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COMMENTARY

MERS and the Registry of Deeds

Dick Howe

BY RICHARD P. HOWE JR.

Back in the fall of 1991, a popular Friday afternoon activity in downtown Lowell was to walk around the city looking for clues as to which bank would be seized by the FDIC that day. Carloads of U.S. Marshalls, clad in blue blazers and gray slacks, would race up to the front door and physically take control of the place, using the weekend to take inventory. Entities such as Lowell Institution for Savings and Central Savings Bank that had been around for longer than the city itself were seemingly gone overnight, casualties of the bursting of that era's housing bubble.

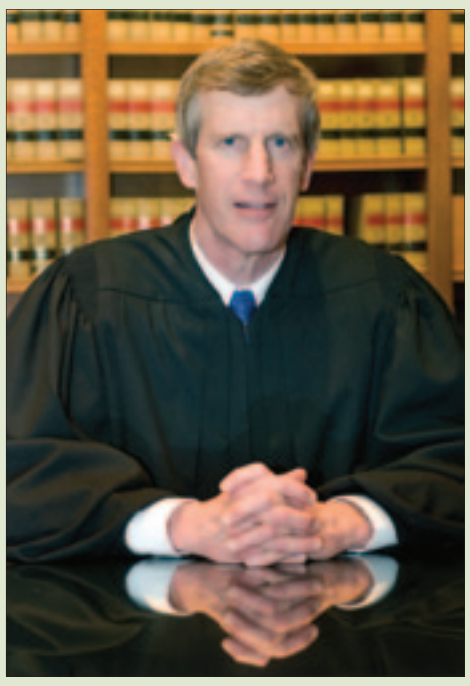
Banks were not the only casualties of that collapse. Countless homeowners had their lives disrupted when assignments and discharges disappeared or didn't exist and missing paperwork became a drag on the real estate market's recovery. At least that is how I remember things during the early days of my tenure as Register of

See MERS, page 2

Hon. Robert Cordy to keynote REBA 2011 Annual Meeting & Conference

U.S. Supreme Judicial Court Associate Justice Robert J. Cordy, who wrote a concurring opinion in the Supreme Judicial Court foreclosure case, U.S. national Bank Association vs Ibanez, will be the keynote speaker at REBA's 2011 Annual Meeting Conference on November 14 at the Best Western Royal Plaza Hotel in Marlborough.

Cordy's concurring opinion noted the "utter carelessness" of the plaintiff banks in the case pertaining to the title documentation of their assets. "Foreclosure is a powerful act with significant consequences, and Massachusetts law has always required that it proceed strictly in accord with the statutes that govern it." He also noted – though the issue was not before the Court in this particular case – the possible effect on third-party purchasers of foreclosed properties that were not properly recorded and the foreclosures not contested.



REBA Hosts Exclusive Paralegal Programs

REBA will host three special programs for paralegals at the association's all-day annual meeting and conference (AMC11) on Monday, Nov. 14, 2011, at the Best Western Royal Plaza Hotel in Marlborough.

The hour-long programs will include *Foreclosures for Paralegals* with Ward Graham; *Short Sales for Paralegals* with Amanda Zuretti and *A Paralegal's Primer on Homesteads* with Erica Bigelow.

The all-day conference will include a plenary luncheon meeting with SJC Associate Justice Robert J. Cordy as a featured luncheon keynote speaker. To register for the AMC11 go to www.reba.net.

PRESIDENT'S MESSAGE

REBA's active mission

BY EDWARD M. BLOOM

Recently, I watched a documentary about Hubert Humphrey, one of the greatest senators of the 20th century. I was quite moved by the "Happy Warrior's" interpretation of the Preamble to the Constitution as a call to Americans to be actively involved in the business of providing a more perfect union for "we the people of the United States." He noted that each of the verbs in the Preamble is active: to *establish* justice, to *insure* domestic tranquility, to *promote* the general welfare, and to *secure* the blessings of liberty. His point was that unless citizens actively engage in politics and the issues confronting the country, the goals of the Constitution cannot be achieved.

Ed Bloom

And this interpretation holds true when analyzing any organization, for if its members do not participate, the organization becomes moribund and ceases to provide benefits for or remain relevant to its constituents. REBA's mission is to *advance* the practice of real estate law, to *sponsor* professional standards, to *create* educational programs and to *promote* fair dealings and good fellowship among members of the real estate bar.

These goals require the active participation of REBA members in order for REBA to serve its members or be valuable to their real estate practices. So who are these men and women of REBA who volunteer their time and expertise and why do they do it? They are individuals who do not see their role as lawyers as simply providing them with income to live on, but rather view their chosen field as a professional calling with a duty to the law, the courts and society as a whole. These men and women believe in REBA's mission and so they join its committees, participate in its educational programs,

See VOLUNTEERS, page 2

Supreme Court to hear separation of powers issue within title insurance kickback case

BY DOUGLAS W. SALVESEN

The Supreme Court has agreed to decide whether a homebuyer can sue a title insurer for violation of the Real Estate Settlement Procedures Act of 1974 (RESPA) even though the homebuyer cannot establish that the violation increased the amount she paid for title insurance services.

FACTUAL AND PROCEDURAL BACKGROUND

In 2006, Denise Edwards bought a three-bedroom home in the North Collingwood section of Cleveland for $111,000. The settlement agent, Tower City Title Agency, LLC, referred Edwards to First American Title Insurance Co. for her title insurance policy.

At the time of the referral, Edwards was unaware of the commercial relationship between Tower City and First American. In 1998, First American had paid $2 million to Tower City. First American maintains that the payment was to buy a minority interest in the agency. Edwards insists that the payment was part of a kickback arrangement whereby Tower City agreed to refer all title-insurance underwriting business exclusively to First American.

In a class action filed in federal court, Edwards alleged that this exclusive referral arrangement violated RESPA. However, because Ohio law mandates that all title insurers charge the same price,

See TITLE KICKBACK, page 3

BLOOM: Kudos to volunteers

CONTINUED FROM PAGE 1

volunteer to author amicus briefs providing guidance to the courts, create standards and forms to elevate and assist the professionalism of real estate lawyers and sponsor legislation to resolve real estate issues that affect the common good.

Recent tangible examples of their work include: the excellent educational program presented at the REBA Spring Meeting on May 2; the enactment of the new Homestead Act (which was drafted by three REBA members); the six new forms created by REBA's Title Committee for use under the new Homestead Act; and the REBA amicus briefs filed in the *Ibanez*, the *Moot* and the *Faneuil Investors* cases.

More significantly, many REBA men and women volunteered numerous hours to REBA's legal challenge to NREIS's settlement service activities as the unauthorized practice of law. Their work culminated in a decision by the SJC that emphatically concluded that Massachusetts is an "attorney" state which requires an attorney to be substantively involved in the closing of real estate transactions. This holding is a major victory for the homeowners of Massachusetts and the real estate bar.

These volunteers are the heart and soul of REBA and we all owe them a great deal of gratitude. I urge all members of REBA to become more involved, to join in the passion of those who make the verbs of REBA's mission *active*. To be engaged with these extraordinary men and women in their goal to bring excellence and the highest standards of professionalism to the real estate bar is an experience that will enrich your life and provide you with life-long memories.

A partner at Sherin and Lodgen LLP, Ed Bloom has chaired the REBA leasing and amicus committees, and is currently president of REBA. He can be reached at embloom@sherin.com.

MERS mortgages benefit homeowners, lenders

CONTINUED FROM PAGE 1

Deeds of the Middlesex North District.

When Mortgage Electronic Registration Systems, Inc., better known as MERS, came on the scene in the late 1990s, it was widely hailed as part of the solution to the missing assignment problem. MERS would be the mortagee of record and serve as nominee for the equitable owner of the loan, eliminating the need for assignments that would track the underlying ownership of the note that was secured by that mortgage.

