



An Abridged History of REBA and the Massachusetts Conveyancers Association

BEGINNINGS

When Neil Golden and Kendra Berardi asked me to pen a few paragraphs on the history of the Association, I immediately recognized a daunting task, as REBA has few records pre-dating the early 1970's. However, our more legacy-minded sibling association, the Abstract Club, published a pocket-sized written history prepared in 1908 by Charles S. Rackemann, updated in 1972 by William L. Payson and further updated in 1986 by Mark Titlebaum, with some collateral material about what was then simply known as the Conveyancers Association.

Most of the lawyers who founded the Abstract Club in 1886 were already members of the Association, which had been established 14 years earlier. The Club's mantra was "Deeds, Not Words." The first president was Alfred Hemingway (1887-1901). Other familiar names are Charles S. Rackemann (1909-1933) (evidently, there were no term limits!), Richard B. Johnson (1973-1977), Herbert W. Vaughn (1977-1980), Frederick S. Lane (1981-1984), and Norman Byrnes (1984-), all of whom led the MCA.

The Abstract Club's history certainly suggests that it was a drinking, eating – and singing – organization, as well as a group of learned professionals. Every meeting of the Club involved a meal – usually five courses with wine – at some of Boston's best-known hostelrys. Young's Hotel was a favorite venue. The Club's history includes several references to "trenchermen" (referring to folks who are hearty eaters).

In the summer months, there were outings to Plymouth, Nahant, Dedham and the Brewster Islands. Occasionally, members of the group would advocate legislation on Beacon Hill. In those instances, recognizing that the club's name could perplex legislators, they adopted an alias, the "Real Estate Law Society."

Following more collateral research (thank you, Fran Nolan), we learned that in March of 1900, the Massachusetts Historical Society published the text of a presentation given by John T. Hassam at the Society's May 1898 meeting. Mr. Hassam's topic was the various recorders and registers of deeds for Suffolk County. In the course of his discussion, Mr. Hassam discussed the development of the Classified Descriptive Index by the "Conveyancers' Association," which he identifies as having been formed in 1872 and "includ[ing] nearly all the leading conveyancers of Boston." This pegs REBA's founding to 1872.

The history of the Abstract Club also references this Conveyancers Descriptive Index, which permitted the interchanging of abstracts of title among members. Each member would keep his own books and abstracts in his own office, but the library would have a common index, presumably by address, and files of reference. The Index was an early example of comity and collaboration among transactional lawyers, which, I believe, distinguishes REBA members today.

The only records in the Association's possession are handwritten income/expense ledgers from the 1920's through the 1970's. These books show that during this time, annual dinners were held at the Parker House. They were boozy evenings, with cocktails before, and brandy and cigars after, consisting almost entirely of men, with perhaps a handful of women on hand. The cost of the 1937 annual dinner at the Parker House for all members was \$303.95, with tips for the waiters aggregating to no more than \$15. In 1947, the cost of the Parker House annual dinner had increased to \$646.88; and by 1956, it was \$1376.48, including tax and tip. There is no written evidence of registration fees for the annual dinners, so we infer that dues revenue covered this cost. The Association also hosted a number of smaller dinners at the Boston City Club on Ashburton Place, although we cannot determine their nature or purpose.

During the first half of the 20th century, printing and postage were a major MCA expense, as all communications – fee invoicing, annual dinner invitations, etc. – were done by mail and required printing. “Multigraph” printing was a recurring expense in the 1930's. For any deceased member, the Association sent flowers, usually a “spray of chrysanthemums” for \$10. Annual dues, which remained at \$5 for decades, were increased to \$10 in the early 1960's.

Another curiosity that endured into the 1970's was the publication and distribution to all members of a “Minimum Fee Schedule” for residential mortgage transactions based on a percentage of the loan. In 1938, the Association paid \$27.25 for printing 1500 copies of the fee schedule. A few years later, the group ordered 2500 copies. Evidently, MCA members had fewer antitrust worries in those halcyon days.

THE MODERN ERA

The 1970's

The modern era of the Association begins in the 1970's with the 1973 formation of the Title Standards Committee and the establishment of the Richard B. Johnson Award. As an unincorporated association, there were no boards of directors or board meetings. However, there was an executive committee that met irregularly for luncheon meetings, most often at Locke-Ober's on Winter Place.

