standards, documents recorded after January 1, 2007 must meet the following requirements:

- Documents must be on white 20-pound paper without watermarks.
- All document pages and attachments must be on paper with a minimum size of 8.5 by 11 inches and a maximum size of 8.5 by 14 inches.
- Printing must be on one side of the page only; no double-sided pages will be accepted.
- On the first page of a document, the top margin must be three inches; the side and bottom margins must be one inch. On second and subsequent pages of the same document, all margins must be one inch.
- All documents must have a font size no smaller than 10-point Times New Roman or its equivalent.
- Blanks in an instrument and corrections to an instrument may be made in pen.
- Signatures must be in either black or dark blue ink. Names must be typed, stamped or printed beneath all written signatures.
- All documents must display on the first line of print on the first page a single title identifying the recordable event that the instrument represents.
- Colored markers may not be used to highlight text.

Dick Howe is register of deeds in the Middlesex North District Registry in Lowell. He can be reached at richard.howe@sec.state.ma.us.

The foundation for these standards is Massachusetts General Laws chapter 36, section 12A, which states: "A register of deeds may refuse to accept an instrument for recording if it cannot be properly duplicated or a proper record cannot be made thereof." Until now, this has been a subjective standard that varies from registry to registry. Because the trend in nationwide registry operations is toward greater standardization, the Massachusetts Registers and Assistant Registers of Deeds Association has sought to specify the minimum standards that will be allowed.

In composing these standards, the Association used as a model a March 2000 White Paper of the Property Records Industry Joint Task Force called "Real Estate Document Formatting." Several other states have enacted similar formatting standards, including Florida, Iowa, New Hampshire, Washington and Wisconsin.

The Massachusetts standards are grounded in the actual needs of the registry to produce legible, reliable and usable copies of all recorded documents. As the printed record book becomes an historic artifact, the quality of the electronic image becomes even more critical. Each of the new standards contributes to this goal.

Three-inch margin controversial

Of all the standards, the most controversial seems to be the requirement of a three-inch top margin. While this may seem excessive, every document that is recorded must have considerable information imprinted on it, such as the date and time of recording, the instrument number, the book and page number, the number of pages in the document and the tax stamp. Few of today's documents leave sufficient space for this information. Consequently, recording information added by the registry either obscures some of the content of the document or is placed so close to the margin that it is

Continued on page 17

Continuous data protection: Improving on tape-based backups

By Chris Baer

Law firms that specialize in real estate transactions have long been aware of the importance of protecting important client correspondence, contracts and agreements. In fact, many of the fireproof file cabinets on the market today were initially created to protect important legal documents.

Technology has brought great efficiencies to bear on the management of this data in an electronic format, yet it also presents new risks to firms as data can now be expunged forever with one accidental mouse click.

All too many firms have realized the hard way that protecting data must go beyond periodic backups if they expect to reliably protect their customers' data (and their firm's uptime) from interrupted access or permanent deletion. It's important to understand that not all data protection strategies meet all needs.

Chris Baer is expert at reducing the cost and complexity of data storage and architecting data protection solutions. He can be reached at chris.baer@broadleafservices.com.

Let's take a step back and understand why people make "backups." There are three primary business drivers to backing up data:

Data Archival: Archiving data is a cost-effective way to meet regulatory or compliance guidelines, and to bring back information from many years ago that needs to be reviewed or submitted in litigation. Professionally administered tape backups maintained in a fireproof, climate controlled offsite facility make sense for this need.

Disaster Recovery: Planning for disaster recovery calls for a business to assess and plan for how to continue operations in the event of a facility outage, such as fire, flood or theft. Solutions for this need may differ depending on how quickly a firm needs to recover and how much data it can afford to lose – an hour, a day, a week, etc.

Onsite Data Continuity: 99% of data loss occurs in the office when a person or virus overwrites file data or deletes the file or database itself. Since tapes can't help here, creating a strategy that protects your data on an intraday basis, rather than just backing it up, will quickly pay for itself. This is where ***continuous data protection*** steps into the picture, to close the gap in protecting your firm.

As data sets continue to grow and demand for immediate availability of data increases, many companies are researching methods to facilitate intraday recovery. The ROI is simple: A single event can cost hours, days or months of trying to reconstruct data. And loss to a business's goodwill and bottom line as a result of data corruption is incalculable.

Let's look at a hypothetical scenario: An attorney, let's call him Paul Hewson, accidentally overwrites the legal document that he has been working on all morning. There have been several crucial changes made in the preceding few hours, and he's due to orchestrate an important real estate closing in 45 minutes. A tape-based backup system is severely inadequate in dealing with this scenario, as this morning's document changes cannot be recovered. (Fact: 60% of recoveries from tape backups fail in small office environments, but that's a story for another column.)

Yet if Hewson had implemented a continuous data protection strategy, which need not be too expensive for a small office, he could have recovered fully in just a few minutes and made it to his closing prepared and ready to go.

Configuring off-site data replication used to require extensive technical expertise and quite a bit of administrative overhead, but there are now options that meet the needs of firms with tight budgets and limited IT resources. Many firms choose to outsource this service as an alternative to spending IT department time on backups.

Not only does a disk-to-disk backup strategy create a more robust environment in which to restore data, it also has the serendipitous benefits of shrinking backup windows and reducing the impact of backups on the network.

Achieving this level of redundancy is not difficult to implement and maintain. It's simply a matter of creating the right solution for the business needs that are specific to the firm.

THE REAL ESTATE BAR ASSOCIATION
for Massachusetts
50 Congress Street, Suite 600, Boston, MA 02108
(617) 854-7555 (800) 496-6799 FAX (617) 854-7570

2006 Annual Meeting & Conference

TUESDAY, NOVEMBER 7, 2006

DCU Center
50 Foster Street
Worcester, MA

THE BREAKOUT SESSIONS

Buying and Selling the Subdivision House Under Construction
If You Build It, We Will Close (or Try to)

Housing Court Practice: It's More Than Evictions

Making Development of Affordable Housing Easier: The New Universal Affordable Housing Restriction and the SJC Ruling Limiting Appeals of 40B Permits

New Expedited Permitting Legislation

Nuts and Bolts: From Title Abstract to Title Commitment to Title Policy and Insured Closing Letters

Proposed REBA Office Lease Form

Recent & Pending Legislation: Summary and Highlights

Recent Developments in Massachusetts Case Law

CONTINUING EDUCATION COMMITTEE CHAIRS

Stephen M. Edwards, Esq.