At a meeting of the Massachusetts Registers and Assistant Registers of Deeds Association held in Worcester on March 23, 1999, MERS was discussed at length. The topic was not the propriety of MERS; no one questioned that. The debate was whether the registries should include the name of the underlying lender as well as MERS in the registry index. The registers (me included) who argued against including both names maintained it unnecessarily increased the amount of data entered by the registry, which would in turn slow down the recording process. Those who supported indexing both names took that position not because they felt it was required by law, but to accommodate *Banker and Tradesman*, which asked for the additional names to better track which institutions were making which loans. In the end, the association agreed to leave the issue of indexing the additional names to the discretion of each register of deeds.

The Land Court soon weighed in on MERS with a May 1999 memo from then Chief Justice Peter Kilborn to all registers of deeds in their capacity as assistant recorders of the Land Court. After describing the background and concept of MERS, Kilborn wrote: "MERS remains the mortgagee of record when mortgage loans or servicing rights are sold from one MERS member to another, and the transfer is tracked electronically on the MERS System; MERS, by serving as nominee for the lender, can remain the mortgagee of record when servicing rights are sold from one MERS member to another MERS member … On the Encumbrance Sheets 'mortgagee' will be listed as Mortgage Electronic Registration System, Inc., without reference to the institution for which MERS is holding."

The Land Court ratified this treatment of MERS in its May 2000 guidelines, in a March 2003 memo from Chief Title Examiner Ed Williams to all registries, at a May 2005 seminar for registry employees, and in the February 2009 revision of the guidelines.

> "in a jurisdiction with a strict "the mortgage follows the note" rule, the concept of MERS might be on shakier ground. But Massachusetts law does not follow that rule"

Why MERS has emerged as the poster child for abuses in the U.S. lending industry is a mystery to me, especially when so much misfeasance and malfeasance by other institutions has passed without comment. Perhaps it flows from an understandable but futile attempt by some to impose a consistent national interpretation on real estate law that varies widely from state to state. For example, in a jurisdiction with a strict "the mortgage follows the note" rule, the concept of MERS might be on shakier ground. But Massachusetts law does not follow that rule, holding instead that a MERS-like separation of the note holder and the mortgagee creates a type of trust relationship with the mortgagee holding only bare legal title for the benefit of the note holder. It's almost as if MERS used Massachusetts law as a model.

To be sure, if some other entity conducts a foreclosure of a mortgage granted to MERS without first recording a valid assignment of that mortgage, then that is a problem. However, such a scenario is not unique to MERS-held mortgages. Indeed, based on the records of this registry, this foreclosure-without-an-assignment situation occurred most often with other mortgage holders and not with MERS.

As for the standard MERS mortgage, the one initially granted to MERS and eventually discharged by MERS, to suggest that the absence of intervening assignments somehow constitutes a title defect is to ignore the law. It also ignores history. As Kilborn put it at the end of that 1999 memo from Land Court that ratified the use of MERS, "we have all experienced considerable problems with missing assignments. Hopefully, this system will eliminate these problems in the future."

From this registry's perspective, the MERS system worked as advertised, especially during the boom years of the recent housing bubble. From January 1, 2003, through December 31, 2007, this registry recorded 140,798 mortgages – more than one-third of which had MERS as the grantee. Given the operation of the home lending industry during that period, the majority of the notes secured by those mortgages were transferred among investors multiple times. Because its legal structure obviated the need to record an assignment for each of those transfers, MERS helped synchronize a 21st century lending industry that emphasized the speed with which instruments were negotiated with a document recording system born in the nineteenth century, a system that saw the wait time for recording documents at some registries measured in weeks rather than minutes.

That so many mortgages from the recent boom were ill advised from their inception goes without saying and corner-cutting and sloppy practices by the lending industry certainly contributed to our current problems. Undoubtedly some MERS mortgages had problems. Still, the great majority of MERS mortgages worked as intended and in doing so, they helped streamline the recording process in a way that benefitted and continues to benefit the homeowners, lenders and registries of deeds of this Commonwealth.

A frequent contributor to *REBA News*, Dick Howe has served as register of the Middlesex North District Registry of Deeds since 1995. He writes a blog on public records issues and concerns, which can be found at www.lowelldeeds.com. He can be contacted at richard.howe@sec.state.ma.us.

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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 inquires relative to the Association's Title Standards, Practice Standards, Ethical Standards and Forms with the understanding that advice to Associations members is not, of course, a legal option.

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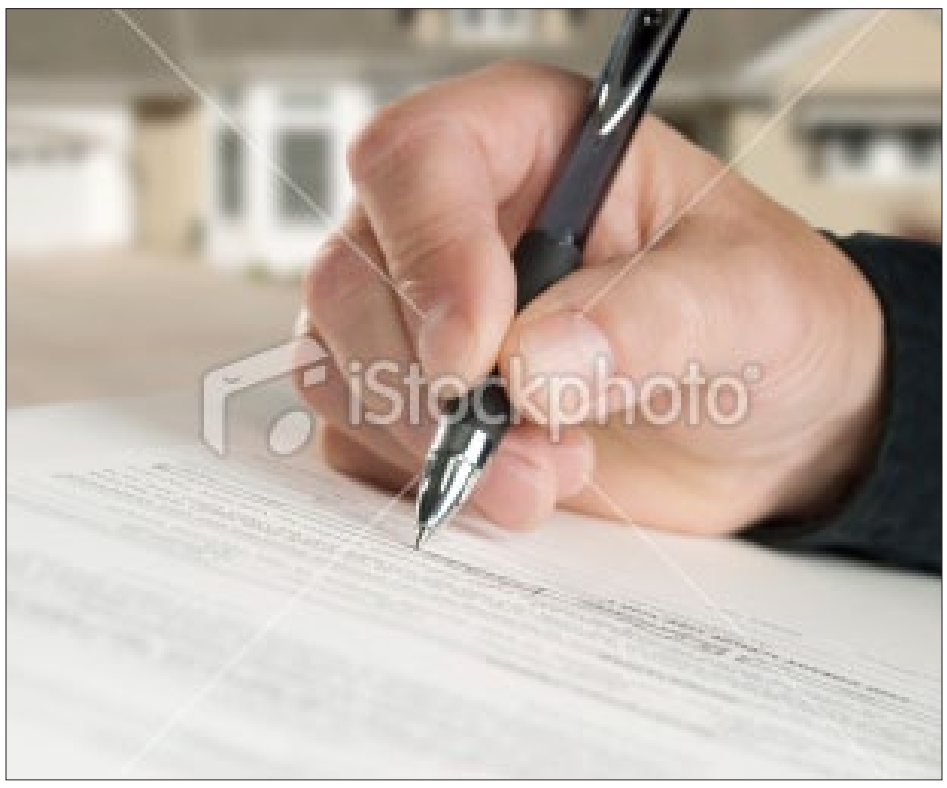
USSC and title kickback

CONTINUED FROM PAGE 1

Edwards could not establish that she was overcharged for title insurance services or had suffered any actual injury resulting from the alleged RESPA violation.

First American sought to dismiss the complaint on the grounds that, because Edwards had paid the same amount that every other Ohio resident paid for title insurance, she had no standing under RESPA to sue First American for the alleged RESPA violations.

The District Court of Southern California, and then the Ninth Circuit, both rejected this argument. Each held that the plain statutory text of RESPA does not require that a consumer be overcharged or demonstrate that she has suffered any actual harm in order to sue on a RESPA violation. Rather, any consumer who is charged for a settlement service that violates RESPA's anti kickback provisions is entitled to three times the amount of any charge paid whether or not the consumer has suffered an injury. The lower courts found that this statutory language was sufficient to provide Edwards with standing to sue First American for its conduct.