These two seminal 1970's events began a long evolution of the Massachusetts Conveyancers Association from a primarily social organization to a full-service, broad-based 21st century bar association, with a significant advocacy and educational mission. This evolution can be benchmarked by the format changes of the group's twice-yearly conferences. From the 1920's through the 1970's, the MCA met for dinner in the Rooftop Ballroom of the Parker House, by happy coincidence, the venue for today's gala Sesquicentennial Dinner. Meetings were later hosted at the Newton Marriott, with a brief, late afternoon educational programs.

The 1980's

In the 1980's and into the '90's, Thomas J. Donovan, of the Beacon Hill firm of Spencer & Stone, was the Association's longtime secretary/treasurer. His records system consisted of five-by-seven index cards, which he kept in several shoeboxes. On the front of the card was the member's name and address, handwritten; on the reverse side, also handwritten, was a record of annual dues payments. The Association's mail house used metal plates, similar to a GI's dog tags, to print address envelopes for the mailing of annual dues invoices. The MCA's handwritten expense ledger, going back to the 1920's and now lodged in the REBA archives, illustrates a wealth of often trivial information.

During the late 70's, Carolyn Partan, later to become the Association's first woman president in 1989, launched the Association's fledgling newspaper, *The Conveyancer*, which later became *REBA News*. That began a collegial relationship with several generations of the Sutherland family printing business, Blanchard Press, now known as Sutherland Printing, that continues to this day – an engagement of nearly 50 years.

In 1986, (the Bob Hoffman era), the Association hired its first administrator, part-time, and rented a small one-room office at 44 School Street. With just a desk, a phone and a filing cabinet, Susan Goldstein assumed the tasks of the secretary/treasurer. In succeeding years, the Association had quarters in the Old South Building at 294 Washington Street, 111 Devonshire Street, 50 Congress Street, and finally, 295 Devonshire Street.

Susan Goldstein was succeeded by Sharin Paaso, the Association's first full-time administrator. Sharin's passion for event planning brought the twice-yearly conferences to a new level of professionalism. Her Halloween costumes at the annual meetings were legendary. She also schooled the MCA leadership on the value of the Handbook of Standards and Forms. Rather than strewn willy-nilly across the Commonwealth with no thought of ownership, these assets were to be nurtured, protected and copyrighted, as they held significant monetary value.

Member communication was slow and primitive in this pre-internet time. Most member communications were by mail. For important time-sensitive messaging, particularly during the fray of UPL litigation, the Association employed a "broadcast fax," a costly and time-consuming effort.

Also in the Bob Hoffman era, recognizing the need for stronger advocacy on Beacon Hill, the MCA engaged Edward J. Smith as legislative counsel. For more than 36 years, Ed has quietly and ably represented the interests of the real estate and conveyancing bar in the legislature. His deep, intuitive and abiding understanding of the culture of Beacon Hill brought 57 Association-sponsored bills to fruition. Nine of these 57 bills were lengthy omnibus acts in the drafting of which REBA had substantial involvement: homestead technical changes (2022); conduct of notaries and title curative provisions (2016); homestead reform (2010); mortgage discharge practice (2006), *lis pendens* reform (2002); expansion of the Land Court's jurisdiction (2002); Article 9 amendments (2001); amendments to condominium statute (1998) and mechanics lien reform (1996). These are the often-overlooked accomplishments of the Association.

Another innovation of the Bob Hoffman era was amending the by-laws by reducing a president's term from two years to one, affording more members the opportunity to lead the Association.

During the 1980's and into the '90's, the MCA had a unique leadership succession arrangement. There was no nominating "committee." Instead, all nominating decisions were delegated to the Land Court's legendary Chief Title Examiner Orrin Rosenberg, who held forth at an annual multi-course luncheon at The Bay Club atop 60 State Street. By the time Orrin had finished his second martini, officers were nominating for the coming year... and all was well.