Sophie Stein, Esq.

Parking Validated by REBA

Valet Parking sponsored by Citizens Bank.

OUR SPONSORS

Allstate 1031
First American Title
Citizens Bank
CATIC
Exchange Authority LLP
Land America
TSS
ADR Reporting

REGISTRATION for REBA'S Annual Meeting & Conference, November 7, 2006

Complete this form, include the appropriate fee and return to REBA Foundation, Attn: 2006 Annual Meeting & Conference, 50 Congress Street, Suite 600, Boston, MA 02109-4075 or FAX to: (617) 854-7570.

NEW! Register Online at www.reba.net

		By 10/27	After 10/27
_____	YES, please register me. I am a REBA member in good standing.	$ 135	$ 160
_____	YES, please register me as a guest.	$ 175	$ 200
_____	YES, my firm/organization wants to reserve ____ tables (seats 10). Firm/organization name_____ (Please attach registration form for each person at the table)	$ 1,350	$ 1,600
_____	NO, I am unable to attend, but would like to purchase the seminar materials and an audiotape of the sessions. (Order by 11/07/06. Please allow four to six weeks for delivery.)	$ 130	$ 130
	TOTAL	$_____	$_____

_____ I have enclosed a check for the total amount listed above

_____ Please charge my _____ MasterCard or _____ Visa for the total amount listed above.

Card Number: __ __ __ __ -__ __ __ __-__ __ __ __-__ __ __ __ Expiration date ____/____

Signature: _____

Name: _____ Esq. (yes or no): _____
Nickname for Badge: _____ Firm/Org: _____
Address: _____
City: _____ State: _____ Zip: _____
Phones: Office: _____ Cell: _____ Fax: _____
Email: _____

SECTION: PLEASE COMPLETE: thank you
SELECT YOUR LUNCHEON: Surf and Turf____ Chicken ____ Vegetarian____ Fish____

SECTION: PLEASE COMPLETE: thank you
BREAKOUT SESSION PREFERENCES: please rate (1-8) order of your preference:

_____ *Buying and Selling the Subdivision House Under Construction* (Johnson, Ricciardelli)
_____ *Housing Court Practice: It's More Than Evictions* (Pierce, McDonagh, Battista)
_____ *Making Development of Affordable Housing Easier* (Regnante, Zinicola)
_____ *New Expedited Permitting Legislation* (Scheier, Peterson, Levey, Kass, Lombardi)
_____ *Nuts and Bolts: From Title Abstract to Title Commitment to Title Policy and Insured Closing Letters* (Zuretti, Gurvits)
_____ *Proposed REBA Office Lease Form* (Bloom, Ronayne)
_____ *Recent & Pending Legislation: Summary and Highlights* (Smith, Rainen)
_____ *Recent Developments in Massachusetts Case Law* (Lapatin)

DRIVING DIRECTIONS

For additional information, telephone the DCU center at 508-929-0124.

FROM BOSTON: Take Rt. 90 W. Get off at Exit 10 (Auburn). After the tollbooth, bear left at the fork. Take Rt. 290E and get off at Exit 16. Left at bottom of the ramp. At 3rd set of lights (Major Taylor Blvd.) the DCU is on your left.

FROM POINTS WEST: Take Rt. 90 E to Exit 10 (Auburn). After the tollbooth, bear left at the fork. Take Rt. 290E and get off at Exit 16. Left at bottom of the ramp. At 3rd set of lights (Major Taylor Blvd.) the DCU is on your left.

FROM SOUTH: Take Rt. 495N and take Exit 25B. Take 290 W and take exit 16. Right at end of ramp. At 3rd set of lights (Major Taylor Blvd.) the DCU is on your left.

FROM NORTH: Take 495 S and take Exit 25B. Take 290 W and take exit 25B. Take Rt. 290 W and take exit 16. Right at end of ramp. At 3rd set of lights (Major Taylor Blvd.) the DCU is on your left.

DCU Center
formerly the Worcester Centrum.
50 Foster Street Worcester, MA 01608-1398

REBA
THE REAL ESTATE BAR ASSOCIATION
for Massachusetts

Tuesday, November 7, 2006
8:30 a.m. – 3:00 p.m.

SCHEDULE OF EVENTS

8:30 a.m. - 3:00 p.m. **Registration and Exhibits Open**

9:00 a.m. - 12:45 p.m. **THE BREAKOUT SESSIONS**

9:00 a.m. - 9:45 a.m.
10:00 a.m. - 10:45 a.m.

Buying and Selling the Subdivision House Under Construction — If You Build It, We Will Close (Or Try To) —

Mark B. Johnson; Sarah H. Ricciardelli

Representing Buyers, Sellers and Lenders in new construction can be challenging. This session will address issues that are unique to such transactions, including permitting documents, the use of offer forms, purchase and sale agreements, title issues, financing contingencies, how to handle extras and upgrades, warranties, mechanic liens, delay in closings, incomplete and punch list issues, escrow agreements, lender issues, closing documents and post-closing obligations of the parties.

9:00 a.m. - 9:45 a.m.

Housing Court Practice: It's More Than Evictions — Chief Justice Steven D. Pierce; Maureen E. McDonagh; Archer Battista

We are pleased to present a panel led by Housing Court Chief Justice Steven Pierce on Housing Court practice and the breadth of the judicial resource that the Housing Court represents. This session is intended as an orientation for the general real estate practitioner to the jurisdiction, variety of caseload and practice in the housing court, featuring as its centerpiece remarks from the Chief Judge. Experienced practitioners representing landlords and tenants will offer their perspectives and guidance as well. Come learn more about the Housing Court, its jurisdiction, and facets of practice. This session is being led by the newly constituted Housing Court Subcommittee of REBA's Litigation Committee.

9:00 a.m. - 9:45 a.m.
11:00 a.m. - 11:45 a.m.

Nuts and Bolts: From Title Abstract to Title Commitment to Title Policy and Insured Closing Letters — Amanda Zuretti; Eugene Gurvits

For both the experienced real estate practitioner as well as those new to this area, we have two title experts to provide their invaluable insights into some of the title matters that surface regularly during real estate practice. Attorney Amanda Zuretti will take the mystery out of Insured Closing Letters ("ICL"), also known as Closing Protection Letters ("CPL"), review recent appellate case law on the subject and analyze the scope of title insurers' liability and remedies. Attorney Gene Gurvits will present a refresher course on reviewing title abstracts, evaluating pesky title problems, and drafting title insurance commitments and policies.