SUPREME COURT GRANTS CERTIORARI ON CONSTITUTIONAL ISSUE

Following the adverse decisions by the District Court and the Ninth Circuit, First American filed a petition for certiorari with the Supreme Court. *First American Financial Corporation v. Edwards*, No. 10-708 *cert. granted* June 20, 2011).

Like the lower courts, the Supreme Court was little impressed by the first issue presented for review by First American – whether Congress had granted standing to consumers who have not suffered an economic injury to sue in the federal courts for violations of RESPA. However, First American's petition presented a second, meta-issue concerning whether Congress could grant such standing and the extent of power granted to each branch of government under the Constitution.

> A decision that only persons who have suffered actual injuries have standing to sue for statutory violations would have far-reaching consequences well beyond RESPA.

In its petition, First American asserted that Article III of the Constitution requires that an individual seeking relief from the Judicial Branch have suffered an actual injury. An individual is not permitted to file an action against a defendant alleging a general violation of the laws unless that individual has suffered or will suffer some actual harm as a result of the defendant's conduct. Violations of the law that harm the public generally but do not harm any specific person may be prosecuted only by the Executive Branch.

First American contends that this power to enforce the laws generally resides in the Executive Branch alone and that Congress has no power under the Constitution to authorize private individuals who have not suffered any injury-in-fact to bring such enforcement actions.

The Supreme Court grant of certiorari on this separation of powers issue goes far beyond RESPA. There are thousands of cases filed each year in federal courts by plaintiffs who have suffered no actual damages but have a right to statutory damages and attorney's fees under the Truth in Lending Act, the Telephone Consumer Protection Act, and similar consumer-oriented laws. A decision that only persons who have suffered actual injuries have standing to sue for statutory violations would have far-reaching consequences well beyond RESPA.

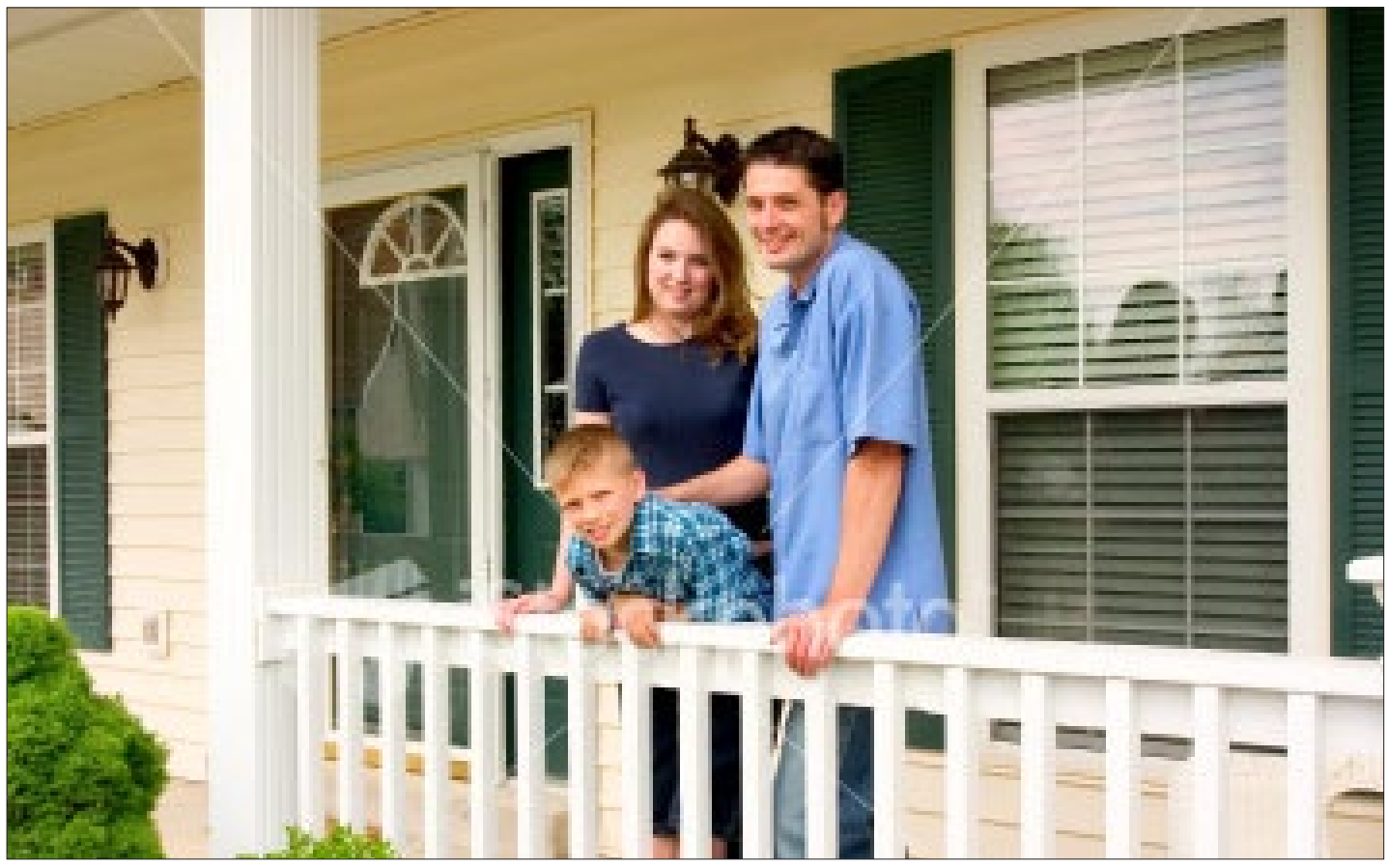
A decision from the Supreme Court will not be forthcoming until sometime next year.

Co-chair of REBA's litigation committee, Doug Salvesen has served for 20 years as counsel to the association's committee on the practice of law by non-lawyer. He is the architect of REBA's success in the recent SJC decision, *REBA vs. NREIS.* Doug can be contacted by email at dws@bizlit.com.

COMMENTARY

Let's speak highly of homeownership again

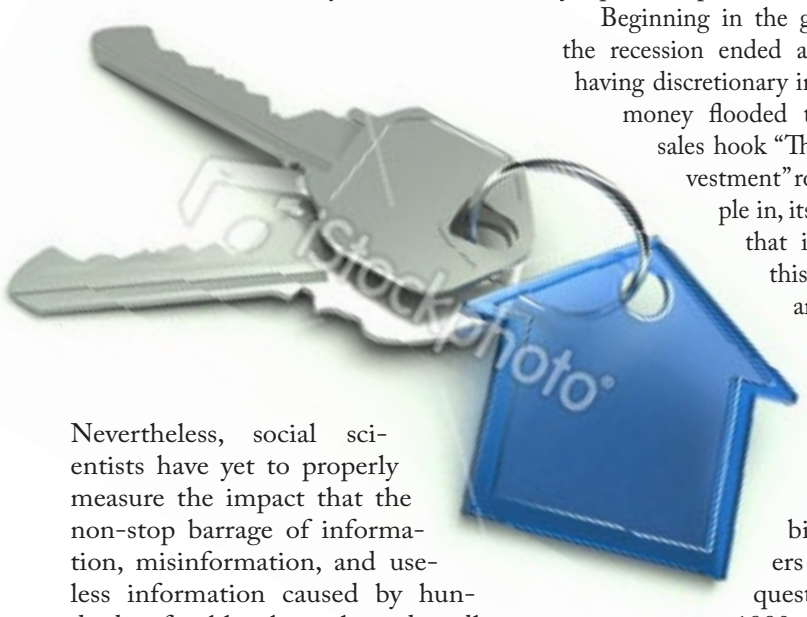
PAUL F. ALPHEN



Anyone who has taken a sociology or psychology course in college knows about the power of effective advertising. It can compel you to buy things you didn't know you wanted, or make you feel as if you are missing out if you don't buy.

