

# THE TITLE *examiner*



An Informational Newsletter Provided Courtesy of Ticor Title Insurance Company

## From the Editor

This issue features an article that has been submitted by George Grasser, a well known speaker and advocate for “new urbanism”, and who is also a longstanding member of our northern New York Advisory Board. This housing development concept is not new in our country, but relatively new to western and central New York. If you have an opportunity to visit any of these communities mentioned by George you will be reminded of old fashioned neighborhoods where everyone knew each other, families grew together, and enjoyed much more social interaction. George is President and CEO of Partners For A Livable Western New York, and I’m sure he would send you additional information, or perhaps give a presentation to your developer clients and community officials.

You will also find that Josephine Carra, our Rochester District Counsel has done a follow-up to her Fall, 2006 article regarding the necessary elements of adverse possession. You will realize that recent court decisions in New York have eased the long-standing requirements for acquiring rights that may be superior to the record title owner—just one more reason to pay attention to driveway encroachments, fence variations, and variations between record and measured distances, all as disclosed on a survey map.

Clark Schaffner, manager of our Lockport office, also chairs our CLE program for customers (see article in this issue). In this issue he provides us with a preview of the new ALTA 2006 title insurance policies. Josephine and Clark are two of our fifteen underwriters located in our northern New York offices who are available to assist you with all of your title needs and questions.

Finally, we hope you all enjoyed the holidays with your families and are looking forward to a prosperous and healthy 2007.

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## New Urbanism Expanding In Upstate New York

By George Grasser, Esq.

With the opening of the Gardens at Oxbow traditional neighborhood development in the Village of Lewiston (see rendering above), new urbanism has made its debut in the Buffalo-Niagara region.

The new urbanism movement is based on planning principles intended to create a more livable neighborhood - attractive streets, a variety of housing that accommodates people of different ages and incomes in the same neighborhood, and the ability to walk more and drive less - all intended to create a more socially interactive and more aesthetically pleasing community. New urbanist developments are very different from conventional subdivision developments. In a new urbanist development the emphasis is on the “public realm” -

what you see from the front door of your house or when you walk or drive down the street. In most new suburban conventional developments the emphasis is what you see out the back door, e.g. the back yard or patio area, with very little attention directed to the street. At

the Gardens at Oxbow, the required storm water detention pond and a community bocce court are located in the middle of the development, for example, not behind the houses as would be the location in a conventional development.

New urbanist or traditional neighborhood developments have had much acclaim and have achieved an accelerated price appreciation ever since the movement began with Seaside, a development on the Florida Panhandle and the setting for the movie *The Truman Show*. Some of the better known of the more

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than 1,000 new urbanist developments nationwide are Celebration (a Disney development) and Baldwin Park in Orlando, Florida; Kentlands in Gaithersburg, Maryland; Birkdale Village near Charlotte, North Carolina and Stapleton on the site of the former Stapleton Airport in Denver.

The Central New York and Rochester areas have already experienced new suburban developments with some new urbanism characteristics. Annesgrove in Camillus; Stonetown and Lusk Farm in Pittsford, and Erie Station in South Henrietta have incorporated such features as wide sidewalks, houses built close to the sidewalk, hidden garages often accessed via a rear alley or lane, and attractive streetscapes. In addition to these "greenfield" developments on previously undeveloped land, some upstate cities have experienced new infill developments that conform to urban area traditional neighborhood development principles such as mixed-uses, attractive retail storefronts and parking hidden in the interior of the block. Examples of such developments include Armory Square in Syracuse, Sagamore in Rochester and the Ulrich City Centre in Lockport.

Because it is located within walking distance of several destinations, the Gardens at Oxbow is more in conformity with the new urbanist mantra of a walkable community than the greenfield developments cited above. Center Street, the main street of the Village of Lewiston with shops, stores, restaurants, churches and public buildings, is three blocks away. An entrance to the eight-mile bicycle and pedestrian trail from Lewiston to Youngstown along the Robert Moses Parkway is a short walk away and the Town of Lewiston's Kiwanis Park with a variety of recreational facilities is immediately adjacent to the development.

The Gardens at Oxbow has taken Upstate New York new urbanism to a new level by utilizing such practices as zero-lot line setbacks so that homeowners have one wide side yard rather than two smaller less useable side yards, eight-foot deep front porches to encourage residents to sit outside and

interact with their neighbors walking by on the wide sidewalks, narrow paved streets – only 19-feet wide, and accessory dwelling units attached to the main house on the lot to accommodate separate living quarters for a parent, an in-law or a child. The Gardens at Oxbow also has strict design guidelines and architectural controls that encourage a variety of home elevations and sizes (from about 1,400 square feet to almost 4,000 square feet). This will enable the built-out community to include singles, empty-nesters and families with children.