The 1990's

In the 1990's (the Joel Stein era), the Association evolved further with a major change in the format of REBA conferences, when the dinner, preceded by a cocktail hour, was replaced by an alcohol-free luncheon, followed by a handful of educational programs. A few years later (the Ruth Dillingham era), educational sessions began in the morning, with a luncheon concluding the conference. Over the succeeding years, the Association has hosted conferences in Framingham, Westborough, Danvers and the DCU Center, formerly known as the Worcester Centrum, before settling on the Four Points Sheraton in Norwood.

In 1995, as part of an initiative to become legally better positioned as a plaintiff in addressing unauthorized practice of law issues, the MCA, hitherto an unincorporated association, became a Massachusetts Chapter 180 corporation.

Also, in the mid-1990's (the Ruth Dillingham era), following its first strategic planning initiative, the MCA explored the establishment of a proprietary title insurance company linked to Connecticut Attorneys Title Insurance Company, now known as CATIC. MCA leaders made several treks to Rocky Hill, just south of Hartford, to make plans. Ultimately, the project was abandoned, as the leadership believed it to be too fraught with risk and capital-intensive for a small specialty bar association.

As a fallback, the leadership launched an alternative dispute resolution subsidiary, MCA Dispute Resolution, Inc., incorporated under M.G.L c. 156B in 1996. In 2004 (the Chris Kehoe era), the corporation became REBA Dispute Resolution, Inc. The Corporation's stock is held by the Association.

Today, REBA/DR, led by Joel Reck, with a board of directors, including three retired Land Court judges and several retired Appeals Court judges, is a crucial underlying resource for REBA's success.

In 2007, REBA again considered a partnership with CATIC. The vision of then Treasurer Tom Bussone to create a new subsidiary, to be known as REBATitle, triggered considerable discussion and some dissent within the Board and among the members, as well as angry opposition from the title insurance industry. Many were genuinely concerned that the creation of a competing title insurance underwriter would alienate many of REBA's long-standing allies within the title insurance industry. The ultimate Board decision was to demur.

Undaunted, Tom Bussone, carried by the momentum of the proposal, created Massachusetts Attorneys Title Group (MATG), which provided years of support to the Association. Payments aggregating more than \$300,000, helped support REBA's UPL mission.

The Unauthorized Practice of Law

The Massachusetts Conveyancers Association, et al vs. Closings, Ltd.

In 1989 (the Carolyn Partan era), the now-defunct Massachusetts Association of Bank Counsel, led by Waltham lawyer Alan Brams, became concerned about a non-lawyer, high-volume residential conveyancing corporation doing business in the Commonwealth with connections to a Peabody law firm. The Delaware corporation, Closings Ltd., was backed financially by Bain & Company, together with Bain Venture Capital Corp., with legal representation from Hale & Dorr, now known as WilmerHale.

Following intense debate, the Board voted to engage Tom Maffei, then a partner at Choate Hall & Stewart, to bring an action for injunctive relief in Suffolk Superior Court. Second chair was a young associate, Doug Salvesen, who would go on to play a pivotal role as counsel in two subsequent UPL cases in the years ahead. As the Association was not yet incorporated, the plaintiffs in the 1993 complaint were Peter Wittenborg, Michael P. Healy and James B. McElroy, officers of the MCA. The MCA persuaded the Massachusetts Bar Association to file an amicus brief.

In August of 1993 (the Mike Healy era), Superior Court Judge Charles T. Spurlock issued a default judgement enjoining Closing, Ltd. from conducting real estate closings in the Commonwealth. While REBA prevailed, Closings, Ltd. essentially bled to death by two factors: first, of course, by legal fees, but more importantly, by the highly cyclical and unpredictable nature of the residential real estate market, which caused Closings Ltd.'s capital-intense closing business to shrink dramatically, ultimately bringing insolvency. These same two factors again arose in the Association's two subsequent UPL actions.

The Massachusetts Conveyancers Association, Inc. vs. Colonial Title & Escrow

In 1996, the MCA faced an entirely different UPL challenge with Colonial Title & Escrow, Inc. Unlike Closings, Colonial was a lean and mean operation, conducting business out of a warehouse in Foxborough, with a sole practitioner from Weymouth as counsel. Again, the Association, together with seven other bar associations, filed for a declaratory judgment and injunctive relieve in the Suffolk Superior Court. In 2001, Judge S. Jane Haggerty determined that Colonial's actions constituted the unauthorized practice of law. Much of the text of the Haggerty decision had been prepared by the MCA's UPL counsel, Doug Salvesen. Colonial went out of business not long thereafter.

