

From the President's desk...

Summer is fading into autumn quite noticeably here in Northwestern Pennsylvania as evidenced by two very significant events:

- the kids have gone back to school, and
- the farmers are beginning to harvest.

Autumn is a time for reflection, as well as a time for preparation: A time to look back on our experiences (“How I spent my summer vacation...”) and a time to prepare for the days ahead (A tough winter is predicted by the Farmer’s Almanac.)

From a business perspective, the same things apply. With roughly $\frac{3}{4}$ of the year behind us, it is time for business people to take stock of what’s been accomplished and determine how to move forward. There will be quarterly reports, quarterly taxes, budget review and future planning. It’s a process—just like going back to school—where you build on what you know and do well and learn from your mistakes.

In this Fall Edition of Title Talk, the emphasis is on “learning” from our mistakes and “reaping” what’s been sown: The Title Guru is back to answer a question recently posed by one of our Approved Attorneys and Preventive Medicine is prescribed for the latest title problem.

We hope that you and your staff enjoy harvesting the fruits of our labor!

Josephine K. Lubiejewski, President

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TITLEGURU



Dear Title Guru,

I represent the purchaser of real estate. In examining the chain of title, I found that the current deed vested title in John Doe and James Doe, father and son, as tenants by the entirety. Since it is obvious the father and son are not husband and wife and therefore cannot hold title as tenants by the entirety, what interest is held by each?

The father has since passed away and I am wondering, does the father's interest pass through his estate?

Sincerely,
Izzy D. Owner

Dear Izzy,

As Ladner's on Conveyancing, Joint Estates §8.04(b), 8-11, explains:

Ownership Interest:

A Matter of Fact and Intention

The basis of tenancy by entirety is the concept of unity of the husband and wife. So, it follows that only husband and wife can take a property by tenancy by the entirety.

When two grantees are not husband and wife—no matter if the deed or instrument designates that they are husband and wife—they cannot take property as tenants by the entirety. *Masgai v. Masgai*, 460 Pa.453 (1975); *Simpson v. Simpson*, 404 Pa. 247 (1961); *Estate of Bruce*, 372 Pa.Super. 16, 538 A.2d 923 (1988).

However non-married parties or former spouses can be joint tenants with right of survivorship. *Riccelli v. Forcinio*, 407 Pa.Super. 629, 595 A.2d 1322 (1991), alloc. Denied, 529 Pa. 651, 602 A.2d 861 (1992); *Labash v. Labash*, 63 D. & C. 4th 556 (Fayette 2003).

They will take either as tenants in common or as joint tenants, as may be appropriate under the instrument. *Thorton v. Pierce*, 328 Pa. 11 (1937).

Normally, whether they take as

tenants in common or as joint tenants is a question of fact and intention. *Masgai v. Masgai*, 460 Pa. 453 91975).

Nevertheless, where a deed purports to convey to A and B, as tenants by entirety, but A and B are in fact not husband and wife, they take as joint tenants, as a matter of law.

The expression "as tenants by entirety" in the deed is a clear and sufficient indication of intent to create the right of survivorship and thus a joint tenancy rather than a tenancy in common. *Bove v. Bove*, 394 Pa. 627 (1959); *Maxwell v. Saylor*, 359 Pa. 94 (1948). See also *Righter v. Righter*, 442 Pa. 428 (1971).

In the case of the father and son, each of the joint tenants, as among themselves, owns an individual share of the whole estate. Upon the death of the father, the property passes to the surviving joint tenant by operation of law.

P.S. Don't forget to pay the inheritance tax on the undivided 1/2 interest of the father!



On the Lookout for Business Improvement Districts

Does your city have a Business Improvement District? If so, we would like to know about it!

We are compiling a list of municipalities that have a Business Improvement District where property owners are *assessed* for the collective purpose and benefit of the Business District.