"The medium is the message" is a phrase coined by Marshall McLuhan in 1964. McLuhan was ahead of his time. For example, he commented that the public's attitude about crime would change once that crime stories moved from newspapers to television sets turned on during family dinner. He could not have foreseen the current obsession with television, the internet and electronic "social networking". (In my opinion, the term "social networking" when applied to electronic media is one of the great misnomers of the century.) In the aftermath of the recent hurricane the newspapers were filled with accounts of lost souls who did not know what to do without their cable television and Facebook accounts. Perhaps they did not own any good books or have any real friends.

Paul Alphen



Nevertheless, social scientists have yet to properly measure the impact that the non-stop barrage of information, misinformation, and useless information caused by hundreds of cable channels and endless internet outlets. When social scientists and economists get together to evaluate 2011, I bet they will find that the public's perception of the value of home ownership, and the public's perception of the economic outlook of the country, were negatively influenced by the inundation of unfiltered baloney that one can encounter on the internet and on TV. Worst among the baloney is the name calling and juvenile bickering amongst various leaders of the two major political parties.

Beginning in the go-go 1980s when the recession ended and people started having discretionary income again, more money flooded the economy. The sales hook "Think of it as an investment" roped plenty of people in, its implication being that if you don't make this investment, you aren't savvy enough to survive.

The correct response is: "Investment for whom?"

If more newbie homeowners had posed that question in the late 1990s and early oughts, and walked away when the salesperson had to think twice about how to answer, the asking prices for housing might not have expanded to consume not only all the discretionary income people had, but all the discretionary income they wanted to think they had. In the process of trying to stay as savvy as one thinks the next guy is by getting on the home bandwagon at any price, buyers forgot one vital thing: A home is, first and foremost, a place where one lives. For those of us whose livelihoods center on real estate, it is indeed an investment, but to succeed as an investment for us, it must also be an economically sustainable place for someone to live.

Despite the modest home appreciation rates of the 1950s and 1960s, as was the rate of appreciation overall in the 1990s, buying a home was an exciting proposition over those decades. We got our parents and friends involved in the purchase decision before making an offer, and we invited everyone over for a cookout soon after moving in. We were proud of our purchases and spent weeks or months making repairs or renovations to make it feel like home.

Homeownership was considered a responsibility, and a way to establish roots – not a financial bonanza. We, as real estate attorneys, have an opportunity to use our positions in the community to share our enthusiasm about homeownership. We should attempt to counteract some of the inflammatory baloney on the Internet and in the media with expressions of excitement about today's low prices and historically low mortgage rates. Our neighborhoods, and the people in them, need us to do this.

We should encourage our family, friends and clients when they start talking about buying a new home. We can share stories of our first horrible moving experiences and of hosting our first Thanksgiving when we learned the oven thermometer was off 25+ degrees. We can share stories about neighbors who became life-long friends, and kids that dug our car out of a snow bank. We should share our boundless advice about buying a new lawnmower or washing machine, and how we learned to install dishwashers and stockade fences. Homeownership is not for everyone, but the rewards are significantly greater than the financial return on investment. It's the wellspring from which communities grow. I think it is time to start reminding one another that homeownership is an admirable vocation.

REBA's president in 2008, Paul Alphen currently chairs the association's long-term planning committee. A frequent and welcome contributor to these pages, he is a partner in Balas, Alphen and Santos, P.C., where he concentrates in commercial and residential real estate development and land use regulation. Alphen can be reached at paul@lawbas.com.

ANALYSIS

Brooks Pond case properly infers missing century-old deed

Cites circumstantial evidence

MICHAEL J. O'NEILL

The Appeals Court[1] has affirmed a Superior Court judgment[2] that a non-profit organization owns a 170-acre pond in four towns in western Worcester County, relying on the inference of an unrecorded deed filed more than 100 years ago.


Michael O'Neill

No appeal was taken. The Appeals Court opinion is an unpublished decision under Rule 1:28, but will nonetheless be of interest to practitioners with problems of missing deeds in chains of title. It also will interest those with cases presenting the question whether a pond or lake is a Great Pond.

The Appeals Court affirmed the Superior Court's decision in all respects, including the conclusion that Brooks Pond is not a Great Pond and that the conservation association managing the pond has the right to make and enforce reasonable rules for the use of the pond.

The case *Brooks Pond Conservation Association, Inc. vs. Albert Starr*, began in Worcester Superior Court in 2004 as a declaratory judgment action. The Brooks Pond Conservation Association (BPCA) sought declaratory and injunctive relief requiring Starr and members of his family to observe some simple rules for the use of the pond, including prohibiting from the pond boats with gasoline engines as well as all-terrain vehicles.

> The lesson to be learned from this case, as in many cases presenting contested issues, is to look to the surrounding circumstances for corroboration, or lack thereof, of the disputed proposition.

The issues grew in complexity. The defendants' answer essentially put BPCA to its proof on all issues, including ownership. In 2007, Starr raised the issue that Brooks Pond is a Great Pond and, therefore, is owned by the state and beyond the ability of BPCA to make rules for its use.

BPCA is a non-profit corporation organized to conserve and manage Brooks Pond as a wildlife and scenic preserve. BPCA leases the entirety of the pond from BPW, Inc., (BPW), which is a non-profit corporation organized to own the pond. BPW claims ownership of the entirety of the pond through deeds in 1935.

The undisputed testimony at trial was that Brooks Pond is beautiful and was enjoyed as a peaceful refuge at least since the 1950s or as far as back as any of the witnesses could recall. BPCA has managed the pond and spent money for its upkeep, including managing weeds. BPCA paid the real estate taxes and liability insurance costs. The pond is open without charge to the public.

The Superior Court found that BPW exercised ownership of the entirety of the pond since 1935 without challenge, except for Starr's challenge in this case. Both BPCA and Starr presented expert opinions on the title issue. The Superior Court in the end adopted the reasoning of BPCA's expert, Jeremy O'Connell, Esq., of Worcester.

Both of the real estate experts testified that in 1864, Amasa Walker and Freeman Walker, as owners of the entirety of Brooks Pond, conveyed a one-third interest to Warren Fay. The 1864 deed said that it is the intention of the grantors that said Fay, Amasa Walker and Freeman Walker each shall own one-third part of the "reservoir" pond in common.

In 1879, Freeman Walker conveyed his one-third interest to Richard Sugden. Also in 1879, Richard Sugden received a conveyance from Warren Fay of a two-thirds interest in the pond. Richard Sugden's devisee conveyed all her right to the Pond to Lucien Taylor, and there was nothing in the deed indicating that she had less than the full interest.

The record title does not show a deed from Amasa Walker to Warren Fay of his one-third interest. Hence, the problem of the missing deed.

O'Connell testified that he examined the will of Amasa Walker, and found that it made very specific dispositions of his property, complete with deed references to real property. The will did not dispose of Brooks Pond, leading O'Connell to conclude that he had already disposed of it during his lifetime.

O'Connell also testified that Sugden was one of the wealthiest citizens in the area, and it is likely that, when he purchased the pond, he knew he was purchasing the entire interest in the pond.

Starr's expert opined, in contrast, that the missing one-third interest passed under the residuary clause of Amasa Walker's will. The Superior Court noted, however, that Starr's expert could not point to any deed in the chain of title purporting to convey this missing interest, or any evidence that Amasa Walker's heirs exercised dominion or control over the pond. On the other hand, all of the deeds in BPW's chain of title, from the 1898 deed on, did purport to convey the entire interest. In summary, all of the corroborating evidence supported the inference of an unrecorded deed.

