

THE DAILY RECORD

WESTERN NEW YORK'S SOURCE FOR LAW, REAL ESTATE, FINANCE AND GENERAL INTELLIGENCE SINCE 1908

TitleTRACK

What's in a name? CLE focuses on title search snags

On May 5, WebTitle Agency hosted its second annual Continuing Legal Education seminar at the Country Club of Rochester. The event was entitled "Insuring Real Property Out of Mortgage Foreclosures and Short Sales," & "Survey of Current Title Claims in Upstate New York." This follows last year's CLE program, "You say I am Liable for What?"

This year's event was attended by 100 attorneys, guests, speakers and WebTitle Agency staff. While many attendees were returning guests from last year, there were 33 new faces this time, including members of the Greater Rochester Association for Women Attorneys, newly admitted attorneys, several attorneys with over 50 years in practice and even a federal bankruptcy court clerk.

Speakers for the seminar included Frank Carroll, regional counsel for Fidelity National Title Group, Paul Malon, senior counsel for Fidelity National Title Group, and Michael Fame, title counsel for WebTitle Agency.

The first topic included a brief introduction to short sales. The short-sale discussion included the Home Equity Theft Protection Act, HETPA violations, rescission periods, title considerations and title report exceptions. Also discussed was the short-sale payoff letter — "the estoppel letter." Making sure the proper party prepared the letter, and ensuring it is properly reviewed for compliance with approval terms and conditions therein.

Fame also spoke about deeds in lieu of foreclosure as an alternative to the foreclosure process.

Malon spoke about standing as a major problem with many downstate foreclosures, stressing the adverse impact of "robo-signing." He discussed several cases that have affected the industry and provided excellent materials for the attendees to take home.

Carroll discussed attorney liability, title claims, owner's title policies and cases involving name variations and indexing of

these names into county records to ensure accurate title certification.

Malon drew on his many years of experience to tell the audience stories about the problems that have come across his desk, while at the same time making them aware of situations to avoid in their practice.

One topic of particular interest to the audience was a recent supreme court decision in Dutchess County, involving a judgment docketed against the name Bob Conway.

The subject property was owned by Robert Conway, and his wife, and was subsequently transferred to Silvia Villa. A search of the records prior to closing against the name Robert Conway, failed to disclose the judgment against Bob Conway. The creditor claimed the judgment was a lien on Robert Conway's property and the title company examining the county clerk's records, prior to closing, should have picked up the judgment against Bob Conway.

The court ruled that since the judgment debtor was not correctly named in the judgment it was not valid or capable of giving proper notice to the purchaser. The creditor's petition was dismissed, *The Accounts Retrieval System, LLC v. Conway*, no. 8-2010 (N.Y. Sup. Ct. Dutchess Cty. June 4, 2010).

The opposite decision was reached in an appellate division case involving similar facts. This case involved a judgment against Jack McCabe, while title to his property was in the name of John McCabe. The title search failed to disclose the judgment against Jack McCabe and the property was transferred to a bona fide purchaser for value.

The court wrote that "every title examiner should know that there are certain standard abbreviations, derivatives and nicknames for the more common first names which the courts have long recognized as interchangeable with the full name such as Jack for John."

Continued ...



By **ANDY LICHERDELL**

Daily Record
Columnist

THE DAILY RECORD

WESTERN NEW YORK'S SOURCE FOR LAW, REAL ESTATE, FINANCE AND GENERAL INTELLIGENCE SINCE 1908

Continued ...

The court ruled that the lien was a valid lien and that it did not appear that there was ever any real question of fact regarding whether the judgment debtor and the grantor were one and the same person, *Soressi v. SWF, LP*, 916 NYS 2d 349 (N.Y. App. Div. 3d 2011).

The Bob Conway case was appealed and the decision was reversed by the Appellate Division, Second Department on April 26, *The Accounts Retrieval System, LLC v. Conway, NY Slip Op 03590* (Second Dept. 2011) citing the *Soressi* decision. It appears evident that the courts intend to adhere to the letter of CPLR 5018(c)(1)(i).

This case could have an impact on how liens are searched, the use of nicknames or derivatives, and how far a title search must go in order to cover all possible scenarios.

WebTitle Agency believes these seminars provide vital information so that attorneys avoid unnecessary liability exposure to their practice. Tentative plans are under way for another CLE program later this year.

Andy Licherdell is a vice president for WebTitle Agency, an authorized issuing agent for First American Title Insurance Co. of New York, Fidelity National Title Insurance and Old Republic National Title Insurance Co.; 69 Cascade Drive, Suite 101, Rochester, N.Y. 14614; phone (585) 454-4770; www.webtitle.us.