The assessment is not a tax, but is legally binding upon the benefitting property owner. **State law directs that liens be imposed upon the property for the nonpayment of these property assessments.**

If you can help, please forward information about BIDs to Jennifer by email at jmacgregor@firstam.com or by FAX at 1-800-234-2352.

“Penn Attorneys Central”

The More Things Change, The More They Remain the Same.

You’ve noticed a change—a change for the better, we hope! You’ve even had a few questions about:

- Is this the office I’m supposed to be calling?
- What phone number should I use?
- Where do I fax (or email) my title application?
- Where do I mail my Final and payment?
- Who do I talk to for underwriting advice?

Undoubtedly, 2008 has proven to be a year of transition for our operations. We’ve updated our existing forms (ALTA 2006), adopted new endorsements, and issued an updated Manual of Rules and Rates.

And in an effort to achieve greater efficiency in processing finals and remittances, we established “Accounting Central”, utilizing a central location to record, post and scan Final Reports and payments.

Now we introduce “**Penn Attorneys Central**”—using one centralized location in Erie, PA to receive, underwrite and process all title applications.

As of August 1, 2008, all Commitment and Policy processing, along with underwriting and claim issues, will be handled exclusively in one centralized location.

Through a consolidation of its resources, including: Personnel, Technology, Title Plant, and Physical locations—Penn Attorneys continues its focus on efficiency, quality and service.

For the convenience of our EPRO customers, we are maintaining the same phone and fax numbers and email addresses. (See page 4, Penn Attorney’s Phone, Fax and Email, EPRO.)

Erie customers may continue to use the contact information listed on page 4. (See Penn Attorney’s Phone, Fax and Email, Erie.)

The more things change, the more they remain the same. We stand committed to providing you the personal and professional service that you expect and deserve. Please call upon us if we can be of service:

Operations

Josie President	814-451-8860 jlubiejewski@firstam.com
Tracy Manager	814-451-8867 tchipoletti@firstam.com
Jennifer Executive Assist.	814-451-8860 jmacgregor@firstam.com

Accounting

Barb	814-451-8866 bjclark@firstam.com
Lorraine	814-451-8865 lacklin@firstam.com
Mary	814-451-8863 mlolon@firstam.com

Processing

Angi	814-451-8868 aprenatt@firstam.com
Linda	814-451-8874 lratzlaff@firstam.com
Maria	814-451-8878 mortiz@firstam.com
Mike	814-451-8877 mweber@firstam.com
Rebecca	814-451-8880 rszklenski@firstam.com
Shirley	814-451-8875 scrozier@firstam.com
Tabatha	814-451-8872 tsteadman@firstam.com



Where Do We Go From Here?

Here are some guidelines on where to send your title orders and communications.

New Title Order?

Send It to the Fax Hotline or Email.

Our **Title Order Hotline** was created to expedite the processing of your title orders.

It should only be used to **initiate orders** for Commitments & Instant Policies.

Send the following to the Hotline:

- New Attorneys Preliminary Certificates & Reports on Title.
- Requests for Closing Protec-

tion Letters and/or Instant Policies **only if they are included with the initial fax of the Preliminary.**

The Fax Hotline computer software **does not recognize any paperwork other than the Preliminary Certificate and Report on Title.**

It automatically deletes any other faxes it receives. We will not (nor will you) receive any notice of the deletion of your fax.



Penn Attorneys Phone, Fax & Email

Erie

Toll-free Tel: 1-800-352-2216

FAX Hotline: 1-866-415-1199

General Fax: 1-814-453-5983

Toll-free

General Fax: 1-800-234-2352

Email: erie@pennattorneys.com

EPRO

Toll-free Tel: 1-800-929-4024

FAX Hotline: 1-866-822-5613

General Fax : 1-570-288-1233

Toll-free

General Fax: 1-800-929-3877

Email: epro@pennattorneys.com

NOTE:

In order to submit and/or receive your orders via email, you must be registered for Email Service.