10:00 a.m. - 10:45 a.m.
11:00 a.m. - 11:45 a.m.

Making Development of Affordable Housing Easier: The New Universal Affordable Housing Restriction and the SJC Ruling Limiting Appeals of 40B Permits — Theodore C. Regnante; Phyllis A. Zinicola

Two recent developments will help break down the barriers to developing affordable housing in Massachusetts, potentially easing the state's still-critical shortage of affordable units. First, in a sharp departure from almost twenty years of affordable housing lending practice, MassHousing has obtained Fannie Mae's endorsement of a new form of Affordable Housing Restriction in which affordability restrictions will survive foreclosure. This change gives municipalities the assurance they have sought that units on the Subsidized Housing Inventory will remain there and remain available for use by low- and moderate-income households, even in the event of foreclosure. Second, in Standerwick v. Board of Appeals of Andover, 447 Mass. 20 (June 16, 2006), the SJC dramatically limited the scope of abutters' appeals under Chapter 40B when it held that the preservation of real estate values of property abutting an affordable housing development was clearly not a concern that the 40B regulatory scheme was intended to protect. Our two expert panelists will discuss how these developments will impact the rapidly changing world of affordable housing practice.

10:00 a.m. - 10:45 a.m.
11:00 a.m. - 11:45 a.m.

New Expedited Permitting Legislation — Chief Justice Karyn Scheier; Greg D. Peterson; Brian Levey; Retired Judge Rudolph Kass.; Judge Leon J. Lombardi

The expedited permitting legislation enacted in August, which took effect immediately, has made major changes to procedures available to developers and towns to move projects through permitting and appeals and on to construction. Among the new features, project proponents and towns can mutually elect an expedited permitting process that requires expedited review of appeals. A new Permit Session of the Land Court has been created to hear appeals of major permitting and land use cases. Holders of special permits may commence construction while appeals are pending. Our panel is being led by two of the principal authors of the legislation, Greg Peterson and Brian Levey, who will be explaining highlights of the new legislation. Moderating will be Hon. Rudolph Kass, REBA Dispute Resolution Neutral and retired Massachusetts Appeals Court Judge. Also joining the panel will be Chief Justice Karyn Scheier of the Land Court to provide an orientation to the new Permit Session.

9:00 a.m. - 9:45 p.m.
10:00 a.m. - 10:45 a.m.

Proposed REBA Office Lease Form — Edward M. Bloom; John T. Ronayne

REBA's Leasing Committee has generated what we expect to become a valued and widely used resource for our members: a form of office lease with fit-up work letter exhibit. This thoughtful form addresses in efficient fashion numerous typical issues faced by the draftsperson of a commercial office lease. This form is to be voted on at our luncheon business meeting as a REBA approved form. This session enables members to review the form, its purpose, and what it does (and does not) do, led by two of its principal draftspersons, Leasing Committee Chair Ed Bloom and committee member John Ronayne.

11:00 a.m. - 11:45 a.m.

Recent & Pending Legislation: Summary and Highlights — Edward J. Smith; Edward A. Rainen

You won't want to miss this twice yearly update from REBA's long-time Legislative Counsel, Ed Smith, and the co-chair of the Legislation Committee, Ed Rainen, on the recent and pending legislation on the Hill. Ed Smith gives us up-to-date-goings-on up on the Hill affecting REBA members, and Ed Rainen discusses the inner workings of REBA's Legislation committee.

12:00 p.m. - 12:45 p.m.

Recent Developments in Massachusetts Case Law — Philip S. Lapatin

Phil Lapatin draws a huge crowd with this session every meeting. Now, you won't have to stay late to hear him. His new timeslot is right before luncheon. His session, Recent Developments in Massachusetts Case Law is a must-hear for any practicing real estate attorney.

12:45 p.m. - 2:20 p.m. **Luncheon**

1:20 p.m. - 1:40 p.m. **REBA President's Remarks - Robert J. Moriarty, Jr., Esq.**

Presentation of the Richard B. Johnson Award

1:40 p.m. - 2:00 p.m. **Keynote Address**

2:00 p.m. - 2:30 p.m. **REBA Business Meeting**

Clerk's Report
Treasurer's Report
Committee Reports

The new schedule is planned to get you out earlier to avoid rush-hour traffic. Have a safe trip home and see you in the spring.

GENERAL INFORMATION

- Premium credit for professional liability insurance may be given for attending properly documented continuing legal education programs.
- Continuing Legal Education credit can be made available in other New England states. Contact the Real Estate Bar Association (REBA) for specific details.
- Registration for REBA's 2006 Annual Meeting and Conference is open to REBA members/ associates in good standing and their guests and non-members/associates (for an additional fee). Everyone attending the REBA 2006 Annual Meeting and Conference must register. The Registration Fee includes the cost of the morning and afternoon sessions, the seminar written materials and the luncheon. We are unable to offer discounts for persons not attending the luncheon portion of the program.
- Please submit only one registration form per person. Additional registration forms are available at our website, www.reba.net or by emailing Nicole Cohen at cohen@reba.net. Confirmation of registration will be sent to all registrants by email or mail.
- Registrations with the appropriate fee should arrive by October 27, 2006 to guarantee a reservation at the 2006 Annual Meeting and Conference. Registrations received after October 27, 2006 are subject to an additional processing fee of $25. Registrations cancelled in writing before October 27, 2006 will be honored, but charged a $25 processing fee. No other refunds will be permitted. Registrations cancelled in writing on or after October 27, 2006 will not be honored but substitutions of registrants attending the program are welcome and may be made at any time. Written materials will automatically be mailed to "No Shows" within four to six weeks after the program.
- The use of cell phones and pagers is prohibited in the meeting rooms during the programs.

Could a disaster wipe out Registry of Deeds records?

By Carrie Rainen

Could a disaster wipe out vital registry of deeds records? With the threat of terrorism, Hurricane Katrina and the recent floods in Taunton, this question is becoming increasingly relevant.

Currently, due to the elimination of county government in most of the Commonwealth, 13 of the 21 registries of deeds are supervised by the office of the Secretary of the Commonwealth. Most of those registries' indexes and documents are available on the website www.masslandrecords.com.