The Real Estate Bar Association for Massachusetts, Inc. vs. National Real Estate Informational Services et al.

The most challenging of all of the Association's UPL initiatives came with National Real Estate Informational Services (NREIS), a Pittsburg-based, non-lawyer settlement services company with a broad, multi-state reach, represented by K&L Gates, a major national law firm. This David vs. Goliath confrontation, launched in Suffolk Superior Court, was immediately transferred to federal district court by NREIS.

It would be impossible to overstate the time, energy, expertise and consternation expended during this battle. Members volunteered countless hours of expertise assisting in strategy sessions and discovery. Board meetings regularly ran late into the evenings, with sometimes heated exchanges debating the appropriateness of the Association's nuanced legal positions. There was concern on the part of some board members of potential personal liability if the case went the wrong way.

In 2009 (the Steve Edwards era), at the hands of U.S. District Court Judge Joseph L. Tauro, REBA suffered a devastating defeat, which featured a damage award to NREIS of nearly one million dollars. Those were dark days for REBA and its existence was in peril. Preparing for the worst, the Association immediately engaged bankruptcy counsel in anticipation of a Chapter 11 filing. The dark clouds cleared in June of 2010, in a strongly-worded decision of Chief Justice Sandra L. Lynch, in which the First Circuit vacated Judge Tauro's decision and certified questions on state law to the SJC.

The narrative of the history of REBA's UPL initiatives cannot be complete without a tribute to the courage, determination and unwavering leadership of Jon Davis, who served as president in 1995. With Jon's strength, coupled with the vision and counsel of longtime Association UPL counsel Doug Salvesen, REBA pressed on with an appeal to the First Circuit. In 2013, shortly before Jon's untimely death, a grateful Association established the Jon Davis Excellence in Professionalism Award, which recognizes the honoree's integrity, passion and dedication to the highest standards in the practice of law. The award's recipients understand that the legal profession is a higher calling imbued with noble and aspirational goals of service—to clients, to the community and to the profession.

Finally, in April of 2011 (the Ed Bloom era), SJC Associate Justice Margot Botsford's decision upheld the Association's position that conveyancing in Massachusetts is indeed the practice of law. Allies supporting REBA with amicus briefs were Attorney General Martha Coakley, the American Immigration Lawyers Association, the Massachusetts Bar Association (authored by legendary litigator Robert J. Muldoon), and various legal assistance organizations, as well as CATIC and other bar-related title insurers. Ultimately, NREIS closed its doors, another victim of the fierce economics of the cyclical and unpredictable residential real estate market.

During the pendency of the *NREIS* litigation, REBA fought another battle, this time in the legislative arena. The Pittsburg-based Title/Appraisal Vendor Management Association (TAVMA), filed legislation in the General Court that would eviscerate the Commonwealth's UPL law.

Notwithstanding TAVMA's lobbying and testimony before the Joint Committee of the judiciary in 2008, the TAVMA legislation was sent to study. TAVMA went out of business in 2013.

Despite successes in three UPL actions, which seriously strained the resources of the Association, the unauthorized practice of law is a continuing issue in Massachusetts with the advent of witness closings or so-called notary closings. REBA must remain vigilant.

The 21st Century

In 2005 (the Greg Peterson and Kathleen O'Donnell eras), the leadership launched a major strategic planning initiative to transform and rebrand the MCA, while broadening the scope of its mission. Greg Peterson's vision was the genesis of the Real Estate Bar Association. A new position, executive director, was established with a mandate to effectuate that strategic plan. Beginning in 2003, the leadership invited a cautious and reluctant Peter Wittenborg to become the Association's first executive director, and in 2004, Nicole Cohen and Bob Gaudette joined the staff. This triumvirate, with exemplary and almost symbiotic teamwork, has staffed REBA headquarters and built a narrowly-focused association, into today's full-service, broad-based organization reaching every real estate related practice concentration area.