Contact Jennifer at 814-454-8278 or 1-800-352-2216 for more information.

Anything else?

Send it to the General Fax # (or Email).

Please send **all other paperwork** to the general fax number, including:

- All changes or additions to orders that were already sent to the Fax Hotline, i.e.:
 - Closing Protection Letter requests sent separately from the Preliminary.
 - Instant Policy requests sent separately from the Preliminary.

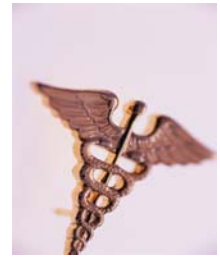
◦ Endorsement requests, etc.

- Quick Title Orders.
- Attorney's Final Certificate & Application for Owner &/or Mortgagee Policy (80-1).
- Attorney's Final Certificate & all other final paperwork.
- General faxes.



EPIDEMIC HITS!

Preventive Medicine Required.



It's an outbreak of epidemic proportions: one in five recorded instruments reviewed by our processors is plagued with a defective acknowledgement. You must take preventative action now!

The most common defect we discover is missing information, such as the:

- Date/year
- County
- Name of the party whose signature is being acknowledged.

Another major error we find is the use of the wrong format (and thus incomplete information) for a corporate acknowledgement.

We used to look at a defective acknowledgement and try to weigh the severity of the defect. Was it a flaw or did the defect have a major significance? But the days of looking for a way out are gone.

The title industry is being overwhelmed with claims and litigation. It has been our claims experience that a Trustee in bankruptcy will make every attempt to avoid liens or transfers based upon the smallest defect, including but certainly not limited to missing information in a certificate of acknowledgment. This has succeeded and has caused the payment of POLICY LIMITS.

In Pennsylvania, acknowledgment is a statutorily prescribed form (21 Pa C.S.A. §81 and 21 Pa C.S.A. §291.7).

The essential elements of a proper acknowledgment are:

- Venue
- Date
- Name of the Person making the acknowledgment
- Designation of Instrument
- Official Position
- Signature of Official taking the acknowledgement
- Location of Office of Notary Public
- Date of expiration of Notary Public's Commission

If any of the essential elements is missing from the acknowledgement, then the acknowledgement is *defective* and the instrument needs to be corrected and re-recorded. (NOTE: You should confer with your underwriter to see if the instrument also needs to be re-executed.)

An attorney may argue that a document with a faulty acknowledgement that was accepted for recording is *valid* once recorded. The real issue is whether the form of acknowledgment sufficiently complies with the statutory provisions in order to provide constructive knowledge.

It is our underwriting opinion that the failure to include any item as statutorily prescribed results in a faulty document and does not create constructive knowledge despite its being recorded.

Curative statutes that validate defective acknowledgments, are passed every 5 to 7 years. The last such curative act covered acknowledgements from 1997 through 2004. (21 P.S. § 281.1.)

Any document recorded with a faulty acknowledgement since 1/1/05 is not protected by a curative statute and is therefore subject to challenge.

Unfortunately, there is considerable time, effort and cost involved in re-recording corrected deeds, mortgages and other documents. And we are not deaf to the major grumbling of our Approved Attorneys who must obtain original or certified copies, procure the correction and pay for the re-recording.

We ask for your immediate cooperation in adding the Notarial Checklist enclosed in this newsletter to your Settlement Things-To-Do List. Please use this list for each transaction before recording. Prevent defective acknowledgements and the consequential cost and aggravation!

Acknowledgment Sample Forms

§ 291.7. FORMS OF CERTIFICATES

By individuals:

State of Pennsylvania
County of Erie

On this, the 8th day of September, 2008, before me Nancy Notary, the undersigned officer, personally appeared John Doe, known to me (or satisfactorily proven) to be the person whose name is subscribed to the within instrument, and acknowledged that he executed the same for the purposes therein contained.

In witness whereof, I hereunto set my hand and official seal.