When a state-run registry receives a document for recording, a digital image is scanned, and the information for the electronic grantor index is entered into the system by registry staff. Those fields create digital records in the registry's on-site system, and simultaneously create a duplicate in the Secretary of the Commonwealth's web server in Boston. Each recording is simultaneously backed up in Boston and in the registry itself. (However, the image of the document is not stored in the Secretary of State's Internet server until the end of the day, when transferring large image files is less likely to slow down the system.)

While this automatic backup sounds like the perfect plan, all of the records are located in eastern Massachusetts. The Suffolk Registry is two blocks away from the Secretary of State's office and the Middlesex South Registry is less than two miles away. What happens if both systems are wiped out?

Considering the almost daily discussions in the media concerning the establishment of an LNG tanker facility on a Boston island, the possibility of conflagration emanating from a disaster at the existing LNG plant on the Mystic River in Everett is hardly far-fetched.

Several registers under state supervision have been under the mistaken impression that a third copy of the document is made electronically and transmitted to a facility in Texas. Originally, when the system was first being tested in the Middlesex North Registry, documents were recorded and simultaneously backed up in the registry and in a Texas facility. However, before the system was introduced to other registries, Secretary of State Galvin requested that the duplicate backup be moved to his facility in Boston.

Kevin Harvey, the Assistant Secretary of State and Director of the Registries of Deeds, is aware of this concern. "As we go further west, we're looking at backup locations…geographically closer to the registries out [west]," he said. He also reports that the Secretary's office is seeking a dual backup system.

In addition, the state has helped the registries under its stewardship to develop satellite locations. Currently, there is a Middlesex South satellite in the Middlesex North Registry, there is a Hampden satellite in Westfield, and soon there will be a Worcester District satellite in the Worcester North Registry. "We have a disaster recovery plan for all registries," said Harvey. "It is always ongoing, improving and changing procedures to keep up with the environment we're working with."

Many have own process

Even under the state-supervised system, many of the state-run registries still maintain their own processes to deal with records backup and disaster planning. For example, Essex South, Middlesex South and North, Worcester District, Suffolk, and Hampden counties all back up digitally and on microfilm. But each of these registries has a different process of backing information up, and each stores its records differently.

The Worcester District Registry stores its digital tapes and microfilm in registry vaults, as well as off-site storage vaults located at Iron Mountain facilities in New York and Northborough, Massachusetts. The Middlesex South Registry has information on DVDs and microfilm, which are also kept with Iron Mountain. The Essex South Registry also stores its microfilm and digital backups with Iron Mountain. The Middlesex North Registry stores its microfilm off-site with a different data storage company located in western

Continued on page 13

Carrie Rainen is a recent graduate of New England School of Law.

Secretary of State Galvin: Ten years of leadership in land records

By John L. O'Brien, Jr.

Next year will mark the tenth anniversary of the abolition of Franklin and Middlesex Counties, the first of many Massachusetts counties to meet their demise due to fiscal problems. The silver lining in that dark cloud was the transfer of 13 of the state's 21 registries of deeds from county government to state control under the office of the Secretary of the Commonwealth.

Over the years, Secretary William F. Galvin has demonstrated a far-reaching vision of how registries of deeds should fit into a larger system of "one-stop shopping" for land-related information. Secretary Galvin has also struck a balance between allowing worthwhile individual registry initiatives to proceed and guiding the 13 state-controlled registries toward standardization and technological advancement.

One of the first challenges in this period was Y2K. Thanks to the intense preparations undertaken as the year 2000 approached, few problems occurred. In retrospect, it is tempting to say that the entire Y2K issue was overblown, but nothing could be further from the truth. Without the intensive remediation efforts that were undertaken, the computer systems at five registries would have crashed on January 1, 2000. These efforts had a dual function: They fixed the Y2K problem and they laid a solid infrastructure for the introduction of new, transformative technologies such as the widespread use of high-speed Internet service and electronic storage of data and images.

The next major effort was replacing obsolete registry computer systems with state-of-the art hardware and software. The first new system was installed in Middlesex North in June 2002. Since then, new systems have been installed in 12 of the Commonwealth's 21 registries (nine state and three county). One of the most valuable features of the new systems is the Internet component, which allows the citizens of Massachusetts to view newly updated data and images in "real time."

Secretary Galvin made a public policy decision during this period to have the data and images at the state registries freely available on the Internet. This 24/7 access has transformed the use of land records in Massachusetts. It has empowered average home buyers and sellers by making a vast amount of real estate information available to them – instead of just professionals who can afford online access fees.

Of course, online access to land records is only as valuable as the quality and quantity of electronic records available. Through funding provided by Secretary Galvin's office, many of the state's registries have added decades' worth of land records to their electronic holdings. This transition of records from paper to electronic images is ongoing, with more images being added to registry websites every day.

However, this work is still not complete. The age of electronic recording – where the customer records an electronic image of a document from a remote location without ever setting foot in the registry – is now upon us. This process will bring a radical alteration of hundreds of years of real estate practice. Secretary Galvin has directed a pilot program for electronic recording at the Middlesex North Registry that will establish statewide procedures for this new remote recording system. Thanks to Secretary Galvin's leadership, this change promises to greatly benefit this vital part of our state's economy.

John O'Brien has served as Register of the Essex South District Registry of Deeds for nearly 30 years. A long-time resident of Lynn, he is a former president of the Massachusetts Registry of Deeds Association.

Could a disaster wipe out Registry of Deeds records?

Continued from page 12

Massachusetts. In the Hampden Registry, all land records and plans from 1636 to date are backed up on microfilm, which is stored off-site at the Western New England Archives in Enfield, Connecticut. All current recording activity is put onto optical platters, which are transported to the archives when full.

Massachusetts registries of deeds are becoming more aware of just how fragile their records are. The ultimate goal is a unified statewide method of protecting these valuable records, but much still remains to be done.

A User's Guide to the New Mortgage Discharge Law

Schedule of Workshop Programs

Lenox

CATIC
October 3rd
12:00 noon
Cranwell Resort
55 Lee Road
Lenox, MA 01240
Sponsor contact: Lorie Chapdelaine
loriechapdelaine@catic-e.com
Special Guest: Sen. Andrea F. Nuciforo, Jr., Esq.
Sponsor Faculty: James S. Jurgens, Esq.
REBA Faculty: Edward J. Smith, Esq.
David M. Lazan, Esq.
Michelle T. Simons, Esq.
Thomas Bussone, II, Esq.