The Superior Court and the Appeals Court relied heavily on a decision of the Appeals Court, three months before the Superior Court trial, in the case of *Poor v. Lombard*, 72 Mass. App. Ct. 719 (2008). The Appeals Court there noted that Massachusetts jurisprudence recognizes the slippery slope of inferring the existence of a lost, unrecorded deed, pointed out that do so may well be perilous, but warned that the failure to do so may also have grave consequences. Massachusetts courts have long held proper the practice of inferring missing grants. In *Poor* the Land Court inferred the existence of a missing deed based upon a later deed which purported to convey the parcel, and the deed of a neighboring party which referred to the owner of the abutting land.

The Superior Court, upheld by the Appeals Court, stated that circumstantial evidence may suffice to establish a missing parcel, but that only a probability of the missing grant, not a mere possibility, will suffice.

See BROOKS POND page 10

2011 Annual Meeting & Conference

Monday, November 14, 2011 • 7:30 A.M. – 3:00 P.M.
Best Western Royal Plaza Hotel
181 Boston Post Road West, Marlborough

Schedule of Events

7:30 A.M. **Registration Opens**
7:30 A.M. – :30 A.M. **Exhibitors' Hour**
8:30 A.M. – 1:15 P.M. **BREAKOUT SESSIONS**

8:30 A.M. – 9:30 A.M. **Salon A**
9:45 A.M. – 10:45 A.M. **Salon A**

Probate Real Estate and the New Code: The Good, the Bad and the Ugly

Jennifer A. Maggiacomo, Esq.; Michael J. Ring, Esq.

Whenever a real estate transaction involves the Probate Court, a host of issues emerge; with sweeping codification of probate law effective January 2012, the practitioner will need to know how the Massachusetts Uniform Probate Code will, or may, affect the practice and probate court procedures. This discussion will address necessary, and unnecessary, court involvement and tips on navigating your way through the maze. Topics include: licenses to sell, transferring without license, registered land, death related liens, sales by foreign fiduciaries, the Code's framework for administering estates, new intestacy and divorce provisions, time limitations, exceptions, and deeds of distribution.

8:30 A.M. – 9:30 A.M. **Salon B**
9:45 A.M. – 10:45 A.M. **Salon B**

Ethical Issues in Real Estate Practice: A Three-Part Session

Mark W. Bracken; Daniel C. Crane, Esq., Jennifer L. Markowski, Esq.

Real estate practitioners are faced with ethical issues on a regular basis and this session will focus on selected issues that are recurring subjects of calls into REBA's ethics hotline (served by REBA's Ethics Committee) and are important to our members. In part 1 of this session Jennifer Markowski will discuss numerous ethical concerns that arise when an attorney serves as both attorney and broker in the same transaction, and will introduce the REBA Ethics Committee's proposed "REBA Ethical Standard No. 5: Attorney Acting in Dual Capacity as Attorney and Broker" that would establish a bright line standard against the practice. Before it is presented for member ratification, come learn the rationale for the standard and participate in what is sure to be a lively discussion of the issue. In Part 2 of this session Mark Bracken, head of the Unclaimed Property Division for the State Treasurer's office, will lead a discussion on how attorneys should handle unclaimed funds in IOLTA accounts and other client funds and escrow accounts. In part 3 of this session, Dan Crane will discuss rules and responsibilities of attorneys for retention and destruction of client files and work product, and will provide a File Destruction Protocol that will be of practical benefit to practitioners in any discipline.

8:30 A.M. – 9:30 A.M. **Salon D**
9:45 A.M. – 10:45 A.M. **Salon D**

Avoiding Litigation in a Down Market

Margaret M. Fortuna, Esq.; Thomas M. Looney, Esq.; Joel M. Reck, Esq.

The real estate collapse has brought an unrelenting wake of title problems, preventing borrowers from refinancing and lenders from foreclosing, and clogging the courts. Frustrated clients demand to know why it takes many months, even years to clear up a title. The solution is mediation. Mediation at the outset of a case, even before a complaint is filed, can avoid years of litigation. The panel will share their experiences with mediation, discuss the many kind of cases that may be resolved by mediation, and offer counsel on making the process as effective as possible.

8:30 A.M. – 9:30 A.M. **Salon E**
9:45 A.M. – 10:45 A.M. **Salon E**

Shepherding Chapter 40B Applications Through Mass Housing, ZBA & the HAC

Theodore C. Regnante, Esq.; Jason R. Talerman, Esq.; Gregory P. Watson, AICP

Our distinguished panelists include practitioners, municipal counsel and government regulators in the field of Chapter 40B permitting, who will provide an overview of the Chapter 40B permitting process from project inception to exhaustion of appeals. The panel will discuss regulatory issues and procedures relating to the issuance of Project Eligibility Letters and Final Approval from MassHousing. Our panel will review practice before local Zoning Boards of Appeal for the prosecution of Chapter 40B Comprehensive Permit applications. It will also discuss practice before the Housing Appeals Committee as well as the appellate process beyond. The panelists will review various aspects of decisions from MassHousing, local ZBAs, the HAC, Trial Courts and Appellate Courts. The panel is intended to provide practitioners with practical advice on Chapter 40B permitting and to help practitioners avoid the pitfalls associated with this unique form of land use permitting.

9:45 A.M. – 10:45 A.M. **Salon C**
11:00 A.M. – 12:00 P.M. **Salon D**

Commercial Landlord Liabilities & Related Leasing Strategies

Richard Heller, Esq.; David K. Moynihan, Esq.

This session will explore various types of liabilities to which commercial landlords are liable in leasing commercial property, and will include a discussion of recent Supreme Judicial Court decisions in *Bishop v. TES Realty Trust* and *Trace Construction, Inc. v. Dana Barros Sports Complex, LLC*, that have (arguably) expanded landlord liabilities in certain specific areas (tort liability and exposure to mechanics liens of tenants' contractors). The panelists will also discuss common lease provisions that address (or fail to address) these issues, provide both a landlord's and tenant's perspective on how these risks can and should be allocated between the parties, and provide practical strategies for lease drafting and risk-shifting to eliminate or reduce unintended liabilities.

8:30 A.M. – 9:30 A.M. **Salon C**
11:00 A.M. – 12:00 P.M. **Salon E**

The Basics of Purchasing and Transferring Real Estate in Bankruptcy

Michael J. Goldberg, Esq.; Robert J. Moriarty Jr., Esq.

Michael Goldberg, of Casner & Edwards, and Robert Moriarty, of Marsh Moriarty Ontell & Golder, will discuss the issues that frequently arise when dealing with sales and other transfers of property from a bankruptcy estate. Among the topics they will cover include: Documentation required to obtain clear title to property in connection with sales by a Chapter 11 debtor and by a Chapter 7 debtor; Notice issues that can affect whether property has been effectively sold "free and clear of liens and interests"; Can a debtor still use the Bankruptcy Code to avoid paying Deed stamps in connection with a sale of real estate?; Using the Bankruptcy Code to extinguish real estate interests, such as leaseholds, easements and restrictive covenants; Nominee and other trusts in the context of a bankruptcy filing; Homestead problems.

8:30 am – 9:30 am **Seminar Room**

Who, What, When: A Paralegal's Primer on Homesteads

Erica P. Bigelow, Esq.

In this session, we will focus on the mechanics of creating – and releasing – homesteads. We will review the homestead

Exhibitors Registered so far...

Easy Soft, LLC
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Bradbury Promotions
Exchange Authority, LLC
First American Title Insurance Company
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Registration to REBA's 2011 Annual Meeting & Conference is open to members in good standing, their guests and non-members (for an additional fee). Everyone attending the 2011 Annual Meeting & Conference must register. The Registration Fee includes the cost of the morning sessions, the seminar written materials and the luncheon. We cannot offer discounts for persons not attending the luncheon portion of the program.