Signature of Nancy Notary
Notary Public
(Title of Officer)

Nancy Notary, Notary Public
City of Erie County of Erie
My commission expires
September 19, 2010

By an attorney in fact:

State of Pennsylvania
County of Erie

On this, the 8th day of September, 2008, before me Nancy Notary, the undersigned officer, personally appeared Jane Doe, Agent known to me (or satisfactorily proven) to be the person whose name is subscribed as Agent for John Doe and acknowledged that she executed the same as the act of her principal for the purposes therein contained.

In witness whereof, I hereunto set my hand and official seal.

Signature of Nancy Notary
Notary Public
(Title of Officer)

Nancy Notary, Notary Public
City of Erie County of Erie
My commission expires
September 19, 2010

By a corporation:

State of Pennsylvania
County of Erie

On this, the 8th day of September, 2008, before me Nancy Notary, the undersigned officer, personally appeared John Doe, who acknowledged himself to be the President of J & D Ltd., a Pennsylvania corporation, and that he as such being authorized to do so, executed the foregoing instrument for the purposes therein contained by signing the name of the corporation by himself as President.

In witness whereof, I hereunto set my hand and official seal.

Signature of Nancy Notary
Notary Public
(Title of Officer)

Nancy Notary, Notary Public
City of Erie County of Erie
My commission expires
September 19, 2010

By any public officer or deputy thereof or by any trustee, administrator, guardian or executor:

State of Pennsylvania
County of Erie

On this, the 8th day of September, 2008, before me Nancy Notary, the undersigned officer, personally appeared Steven Smith, the Administrator of the Estate of John Doe, of the County of Erie, State of Pennsylvania, known to me (or satisfactorily proven) to be the person described in the foregoing instrument, and acknowledged that he executed the same in the capacity therein stated and for the purposes therein contained.

In witness whereof, I hereunto set my hand and official seal.

Signature of Nancy Notary
Notary Public
(Title of Officer)

Nancy Notary, Notary Public
City of Erie County of Erie
My commission expires
September 19, 2010

By an Attorney:

State of Pennsylvania
County of Erie

On this, the 8th day of September, 2008, before me Nancy Notary, the undersigned officer, personally appeared Larry Lawyer, Esq. known to me (or satisfactorily proven) to be a member of the bar of the highest court of said state and a subscribing witness to the within instrument, and certified that he was personally present when John Doe, whose name is subscribed to the within instrument, executed the same, and that said person John Doe acknowledged that he executed the same for the purposes therein contained.

In witness whereof, I hereunto set my hand and official seal.

Signature of Nancy Notary
Notary Public
(Title of Officer)

Nancy Notary, Notary Public
City of Erie County of Erie
My commission expires
September 19, 2010

§ 81. FORM OF CERTIFICATE OF ACKNOWLEDGMENT

The form of certificate of acknowledgment of individuals (single or married) of any deed may be in the following words:--

State of Pennsylvania
County of Erie

On this, the 8th day of September, 2008, before me a Notary Public in and for Commonwealth of Pennsylvania came the above named John Doe and Jane Doe, husband and wife, and acknowledged the foregoing deed to be their act and deed, and desired the same to be recorded as such.

Witness my hand and official seal, the day and year aforesaid.

Signature of Nancy Notary
Notary Public
(Title of Officer)

Nancy Notary, Notary Public
City of Erie County of Erie
My commission expires
September 19, 2010



What's a Title Attorney To Do?

As the title industry reacts to the crisis "du jour", there's one question that keeps popping up in every conversation that I hold with an

Approved Attorney: What is a title attorney to do?

Over the years, many of our attorneys have developed a passion and a commitment for the title business. While others have cultivated their skills to provide the necessary stream of income to make a "good living".

Whatever brings you to the arena of being a title professional, here are some important tips that I have gleaned from the success of others.