Springfield

CATIC
October 4th
8:30 am
The Delaney House
Route Five
Holyoke, MA 01040
Sponsor contact: Lorie Chapdelaine
loriechapdelaine@catic-e.com
Sponsor Faculty: James S. Jurgens, Esq.
REBA Faculty: Edward J. Smith, Esq.
Michelle T. Simons, Esq.
Thomas Bussone, II, Esq.
David M. Lazan, Esq.

Plymouth

Stewart
October 11th
8:30 am
Radisson Hotel Plymouth
180 Water Street
Plymouth, MA 02360
Sponsor contact: Craig J. Celli, Esq.
ccelli@stewart.com
Sponsor Faculty: Ward P. Graham, Esq.
REBA Faculty: Michelle T. Simons, Esq.
Thomas Bussone II, Esq.
Mandee DaCosta, Esq

Andover

First Am
October 12th
8:30 am
Wyndham Andover Hotel
123 Old River Road
Andover, MA
Sponsor contact: Joyce Fiocca Bold
tine.sa.marketing@firstam.com
Sponsor Faculty: Eugene Gurvits, Esq.
REBA Faculty: Edward J. Smith, Esq.
Michelle T. Simons, Esq.
Thomas Bussone, II, Esq.
Mandee J. DaCosta, Esq.
Alan J. Sharaf, Esq.

Metro South

Fidelity
October 18th
5:00-8:00 pm
Sheraton Braintree
37 Forbes Road
Braintree, MA 02184
Sponsor contact: Shawna Gillis
shawna.gillis@fnf.com
Sponsor Faculty: Jeffrey A. Campbell, Esq.
REBA Faculty: Ward P. Graham, Esq.
E. Christopher Kehoe, Esq.
Michelle T. Simons, Esq.
Thomas Bussone, II, Esq.
Mandee J. DaCosta, Esq.
Alan J. Sharaf, Esq.
Douglas A. Troyer, Esq.

Worcester

LandAm
October 24th
8:30 am
Crowne Plaza Hotel
10 Lincoln Square
Worcester, MA 01608
Sponsor contact: Carol A. Vardaro
cvardaro@landam.com
Sponsor Faculty: Kathleen M. Mitchell, Esq.
REBA Faculty: Ward P. Graham, Esq.
Michelle T. Simons, Esq.
Thomas Bussone, II, Esq.

Cape Cod

LandAm
October 25th
8:30 am
The Cape Codder Resort and Spa
1225 Iyanough Road
Hyannis, MA 02101
Sponsor contact: Carol Vardaro
cvardaro@landam.com
Sponsor Faculty: Kathleen M. Mitchell, Esq.
REBA Faculty: Edward J. Smith, Esq.
Michelle T. Simons, Esq.
Thomas Bussone, II, Esq.
Alan J. Sharaf, Esq.
Mandee J. DaCosta, Esq.
Douglas A. Troyer, Esq.

Environmental insurance makes it easier to close brownfields deals

Continued from page 6

comfortable underwriting the risks. To this end, the application package should include, at a minimum:

- The size of site or deal, and whether it is a portfolio or a single property.
- The prior site use, the future site use, and surrounding uses.
- The contamination type.
- The contamination location. Is it on-site only? Is migration likely?
- The stage of remediation and redevelopment. Is there a Response Action Outcome Statement or Remedy Operation Status Opinion in place?
- The expected remedial costs and volatility.
- Will remediation take place after transfer of title?
- The level of regulatory agency involvement, including documents such as covenants not to sue; no-further-action letters; or positive audit findings.
- The regulatory climate regarding this type of property, including any changes in regulations or heightened enforcement.
- Any contractual arrangements that manage, shift, or allocate risk, such as indemnities, assumption of risk, liability caps, or carve-outs.
- Any statutory exemptions or defenses to liability.
- An executive summary by the insured's environmental consultant highlighting the bottom-line results from the due diligence.

Evaluating the proposal

After the insurance company issues its proposed coverage, carefully review it for accuracy and completeness. Important items include:

- The scope of coverage, including cleanup, bodily injury, property damage, third-party claims, cleanup cost caps, business interruption, and retrospective vs. prospective coverage
- Price. Ask for a range of premiums for different coverage limits and deductibles to get what's best for the insured.
- The policy term and renewal options.
- Assignability.
- Typical exclusions, including those for known conditions; asbestos, lead and mold; radioactive matter; naturally occurring conditions such as radon and arsenic; and storage tanks.

A policy can also include endorsements that add to or take away from the standard coverage in order to tailor it to a particular site or situation. It is here that a skilled broker, with the help of counsel, can make a big difference in terms of getting the needed coverage.

For example, endorsements can more precisely define the pollution conditions, the remediation area or plan, and the cleanup cost. They can include risks that are excluded by the standard policy. They can cover material changes in use, and they can protect one insured in the event of inadequate disclosures by a co-insured.

After the policy is issued

Once the policy is bound, many insureds make the (costly) mistake of forgetting about the policy and their obligations under it.

For example, some policies require written status reports until regulatory closure is achieved. Failure to timely submit such reports could compromise coverage.

Another example is the "Known Contaminant Exclusion" endorsement that provides for removing the exclusion after the filing of a contaminant closure report with regulatory authorities. To remove the exclusion and obtain coverage, the report typically needs to be approved by the carrier. If an insured delays the approval process, it may find itself embroiled in a costly audit or enforcement action by the government (over the adequacy and completeness of the report) without coverage.

Mark Your Calendar!

REBA Spring Seminar and Conference
Monday, May 7, 2007

New ALTA loan policy should be a hit with lenders

Continued from page 4

the standard exclusion for certain types of mechanic's liens in the 1992 policy, although such coverage will be subject to a Schedule B exception tailored to the applicable state law.

Simplified Claims Procedures

The procedures for submitting a claim have been simplified. *Yes, we do pay claims!* The 1992 policy obligates the insured to submit the policy as a condition to receiving payment of a loss. In addition, the insured is required to submit a "sworn" proof of loss within 90 days of determining the facts giving rise to a loss. Although the insured is still required to fully cooperate in the claims process, the 2006 policy gives the insurer the option to require a proof of loss and eliminates the requirement that the insured submit the policy for endorsement when a claim is settled.