Please submit only one registration per person. Additional registration forms are available on our website, www.reba.net, or by contacting Andrea Morales at morales@reba.net or at 617-854-7555. Confirmation of registration will be sent to all registrants by email. Name badges and a list of registrants will be available at the registration desk located in the foyer of the Best Western Royal Plaza Hotel.

Registration with the appropriate fee should be sent via email, mail or fax to arrive prior to November 7, 2011 to guarantee a reservation at the Annual Meeting & Conference. You are also welcome to register online at www.reba.net. Registrations received after November 7, 2011, will be subject to a late registration processing fee of $25. Registrations cancelled in writing before November 7, 2011, will be honored but will be charged a processing fee of $25. No other refunds will be permitted. Registrations cancelled on or after November 7, 2011, will not be honored, however, substitutions of registrants attending the program are welcome and may be made at any time. Seminar written materials will be mailed to those who registered but could not attend within four to six weeks after the program.

The use of cell phones is prohibited in the meeting rooms during the programs and luncheon meeting, however, please be sure to visit the lounge areas. Lounge areas will be located in the Princess Room and the Duchess Room of the hotel. Refreshments will be served.

9:45 A.M. – 10:45 A.M. Seminar Room

Foreclosures for Paralegals in the Post-*Ibanez* World: The Devil is in the Details

Ward P. Graham, Esq.; Amanda Zuretti, Esq.

This session will review the foreclosure process from the viewpoint of the foreclosure attorney's office, a buyer's attorney's office and a title insurance underwriter, including compliance with G.L. c. 244, s. 35A, right-to-cure notice requirements, preparation for the foreclosure, the initiation and conduct of the foreclosure, the interplay of the mortgage contract and the technical requirements of the foreclosure statutes, the role of the Servicemembers Relief Act action, what to look for in reviewing the foreclosure process and the resulting foreclosure documentation, how to deal with the multitude of issues that can arise at any stage of the foreclosure process and what practical impact recent case law has had on evaluating the validity of a foreclosure sale and what can be done to cure infirmities in the foreclosure sale process.

11:00 A.M. – 12:00 P.M. Seminar Room

Short Sales for Paralegals: An Increasingly Valuable Alternative to Foreclosures

Ward P. Graham, Esq.; Amanda Zuretti, Esq.

Not withstanding some of the horror stories periodically seen in news reports regarding wrongfully foreclosed borrowers, lenders are increasingly realizing that foreclosures are not their best alternatives for recovering mortgage loan debt, especially on residential property that remains in good repair and insured. Accordingly, lenders are responding more and more favorably to the concept of short sales in lieu of foreclosures. There are many facets involved in approaching and negotiating the terms of a short sale. This session will guide you through the initial considerations in determining whether borrowers should pursue a short sale with their lender and junior lienholders, how the short sale process is initiated, what the negotiation process is like, with what considerations the lender and junior lienholders will likely be concerned and what documentation and information forms adopted by the Title Standards Committee, and discuss who should sign, in what form, and when each form should be used. Attendees are encouraged to bring questions in writing – so we can all learn from them they will typically require. We will also discuss the conditions contained in the typical short sale authorization letter, the final closing, typical kinds of issues that may arise at various stages of this process and how to address them.

12:15 P.M. – 1:15 P.M. Salon E

Recent Developments in Massachusetts Case Law

Philip S. Lapatin, Esq.

Now in his 32nd year at these meeting, Phil continues to draw a huge crowd with this session. His session, "Recent Developments in Massachusetts Case Law," is a must-hear for any practicing real estate attorney. Phil is the recipient of the Association's highest honor, The Richard B. Johnson Award.

1:20 P.M. – 3:00 P.M.
LUNCHEON PROGRAM

1:20 P.M. – 1:45 P.M.
Keynote Address

The Honorable Robert J. Cordy

Associate Justice of the Supreme Judicial Court

1:45 P.M. – 2:15 P.M.
REBA President's Welcome & Remarks

Edward M. Bloom, President

2:15 P.M. – 3:00 P.M.
Business Meeting

Report of the REBA Title Standards
Committee Co-chairs: Christopher S. Pitt, Richard M. Serkeyr
Report of the REBA Ethics Committee
Committee Co-chairs: Daniel C. Crane; Robert T. Gill; Jennifer J. Markowski

3:00 pm
Adjournment

Continuing Education Committee

Thomas Bhisitkul, Co-chair
William F. Lyons, Jr., Co-Chair

CLE Credits

New Hampshire and Rhode Island continuing legal education credit pending. Additional information to follow.

Lounge Areas

Be sure to visit the lounge areas, located in the Princess Room and the Duchess Room of the hotel. Refreshments will be served.

Luncheon Keynote Speaker

THE HON. ROBERT J. CORDY

ASSOCIATE JUSTICE, SUPREME JUDICIAL COURT

Author of a compelling concurring opinion last January in the SJC's landmark foreclosure case, *U.S. National Bank Assn. vs Ibanez*, Bob Cordy was appointed to the SJC bench in 2001 by Governor William F. Weld after a distinguished career in the private practice of law.

Prior to his appointment to the bench, Cordy was the managing partner of the Boston office of the international law firm of McDermott, Will and Emory which he joined in 1993. He is currently a member of the adjunct faculty of the New England School of Law where he teaches advanced criminal procedure.

After brief stints as a public defender, service in the Department of Revenue as a deputy commissioner and enforcement work at the State Ethics Commission as an Assistant Attorney General, Cordy served as a federal prosecutor under U.S. Attorney William F. Weld from 1982 to 1987 where he became head of the Public Corruption Unit. He was a partner in the Boston office of Burns & Levinson from 1987 to 1990, joining the Weld administration as chief legal counsel in 1991.

Cordy received his A.B. degree, cum laude, from Dartmouth College in 1971 where he is remembered for his stellar performance on the gridiron. He received his J.D. in 1974 from Harvard Law School.

Join us at our 2011 Annual Meeting & Conference where you can take advantage of accredited continuing education, network with colleagues, and enjoy an informational luncheon with old friends! We look forward to seeing you on November 14th!

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Taming the title defect beast with curative tracking

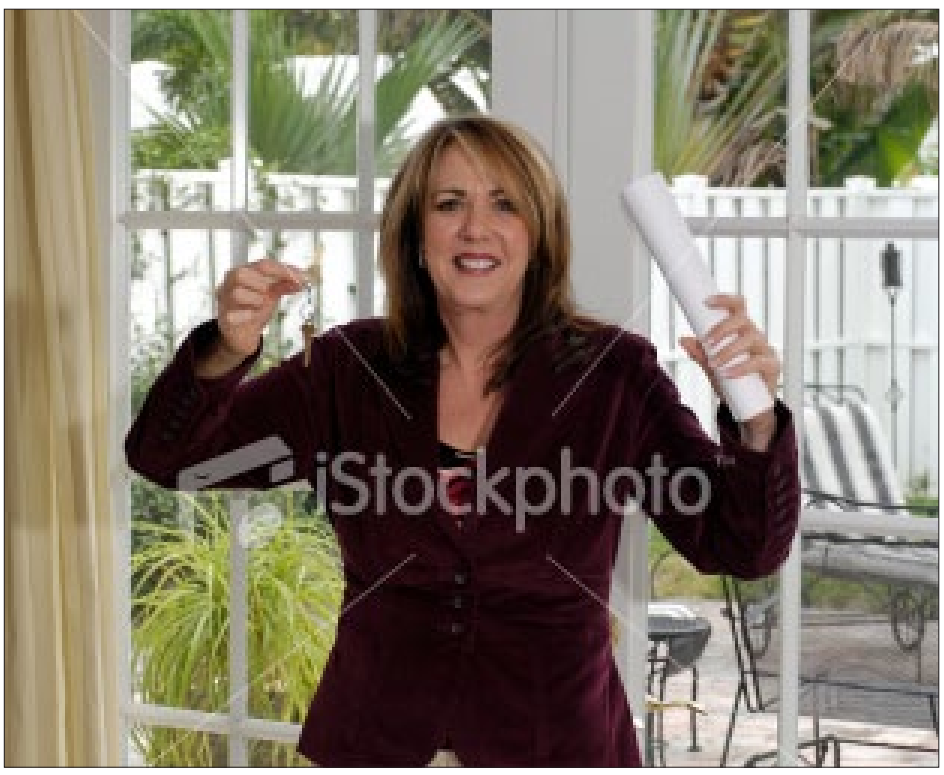
BY: WILLIAM A. SNIDER

Curative tracking is the curing of title defects arising from a failure to properly record all necessary documents in order to maintain a chain of title that is free and clear of any deficiencies. It's the industry's best weapon in its ongoing battle against the "Title Defect Beast." But it's also one of the most detested duties in real estate practice.