Early on, the trio established the member messaging vehicle, REBA e-News, as well as *REBA News*, published five times a year by *Lawyers Weekly*. Bob Gaudette introduced REBA to social media platforms and established the REBA Blog.

During these first decades, REBA launched a number of practice concentration sections in an effort to broaden membership.

- 2003 Commercial Leasing Section, chaired by Ed Bloom
- 2003 Ethics Section
- 2004 Commercial Real Estate Finance Section, chaired by Beth Mitchell
- 2004 Affordable Housing Section, chaired by Kurt James
- 2005 Environmental Law Section, led by Mary Ryan and Greg McGregor
- 2006 Paralegal Section, launched by Jackie Waters Adams, Colby Welch and Karen DePalma
- 2013 Estate Planning, Trusts & Estate Administration Section, led by Leo Cushing and Sara Goldman Curley
- 2012 Women's Networking Group, launched and chaired by Michelle Simons
- 2014 New Lawyers Section, launched by Kendra Berardi and David Uitti
- 2016 Construction Law Section, led by Jonathan Hausner and John Connelly
- 2016 Residential Landlord/Tenant Section, launched by Emil Ward and Ken Krems

REBA is fortunate to have the Women's Networking Group among its sections, whose annual benefit reception for its designated charity, the Women's Lunch Place, has become a time-honored tradition.

In 2006, the Association established the Denis Maguire Community Service Award. Denis Maguire, a long-standing Association member, served as president of the Massachusetts Conveyancers Association for a two-year term in 1979 and 1980. The award honors members contributing to their communities outside the bounds of the legal profession through their volunteer endeavors, exemplify a sense of caring, initiative and ingenuity.

During these years, REBA established a Long-term Planning Committee, led by Paul Alphen and Dan Ossoff, as well as a Strategic Communications Committee. These new groups were established in addition to the longstanding but now renamed Standards and Forms Committee, as well as the Amicus Committee, one of the Association's better-known resources. Since 1979 the Committee has filed more than 70 amicus briefs with the SJC or with the Appeals Court.

Despite these advances, there were also turbulent times. The huge legal expenses relating to the successful *NREIS* litigation were a burden on the Association's coffers, almost a decade following the successful outcome of the case. Furthermore, the economic crash of 2008 decimated membership rolls. REBA has not yet regained the pre-crash membership numbers.

Increasing membership, particularly among younger and newer lawyers, continues to be a major ongoing challenge for the leadership, the Long-Term Planning Committee and the New Lawyers Section. To that end, in 2016, REBA established the Emerging Leader Award honoring young or new leaders who demonstrate a level of involvement, excellence, collegiality, ethics and integrity within the Massachusetts real estate bar that exceeds expectations for practitioners of their experience level.

Today

Today, we joyfully celebrate REBA's existence and survival at the 150-year milestone, not knowing what lies ahead.

However, we do know that REBA offers its members the benefits of a broad-based, full-service bar association, comparable to the BBA and MBA, with a dedicated but often over-stretched staff, and a meagre budget. As the COVID pandemic has demonstrated, REBA can respond nimbly to extraordinary challenges, perhaps more responsively than its two larger siblings.

REBA's greatest strength is the direct personal service offered to individual members. A member can make an ethics or conflicts inquiry, and in less than 24 hours, receive a mini-treatise, complete with citations to the Rules of Professional Conduct, from Ethics Section Co-chair Henry Dane, backgrounded by his decades of experience and practice. A member seeking a referral, advice on the application of a standard or the use of a form, will receive a prompt response from the appropriate committee/section co-chair or from the Association's staff.

Looking ahead, REBA is blessed with a wealth of leadership. There was a time, not too long ago, when a frustrated nominating committee, due to a dearth of potential leaders, considered recycling former president Henry Thayer to a second term.

Today, we have strong line-up of future leaders of the Association, including Julie Barry, Carrie Rainen, Noel Di Carlo and Nick Shapiro, with more waiting in the wings. I am confident that with these leaders, REBA will meet the unknown challenges that lie ahead.



Peter Wittenborg
October 13, 2022