In addition, a new condition was added to respond to concerns from lenders and others regarding delays in the payment of a claim in situations where the title insurer unsuccessfully pursues an action to eliminate a defect insured against by the policy. In this circumstance, the 2006 policy automatically increases the amount of insurance payable by 10% and gives the insured the option to value the loss either at the time the claim was made or at the date the loss is paid. In addition, several provisions in the 1992 policy that some lenders interpreted as potentially reducing the amount of coverage were eliminated from the 2006 policy.

More Arbitration Options

In response to lender concerns about the arbitration provision, where the amount of insurance exceeds $2 million both the title insurer and the insured must agree to arbitration. In addition, arbitrations under the new policy will be subject to the ALTA arbitration rules since the American Arbitration Association dropped its title insurance rules.

New Short Form Residential Loan Policy

Another revised policy of interest to lenders is the 2006 ALTA Short Form Residential Loan Policy. As the name implies, this is a "short form" version of the standard policy intended for the residential origination market. It provides the same coverages as the "long form" in a format that many lenders find to be more convenient since it incorporates by reference the basic policy and most of the more commonly issued residential endorsements, and also provides a "check the box" format for others.

These are only a few of the numerous changes that have been made to the title insurance policy forms. This is part of an ongoing effort by the title insurance industry to respond to the needs of lenders and other customer groups. Each title insurance underwriter is in the process of submitting the new forms to the various state insurance departments for approval, making it likely that they will be available for use early next year.

Send a letter to the editor!

Peter Wittenborg, Executive Director, REBA,
50 Congress St., Suite 600, Boston, MA 02109-4075,
or wittenborg@reba.net

New formatting rules for deeds take effect Jan. 1

First page must have three-inch top margin

Continued from page 8

lost when the document is scanned. The three-inch top margin gives us a standard location where we can safely and efficiently add recording information to each document.

Although these standards were promulgated more than a year ago with the announced effective date of January 1, 2007, my cursory review of documents recorded in this registry over the past two days showed that only a handful of them comply with the standards. If we strictly enforce these standards come January 1, 2007, the vast majority of documents presented for recording will be rejected. While I certainly want to avoid that type of disaster, we cannot continue to ignore this issue. Leaving it to our customers to police themselves will only perpetuate problems with document images for future registry users.

I believe that the proper course is to allow the formatting standards to take effect on schedule, but at least for the balance of 2007, we should consider these rules as establishing a standard of recordability and not a standard of rejection. In other words, if your document complies with the formatting standards, then it will be recorded, but if your document does not comply with the standards, the registry staff will exercise the discretion granted by chapter 36, section 12A and accept or reject documents accordingly. In the meantime, the Registers Association, REBA and other interested entities should make a greater effort to find the correct balance between the realities of modern conveyancing practice and the responsibility of each register to create and preserve a permanent record of land ownership.

Other states grapple with non-lawyers at real estate closings

Continued from page 7

sensus of opinion in order to offer specific findings and recommendations on the practice of law in New Hampshire."

Jurisdictions outside New England have also recently considered the respective roles of the lawyer and non-lawyer. For instance, the Delaware Supreme Court ruled in 2000 that conducting real estate closings constitutes the practice of law.

The North Carolina State Bar (the state agency responsible for regulating the practice of law in that state) decided that an attorney need not be physically present at residential real estate closings and that a non-attorney, if adequately supervised by the attorney, may oversee the execution of closing documents and the disbursement of proceeds. In a related move, the North Carolina State Bar approved an Advisory Opinion that certain functions relative to a residential real estate closing constitute the practice of law and may be performed only by a licensed attorney. These functions include the rendering of an opinion on title, the provision of a legal opinion or advice, or the drafting of a legal document.

In 2003, the Georgia Supreme Court stated in *Grecaa, Inc. v. Omni Title Services, Inc.* that it has "the inherent and exclusive authority to govern the practice of law in Georgia." The Court then immediately and unanimously approved "Unauthorized Practice of Law (UPL) Advisory Opinion 2003-2," which states that "only a licensed Georgia attorney may prepare or facilitate the execution of a deed of conveyance." These actions firmly establish Georgia as one of the states that require an attorney to preside over real estate closings.

The following web page is a useful resource on unauthorized practice of law decisions around the country: www.abanet.org/rppt/section_info/upl/home.html

As a Bar-Related® title insurance underwriter, CATIC firmly believes that the attorney is instrumental in providing the home-buying public with quality advice and protection in a real estate transaction. The public interest demands that the evaluation of legal rights and obligations in real estate transactions be performed by attorneys trained to provide such services. CATIC will continue to monitor developments in this area and to lend its support to the preservation of the attorney's role in the real estate closing.

Division of Banks cracks down on improper mortgage lending

Continued from page 1

gage credit and do not have other mitigating factors."

In reponse, Massachusetts Banking Commissioner Steven Antonakes launched a coordinated enforcement program aimed at rooting out this fraud and ensuring that the Massachusetts mortgage market is safe and sound for all Massachusetts residents. This effort involves enforcement actions, regulation and licensing changes in Massachusetts and across the country, and community outreach.

Most directly, the Division ordered 11 mortgage companies to immediately stop soliciting or accepting, either directly or indirectly, any residential mortgage loan applications from consumers for residential property located in Massachusetts. These companies, with offices in Worcester, Lawrence, Lynn, Natick and Woburn, as well as in Houston and New York, were ordered to stop conducting any activities as a licensed broker or lender in Massachusetts and place all pending residential mortgage loan applications with a qualified broker or lender at no loss to the applicants. A list of the companies and the specific actions taken by the Division may be found at www.mass.gov/dob.

Mike Caljouw is Senior Counsel at the Boston law firm Holland + Knight LLP. He is a member of the firm's Government practice representing clients before executive branch departments throughout New England and particularly in Massachusetts. He has 10 years of experience developing regulatory and legal strategies as a senior policymaker in Massachusetts and is a former Deputy Director and General Counsel to the Massachusetts Office of Consumer Affairs and Business Regulation and General Counsel to the Massachusetts Division of Insurance. He may be reached at 617-854-1442 or michael.caljouw@hklaw.com.