Some of the names attributed to the beast may be familiar: title defect, cloud on title, chain of title defect, defective title, etc. The weapon utilized to battle the title defect also has many names: curative tracking; title clearing; title curing; title defect clearing; curing chain of title defects, and so on.

Almost all these situations arise through a missing release of mortgage, and are brought to light by an informal or formal "title claim" under a title insurance policy. These situations used to be handled at a paralegal level, or possibly between lawyers. Today, attorneys are skipping this process and going directly to filing a claim, throwing the matter into the laps of the title insurers.

Three things have worked in concert to make this the worst time for title defects, and therefore, curative tracking, in our nation's history. The first two are known: The title defect is a ticking time bomb that can lie dormant for years before it's discovered; many lending institutions, servicing companies, and even title companies and law firms, come and go like ships in the night; and we are working in the wake of a refinance boom, the volume and duration of which was beyond anything the nation had ever seen before – a powerful force that single-handedly brought our economy to its knees.



The title defect is a ticking time bomb that can lie dormant for years before it's discovered.

During the boom, things were moving so quickly that no one took the time to stop and see just how crazy it had become. More than once, I performed a closing where the application was taken that very day. Do a title search, get payoff information, and the lender was good to go. The product wasn't for us to question. "Stated Income," "Interest Only" – just get the thing closed. Also, many borrowers refinanced multiple times in a year, using up imaginary equity to pay off real credit card debt. With everyone working to get these loans closed, very little attention was paid to what we now refer to as "settlement release tracking."

Our industry stuck our heads in the sand. No attention was paid to the question of how these borrowers were going to make their payments, especially when there were more and more closings to perform. There was total chaos when it came to getting discharges and assignments on record in order to properly release mortgages. All these elements came together to create the worst conditions our nation's land records have ever seen. These conditions required real estate professionals to seek recordable assignments and releases from a morass of former and current lenders.

I thought there must be some way to make the process easier. A plan was needed to address both the cleanup of the land records in the aftermath of the refinance boom, and to prevent anything like this from happening again.

In 2006, my current business partner left her position in the title insurance industry after nine years, and I closed up my real estate practice after more than a decade. We collectively decided that someone had to clean up this mess, and that there might be some money to be made while doing it. Not only are we still around, but we have steadily expanded over this period in a less than active real estate market. We went from a small regional player to a company with the capacity to track releases in all 50 states. Witness the birth of the independent release tracking company, capable of handling both settlement release tracking, as well as the curative tracking of the elusive title defect beast.

With the current poor state of the economy, especially within the real estate sector, the title insurance industry staff that survived the layoffs is being asked to take on more work and responsibilities to make up for their shrinking numbers. People who never would have had to deal with these types of issues have been drafted into service. The problem is that management has much more productive things to do than deal with much of the minutia involved in curative tracking. I've personally witnessed a successful sales rep sitting at a desk trying to track down an officer of a defunct lender to sign a release. It didn't take much convincing for her to get the state manager to agree to refer all of its clients' curative, as well as settlement tracking, to our company.

Curative tracking is best left to the experts. It can be painstaking, time-consuming, and frustrating work; not the type of stuff that most title insurance attorneys and management signed up for, or should now be drafted into doing.

It only makes sense when the administrative, clerical and secretarial staff was in no way prepared or trained to be effective title curers. Curative tracking is best left to the experts. It can be painstaking, time-consuming, and frustrating work; not the type of stuff that most title insurance attorneys and management signed up for, or should now be drafted into doing.

Independent tracking companies are willing to do the work at a significant cost-savings to the title insurance companies that were struggling with it, either in-house, or even worse, paying fees to outside counsel to handle it.

I firmly believe that we are at a precipice regarding all aspects of title tracking. This includes the "curative tracking" that is the subject matter of this article, as well as the "settlement release tracking" that ensures that all items paid-off at a closing transaction are properly released in the land records. Both types of tracking dovetail perfectly: if settlement release tracking is done correctly, release-related title claims will not be made, and therefore there will be no need for curative tracking on the file.

New developments, practices, and technology are notoriously slow to take hold in our industry. This may have something to do with the fact that the basic tenets of real estate law remain unchanged since prior to the establishment of our very nation, let alone the bar. However, over time we have proven ourselves to be more than capable of separating the wheat from the chaff, and ultimately embracing new ideas that actually improve the process. Living in Connecticut, I can tell you that if the "Land of Steady Habits" is capable of giving birth to the very concept of "settlement release tracking," then it is only a matter of time before all title tracking will be performed by competent, independent, and effective companies. The simple reason being that these companies have, and will continue to prove themselves to be the ones with the drive, expertise and resources to effectively get the job done.

William "Billy" Snider is the co-founder of Final Trac, LLC, a full service independently owned, discharge/release tracking company doing business in all 50 states.

Mortgage takes priority over attachment

Solans et al v McMenimen et al

Consider the following fact pattern:

- Day 1: A executes deed of Blackacre for value to B; B executes mortgage of Blackacre for value to C; but neither deed nor mortgage is recorded until Day 3.
- Day 2 (three months after Day 1): D obtains and deputy sheriff records a general attachment against B.
- Day 3 (four months after Day 1): Deed from A to B and mortgage from B to C are finally recorded.

Questions:

- D v. B: Is the attachment by D effective against B's fee interest in Blackacre?
- D v. C: Is the attachment by D effective against C's mortgage interest in Blackacre?

In *Solans v. McMenimen*, Appeals Court Docket No. 10-P-1049, the Land Court answered the first question in the negative and therefore did not reach the second question. On appeal, however, the Appeals Court answered both questions in the affirmative.

A reasonable argument can be made, however, for the position that the first question should have been answered in the affirmative and the second in the negative:

Question 1: B had notice of the attachment on Day 2 (assuming it was not an ex parte attachment; if it was an ex parte attachment, B presumably received notice thereof prior to Day 3). B's delay in recording his own deed (whatever the reason was for the delay) should not inure to B's advantage by defeating D's attachment of B's fee interest in Blackacre.

Question 2: A title examiner running the title to Blackacre would find on Day 3 the deed from A to B and the mortgage from B to C. The fact that both instruments were executed on Day 1 should not obligate the title examiner to have to run the title to Blackacre from Day 1. B's mortgage should have priority over D's attachment.

BROOKS POND

CONTINUED FROM PAGE 5

Lengthy period of possession by a party, as well as proof of circumstances that can be reasonably understood only on the assumption that a conveyance has been made, have supplied evidence upon which a finding of a lost, unrecorded deed may be presumed. *Poor* makes clear that this important evidence of the surrounding circumstances will supply the basis for inference of a lost deed.

On the Great Pond issue, BPCA presented the expert testimony of Robert Daylor, P.E., who testified that he conducted historical research at the Worcester Registry of Deeds, State Archives, Harvard University library map collections, and Boston Public Library. He found two surveyed maps, one from 1830 and one from 1834, each depicting Brooks Pond to be less than ten acres. Brooks Pond dam was built about 1848, which created Brooks Pond in its present size. Daylor concluded that Brooks Pond was less than ten acres in its natural state, and so was not a Great Pond. The Superior Court adopted Daylor's conclusion, and the Appeals Court ruled that the Superior Court's ruling was amply justified by the evidence.