Don't wait for the work to come to you. If you are interested in maintaining your practice in real estate, communicate your interest to your existing client base and/or advertise your specialty.

Suggestion: Consider making a presentation to a community or church group on a real estate or title related topic.

Get out of your comfort zone. You'll be surprised at what you can achieve as a real estate and title attorney. Real estate presents opportunities to stretch yourself into the fields of litigation, corporate law, estates, trusts. Explore the opportunities provided from this interesting field.

Seek out a mentor—whether it be an experienced member of your firm or another member of the bar.

Bond with fellow legal and title professionals. You can learn from the success stories and mistakes of others. Take advantage of the educational and social opportunities provided by the Pennsylvania and County Bar Associations and professional organizations such as the American Land Title Asso-

ciation (ALTA) and the Pennsylvania Land Title Association (PLTA).

Suggestions: Join the Real Estate Committee of the local Bar or attend continuing legal education seminars sponsored by PBI, PLTI or Penn Attorneys.

Educate yourself. Discover and use software programs and technological devices that make you more efficient. Seek out businesses that help you get the job done: Attorneys Assist, Fast Track, etc.

Suggestion: Familiarize yourself with our website www.pennattorneys.com (see our Forms Library and Title Alerts, etc.)

Always have a back up plan, whether at work (or at home). Setting up the most efficient legal and title practice requires an understanding of technology and having access to information at all times.

Suggestion: Make sure you have a disaster recovery and business continuity plan. Assess risk (of natural disaster, inclement weather, utilities for communications failures, employee loss, etc.) and develop a contingency plan.

Be prepared to make sacrifices both in business and in family life, in order to advance your career.

Establish a good working relationship with your title insurer and underwriter to allow professional growth on the job.

Suggestion: Remain an active Penn Attorney®—be sure to update your contact information as it changes and send us your current declarations page from your professional liability insurance.



ADDRESS SERVICE REQUESTED

This newsletter is also available at our website
www.pennattorneys.com



Penn Attorney's Holiday Schedule

Our office will be closed on:

Thursday & Friday, Nov 27 & 28, 2008

Thursday & Friday, Dec 25 & 26, 2008

Thursday, January 1, 2009

Thanksgiving

Christmas

New Year's Day



If you will need a Commitment or Instant Policy for a settlement to be held on the above-listed holidays, please be sure to submit your request 2 business days prior to the holiday:



- Tuesday, November 25th for Thanksgiving
- Tuesday, December 23rd for Christmas
- Tuesday, December 30th for New Year' Day

For special requests, contact:

Tracy L. Chipoletti, Ops Manager 814-451-8867 or 1-800-352-2216

Essentials of a Certificate of Acknowledgment

NOTARIAL CHECKLIST

Venue

- State and
- County

Date

- The date on which the acknowledgment is made and taken.
NOTE: The acknowledgment may be made at any time *after* the date of the instrument and the execution of the document, but *never before the date of the instrument and the execution thereof*, since it is not possible to acknowledge an instrument/act that has not yet been created/performed.

Name of the Person making the acknowledgment

- The name must appear in the acknowledgment paragraph.
NOTE: If the person appearing is acting as an Agent, Partner, Officer, Fiduciary, then the name should be followed by the respective identifying designation.

Designation of Instrument

- The instrument may be identified as a deed, mortgage, agreement or other document or may be generally referred to as the "indenture" or "instrument".

Official Position

- The authority of position of the official who takes the acknowledgment must be stated so that his/her authority to take the acknowledgment will appear on the face of the statement.

Signature of Official taking the acknowledgment

- The signature must appear in the acknowledgment paragraph.

Location of Office of Notary Public

- The location is required to be stated immediately below the signature.
NOTE: This means the county and the city, township or borough. (It does not require the street address.)

Date of Expiration of Notary Public's Commission

- A statement of the date when the notary's commission expires is required to confirm that the notary is empowered to take the acknowledgment at the time the acknowledgment is made.