New emergency regulations

Employing rarely used legal authority, Commissioner Antonakes also made immediate changes to the regulatory structure governing Massachusetts-licensed mortgage lenders and brokers. Using emergency amendments to its regulations, the Division codified a significantly expanded number of prohibited acts and practices that will constitute immediate grounds for the issuance of cease and desist orders and license suspension or revocation. These acts include:

- Signing mortgage loan applications or documents on behalf of consumers;
- Falsifying income or asset data on such documents;
- Fraudulently inducing or coercing consumers to sign these documents through misrepresentation or omission of crucial information about terms;
- Engaging in a pattern or practice of failing to make disclosures as required by law, regulation or directive;
- Requiring consumers to use the real estate services of a particular entity, agent or broker; and
- Discouraging consumers from seeking or obtaining independent legal counsel or advice.

The full scope of these amendments is still developing but, at this stage, it is noteworthy that state regulators are cognizant of the need for appropriate legal counsel in the field. These amendments to 209 CMR 42.00 *et seq.* may be grounds for the immediate revocation or suspension of a Massachusetts mortgage lender or broker license. While they are already in force, the Division will need to hold a public hearing and take testimony on these regulations sometime in the coming month.

National database on the way

Two other developments are being touted by state regulators despite the fact that they require future action. Across the U.S., banking officials are highlighting an emerging national database that will allow examiners to review important market information. The Conference of State Bank Supervisors (including the Massachusetts Division of Banks) and the American Association of Residential Mortgage Regulators are implementing a national licensing system with uniform applications for residential mortgage lenders and brokers, as well as a central data warehouse with licensing information and publicly adjudicated enforcement actions. The National Association of Securities Dealers is designing and implementing the Internet-based system. However, the system will not be operational until 2008 at the earliest.

Much closer in time, the Massachusetts Division of Banks and the state's Office of Consumer Affairs and Business Regulation will convene a Fall Mortgage Summit in October 2006. The Summit will provide government, industry, and nonprofit organizations an opportunity to examine the increasing number of mortgage foreclosures across Massachusetts and create a statewide prevention strategy. It is the regulators' hope that a consensus will be reached on meaningful reform for Massachusetts consumers faced with the loss of their homes, and ways to prevent such problems in the future. REBA will be an active participant in the Summit.

The Division of Banks also launched two new mechanisms for complaints of mortgage lending violations. There is an online complaint form available at www.mass.gov/dob, and a Mortgage Fraud Hotline at 800-495-2265, extension 1501.

Action will continue on these fronts throughout the fall and winter. REBA will be active to protect its members' interests and will provide continuing updates as events develop.

New law streamlines permitting process in Massachusetts

Continued from page 1

targeted to process appeals involving the Department of Environmental Protection. The Division must now issue decisions within 90 days after the record is complete. It must also provide statistical reports regarding appeals, and if a recommended written decision does not issue within six months after the appeal was lodged, it must explain to the General Court the reasons for the delay.

- At least five of the 10 necessary persons intervening in a Chapter 91 proceeding must live in the municipality where the licensed or permitted activity is located. New Chapter 91 regulations must be issued consistent with M.G.L. c. 30A, § 10A.
- Special permits for research and development and related manufacturing uses can now be allowed by majority local vote (other than in residential, agricultural or open space districts). A similar local vote can allow an expedited review process for development projects of 50,000 square feet of floor area, requiring local permitting to be finished within 180 days of a completed application.
- The Highway Department must promulgate regulations for state highway curb-cut/access permits.
- Attorneys' fees and costs can be awarded to municipalities and non-profits that successfully enforce affordable housing, conservation, agricultural and historic preservation restrictions.
- A new Massachusetts Permit Regulatory Office, headed by a new State Ombudsman, will advise new and expanding businesses on permitting matters.
- A new Interagency Permitting Board will recommend changes to permitting procedures to improve efficiency, communicate with municipal officials regarding permitting issues, and monitor the permitting and development of priority sites.

Greg Peterson and Brian Levey are the principal draftsmen of Chapter 205 of the Acts of 2006.

Peterson is a former president and current emeritus board member of the Association. He is a partner with the Boston office of DLA Piper Rudnick Gray Cary LLP and active in NAIOP, the National Association of Industrial and Office Properties, both in Massachusetts and at the national level. He concentrates his practice in complex real estate development, zoning and land use law, environmental permitting, title, oil/hazardous materials law, brownfields development and environmental insurance placement. Greg can be reached at greg.peterson@dlapiper.com.

Brian Levey, a principal with the Massachusetts office of Beveridge & Diamond, P.C., has more than 20 years of project development experience before permit-granting authorities and in court. Brian can be reached at blevey@bdlaw.com.

New Land Court Permit Session

The new Permit Session of the Land Court holds great promise for expediting review of appeals. The session will have original jurisdiction, concurrent with the Superior Court, over most disputes regarding projects with 25 or more dwelling units or construction or alteration of more than 25,000 square feet of gross floor area.

The session's jurisdiction includes:

- Appeals of permit approvals or denials including under Chapters 30A, 40A, 40B, 40C, 40R, 41, 43D, 91, 131, and 131A.
- Appeals seeking equitable or declaratory relief in order to obtain a permit.
- Appeals challenging interpretation or application of laws or rules arising out of a permit or approval.
- Claims for attorneys' fees under Chapter 231, Section 6F, for malicious prosecution, abuse of process, or interference with advantageous relations or contractual relations, provided the claims arise out of a permit appeal.

Cases in the new session will be assigned to a single judge for the life of the case and will be assigned one of three tracks with deadlines for getting to trial and receiving a decision or summary judgment. "Average" cases will get to trial in 12 months and a decision will be rendered in four months; "Fast" cases will get to trial in nine months and a decision will be rendered in three months; and "Track X" cases will get to trial in six months and a decision will be rendered in two months.

To help achieve these timetables, a seventh justice will be added to the Land Court. If the court still can't meet these timetables, the Chief Justice of the Land Court may request additional judges from the Chief Justice for Administration and Management, who may select judges from the Superior Court with land use expertise.

In a departure, the Permit Session will be held in numerous counties, including Suffolk, Middlesex, Essex, Norfolk, Plymouth, Worcester, and Hampden. Cases meeting the jurisdictional requirements filed in other sessions can be transferred to the Permit Session on motion to the Chief Justice for Administration and Management.

Cases in the session may be assigned to mediation before mediators with experience in permitting disputes.

Reform will be ongoing

Beyond the particulars, a theme of the new law is that permitting and appeals reform will be an ongoing project. The Act calls for numerous reports with hard, quantifiable data and annual recommendations for further reform and efficiency measures.