The Appeals Court rejected Starr's argument that the Superior Court should have allowed his motion to dismiss for failure to include as an indispensable party the Commonwealth of Massachusetts, filed on the day of trial. The Appeals Court ruled that this motion, filed "five minutes" before trial was to start, was made too late and so waived.

The lesson to be learned from this case, as in many cases presenting contested issues, is to look to the surrounding circumstances for corroboration, or lack thereof, of the disputed proposition. Here, all of the deeds from 1898 forward were for the entire interest in Brooks Pond, coupled with BPW's unchallenged exercise of full dominion and control over the pond since 1935. There were no deeds or other evidence showing a competing chain of title. Accordingly, the Appeals Court held that the evidence amply supported the Superior Court decision.

Docket No. 2010-P-1116
[2] 26 Mass. L. Rptr. 411 (2010)

Michael O'Neill of McGregor & Associates, P.C. in Boston has more than 25 years of experience in real estate and environmental law permitting, land use and commercial litigation, and conveyancing. Michael can be reached at MONeill@McGregorLaw.com.

Celebrating Bill Hovey: The original Avuncular Advisor 1985-2011

BY SCOTT PITMAN AND MICHAEL PILL

This month the Avuncular Advisor torch is passed on from its founder William V. "Bill: Hovey, Esq., who began this column in 1985 and continued as its principal author until his passing in July, 2011. Lawyers Weekly has asked Scott Pitman and Michael Pill to try to fill Bill's sizable legal shoes as co-authors. Scott was Bill's law partner at the Law Offices of William V. Hovey, and he is continuing the firm under that name. Michael is one of Bill's co-authors of 28 Massachusetts Practice: Real Estate Law with Forms.

Land law is an arcane field, where often "A page of history is worth a volume of logic." *U.S. Trust Co. v. Eisner,* 256 U.S. 345, 356 (1921) (Holmes, J., dissenting). For centuries its knowledge has been passed on through the medieval guild tradition of apprentice learning from master craftsman. Bill Hovey was an acknowledged master of Massachusetts land law.

The phrase "Avuncular Advisor" was well chosen by Bill. Webster's online *Third New International Dictionary, Unabridged (2002) defines "avuncular" as "relating to an uncle … acting or speaking with the familiarity, kindness or indulgence of an uncle … ."* That aptly describes his relationship with both Scott Pitman and Michael Pill, who want to begin their legal journalistic endeavor by sharing with readers their memories of Bill.

Scott Pitman has this to say about Bill:

Bill had a large influence on my career and my life. I met him through a law school classmate, Allen Koenig, who became Bill's partner in the mid-1990's. (Sadly, and in an odd coincidence, Allen passed away just two days after Bill did, despite being only 62 year old, due to brain cancer.) Among their many collaborations, Allen and Bill co-authored the legal forms volumes (15-16B) of the Mass. Practice series, beginning in the late 1990's.

I was a struggling solo practitioner when Allen and Bill asked me to take on litigation responsibilities for them. Bill introduced me to the Massachusetts Department of Environmental Protection (DEP) and its adjudicatory arm with Wetlands and Rivers Protection Act cases. He also introduced me to the Land Court where I worked with him on zoning, planning, adverse possession and easement cases, among others. I helped Bill in his appellate practice as well.

When I joined a real estate conveyancing law firm in 2001, I phoned Bill frequently to ask about ancient deeds, arcane conveyancing language, how to use the proper words to create various forms of land ownership (tenancy in common vs. joint tenancy with right of survivorship vs. tenancy by the entirety, life tenancy, etc.), the difference between warrant, quitclaim and release deeds), how to prepare documents properly for recording at the registry of deeds, and what on earth to do with things like railroad rights of way.

Bill never failed to assist, always had time to discuss these things that interested him so much. I joined law firm of Hovey & Koenig full time in 2003, where I was able to learn from the master every day. Bill's calm demeanor and presence moderated the often extreme stresses of litigation that I was going through. Ultimately his knowledge and his willingness to freely give it allowed me to learn and grow as a lawyer in ways that never would have been possible as a sole practitioner. Among many others, I consider myself lucky to be able to consult his many books and seminar materials on property law.

Ultimately his knowledge and his willingness to freely give it allowed me to learn and grow as a lawyer in ways that never would have been possible as a sole practitioner. –Scott Pitman

Practice: Real Estate Law with Forms. Legal treatise writing is not an easy craft, but Bill helped me learn how to do it. –Michael Pill

Bill's generosity with his time and his knowledge is legendary. Several times a week I take calls at our law firm from other lawyers looking to pick Bill's brain, as they had done at some past time. The fact that they continue to call is eloquent testimony to Bill's generous spirit and large presence. The Massachusetts legal community will be the worse now he's gone. Rest in peace, Bill.

Michael Pill remembers Bill in these words:

I started reading the Avuncular Advisor when it began in 1985, and soon became a devoted fan. As a young sole practitioner struggling to master title examination, conveyancing, and substantive real property law, I found in those columns a mentor I sorely needed.

I met Bill in 1994 at a seminar on land law. During his presentation he spoke about the relationship between real estate conveyancing and land use regulation. When he finished speaking I ran to the front of the room, introduced myself and told him I had been struggling to find a sponsor for a seminar on that very subject. As a sole practitioner in Shutesbury, with a law degree from the University of Iowa, there was no reason anyone would let an unknown like me chair any legal seminar -- and they didn't. Bill asked me to send him the seminar outline. A week later the Massachusetts Bar Association education director called me personally, eager to proceed with the seminar. Bill never admitted to making a phone call, but it was obvious he went out of his way to help a struggling younger lawyer. His name on the seminar materials and advertising literature were a key to its success.

A year later, Bill and I found ourselves on opposite sides of a case before the Supreme Judicial Court. I wrote in my *amicus* brief that there were only three ways to create easements, and the court included that point in its decision. Bill told me, in his typical softspoken polite manner, that I was incorrect. He said there were many more ways to create easements than I apparently knew.

Shortly thereafter, Bill phoned with a challenge to help him write the definitive treatise on Massachusetts easement law. The result was the "Massachusetts Conveyancers and Litigators Guide to Easements and Land Use Restrictions" authored by Bill and his then-law partner Devra Bailin, now-retired Land Court Judge Leon Lombardi, and myself. Edward Woll joined the panel as the expert on land use restrictions. The seminar materials went through three editions from 1997 to 2001, and have been cited in several Land Court and published Appeals Court decisions. When we did the seminars, I usually said that the unwritten subtitle of Chapter 2 on "Creation of Easements" was "My Apologies to Bill" because it relied on his outline of the many ways easements could be created in Massachusetts.

In 2005 Bill invited me to join him as co-author of 28 Massachusetts Practice: Real Estate Law with Forms. Legal treatise writing is not an easy craft, but Bill helped me learn how to do it. Although he continued as senior co-author, when he later asked Boston attorney Darren Baird to join us, he acknowledged that he was choosing his successor. Darren and I will do our best to match the high standards established for that frequently cited treatise by Bill and the other former co-authors (Louis Eno, Dorcas Park & Maurice Park).

Bill was a good friend and mentor. To this Iowa hick he was the quintessential New England gentleman. I once said in jest "You are so genteel I bet you go back to the Mayflower!" Without missing a beat he responded "Yes, both my wife and I can trace our ancestry back to the Mayflower." I will miss him.

This article was origionally published in the September 5, 2011 issue of *Massachusetts Lawyers Weekly.* Reprinted here with permission of Lawyers Weekly.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