The new law – Chapter 205 of the Acts of 2006 – is the result of an unprecedented degree of cooperation among the largest business associations in the Commonwealth, and the palpable concern of the General Court that a cumbersome permitting process is causing Massachusetts to lose its competitiveness. The background of the law is Massachusetts' back-to-back annual population losses, the high cost of housing (and persistent underproduction of housing), and the new and serious competition for high-tech and biotech businesses and jobs from states in the South, West and Midwest.

The new law is the beginning, not the end, of the effort to regain economic competitiveness and growth for Massachusetts, an effort that will require the cooperation of all branches and levels of government as well as the private sector.

REBA & CLE Publications

REBA Members …
- **Do you need a new set of our REBA Handbook of Standards and Forms…?**
- **Did you miss out on a Spring Seminar or Annual Meeting…?**

Order your REBA publications listed below by marking the box beside the desired item with the quantity and return to REBA.

REBA Handbook of Standards and Forms on CD-ROM $50
(This publication is available to REBA Members and Associates only)

REBA Handbook of Standards and Forms hard-copy (includes three-ring binder) $50
(This publication is available to REBA Members and Associates only)

Binder for hardcopy of REBA Handbook of Standards and Forms $10
(This publication is available to REBA Members and Associates only)

2006 Spring Seminar Syllabus $130
Includes all recent and pending legislation, recent case law developments and the popular morning breakout sessions:
- Bankruptcy Code Amendments Affecting Real Estate
- The Shifting Sands of Massachusetts Beach Rights
- Conveyancer's Toolbox Essentials
- Hot Issues in Condominium Development
- Overview of REBA's Omnibus Mortgage Discharge Legislation
- Reverse Mortgages

2005 Annual Meeting Syllabus $120
Includes all recent and pending legislation, recent case law developments and the popular morning breakout sessions:
- Relocating Easements After M.P.M. Builders v. Dwyer
- Recent Changes in the State Wetlands Regulations and Enforcement
- Zoning Tear Downs
- Foreclosure, Nuts & Bolts
- Developing a Business Plan Part 1 and Part 2

2005 Spring Seminar Syllabus $50
Includes all recent and pending legislation, recent case law developments and the popular morning breakout sessions:
- Homesteads
- Litigating Title Problems and Disputes
- "Sticks and Carrots": An update on Ch. 40B and a Preview of Ch. 40R
- Zoning Opinion Letter or Zoning Endorsement?
- Billing and Ethics

2004 Annual Meeting Syllabus $50
Includes all recent and pending legislation, recent case law developments and the popular morning breakout sessions:
- Employment Law for Lawyers
- Estate and Medicaid Planning Impacting Real Estate
- Handling Commercial Real Estate Financings
- Stress Management for Real Estate Lawyers
- Title Insurance Claims - Myths, Methods and Mistakes

2004 Spring Seminar Syllabus $50
Includes all recent and pending legislation, recent case law developments and the popular morning breakout sessions:
- Bankruptcy Sales "Free and Clear"
- Bankruptcy Issues in Commercial Leasing
- New Notary Public Requirements
- Real Estate Holding Entities
- Surveying for Attorneys
- Federal Compliance Issues

2003 Annual Meeting Syllabus $40
Includes all recent and pending legislation, recent case law developments and the popular morning breakout sessions:
- GBREB Commercial Lease Forms
- New Frontier in Tax Titles
- Title Standards to the Rescue
- Conservation Real Estate
- Compliance Issues for Conveyancers

2003 Spring Seminar Syllabus $40
Includes all recent and pending legislation, recent case law developments and the popular morning breakout sessions:
- Commercial Lease Issues for the Unwary
- Representing a Client Before the Zoning Board
- Changes in the Lis Pendens Statute
- Life After Bishops Forest
- New Dam Safety Legislation

Ordering Options:
1. Complete this form, and FAX to 617-854-7570 with credit card information
2. Complete this form and mail with check to: REBA, 50 Congress St. Suite 600, Boston, MA 02109-4075

While supplies last…We will include in every publication order a free copy of the 100 page *Land Court Guidelines on Registered Land* as well as *Start Up Right: Real Estate Conveyancing Essentials.*

Item	Amount	Quantity	Total
Standards & Forms on CD-ROM	$50.00		
Standards & Forms in a hardcopy with binder	$50.00		
Binder for hardcopy of Standards & Forms	$10.00		
2006 Spring Seminar Syllabus	$130.00		
2005 Annual Meeting Syllabus	$120.00		
2005 Spring Seminar Syllabus	$50.00		
2004 Annual Meeting Syllabus	$50.00		
2004 Spring Seminar Syllabus	$50.00		
2003 Annual Meeting Syllabus	$40.00		
2003 Spring Seminar Syllabus	$40.00		
		GRAND TOTAL:	

NAME: _____
FIRM: _____
ADDRESS: _____
CITY: _____
STATE: _____ ZIP: _____
TEL: _____ FAX: _____
E-MAIL: _____

PAYMENT
☐VISA ☐MC
CARD NUMBER: _____
EXP DATE: _____
SIGNATURE: _____
☐ CHECK ENCLOSED

If You Handle Summary Process Evictions in Massachusetts, You Need This Book!

The *Residential Landlord-Tenant Benchbook, 2nd Edition* has just been distributed by the Flaschner Judicial Institute to all Housing Court judges in Massachusetts to be used as their "playbook" for handling summary process cases. **You need to know what the judges will be reading when they decide cases!**

The *Benchbook* covers all common legal issues in depth…plus it includes jury instructions, forms, rules, statutes, regulations – and more than 340 pages of case law, not available in one volume anywhere else!

Here's everything you need to handle summary process in one book. Know what the judges will be reading, even before they read it!

Order yours today! Only $99!

☐ Yes! Send me the Residential Landlord-Tenant Benchbook, 2nd Edition for only $99. (Total cost with Mass. sales tax and $7.95 s/h is $111.90).

Name _____
Firm *(if applicable)* _____
Address _____
_____
City _____
State _____ Zip _____
Phone _____

Charge my: ☐ Visa ☐ MC ☐ AmEx
Card number _____
Exp. Date _____
Signature _____

☐ Bill me.

H5I302

Mail to:
Lawyers Weekly Books,
41 West Street, Boston, MA 02111

For even faster service:
Call **800-451-9998**
or visit **http://books.lawyersweekly.com**