The Gardens at Oxbow development would not be possible in most upstate New York communities because zoning ordinances and subdivision regulations would not allow the narrow streets, the short set-backs of the houses from the street, the higher density necessary to create the walkable neighborhood and the accessory dwelling units. The elected officials of the Village of Lewiston made the effort to understand the new urbanist concept, recognized the long-term value of having a new urbanist community in their Village and changed the zoning to accommodate the development. The result is a development that gives people, especially senior citizens, the choice of being able to live in a convenient location, in a place where all of the houses do not look the same, in a neighborhood that encourages more walking and less driving, and in a community where there is ample opportunity for neighbors to become friends.

*George R. Grasser is a retired attorney and the head of the development team for the Gardens at Oxbow. He is also the President and Chief Executive Officer of Partners for a Livable Western New York, a not-for-profit organization with the mission of improving land use and the built environment in Western New York communities. George can be contacted at 11 Summer Street, Buffalo, New York, 14209.  
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## Requirements to Acquire Title by Adverse Possession

By Josephine Carra, Esq.

A recent second department case *Hall v Sinclair* 2006 NY Slip Op 09556 casts additional light on the interpretation of the requirements to acquire title by adverse possession. In this case there was a dispute between neighbors over a 117 square foot area due to the location of driveways on the adjoining premises. The adjoining parcels had originally been one parcel with a driveway that lay on both parcels, part of which was a circular roadway. The parcels were divided and for a time the driveway was used by both owners until an agreement was entered into which released each party from use of the driveway on the others land. However, the circular portion of the driveway which was located on defendants lands and the property to the north of it was used by the defendants and their predecessors in title even though they believed the 117 square foot area was owned by the plaintiffs.

The court held that, even though mistaken about the location of the actual property line, the neighbors could acquire title by adverse possession. The defendants and their predecessors in interest believed that the area in dispute was actually owned by the plaintiffs so that even though the plaintiffs argued that there was no claim of right the court disagreed. Following the decision in *Walling v Przybylo*, 7 NY3rd 228, (covered in the Fall 2006 issue of *The Title Examiner*) any claim of right is adverse to the title owner and also in opposition the true owners' rights. When the adjoiners have allowed the use of the disputed land then the conduct of the parties will prevail over their knowledge.

In defining hostile possession, another element of adverse possession, the court held that there need not be enmity or a specific act of hostility, rather all that is necessary is that the action of the adverse possessor be an actual encroachment onto the

adjoiners' land and infringing of their neighbors rights. Hostility can be found even when the possession was inadvertent.

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## 2006 ALTA Policies— Nearly 20 Years In The Making

By Clark Schaffner, Esq.

On June 17, 2006, the Board of Governors of the American Land Title Association (ALTA) adopted revised versions of the standard owner's and loan title insurance policies. It is expected that most states will adopt the new policies.

In response to my inquiry, the New York State Land Title Association ("NYSLTA") has informed me that the new policy forms have been submitted by the Title Insurance Rate Service Association, Inc. ("TIRSA") to the New York State Insurance Department for approval. We anticipate that the revised forms or variations thereof will be adopted by New York State in the near future. We will let you know if and when the New York State Insurance Department approves the 2006 policies for New York and when they become available for your use.

To learn more about the differences between the 1992 ALTA policies (originally adopted in 1987) and the revised 2006 ALTA policies, visit the ALTA website by going to: [www.alta.org](http://www.alta.org). On the top left portion of their home page, there is box labeled Site Search. If you type in: **2006 Policy** and hit [Enter], you will get two PDF files that comprehensively compare just about every provision of both the 2006 Owner's to the 1992 Owner's Policy, and the 2006 Loan to the 1992 Loan Policy.

If you look at the policy jacket on a 1992 Owner's Policy, you will find

four insuring clauses. On the 1992 Loan Policy, you will find eight insuring clauses. The 2006 policy forms contain 10 covered risks in the Owner's Policy and 14 covered risks in the Loan Policy. Due to these expanded benefits to the insured(s), it is anticipated that insured(s) will insist on the new policy forms.

The 2006 policy forms also attempt to take into account the changing technology (e.g. electronic filing), as it applies to real estate, and the forms also try to eliminate different interpretations of various provisions by employing better and simpler drafting to clarify the coverages therein and the conditions, stipulations and exclusions from coverage.

Down the road, after the 2006 Policy has been in place for a while, we will all have to be mindful of when our closing took place. In the event that your closing took place prior to adoption and implementation of the 2006 Policy, please make sure that the final policy you receive is on the 1992 form.

Finally, in a recent issue of Title Issues, Douglas M. Karlen (Regional Counsel Chicago Title Insurance Company) interviewed Joe Bonita (member of the ALTA drafting committee and former Chief Underwriting Counsel for Fidelity) and asked him whether customers will embrace the 2006 policies. Joe responded, "If any attorney chooses the 1992 policy for a client when the 2006 policy is available, then that attorney should look to his or her malpractice policy." It's that good, according to Joe! (see, [www.cmetro.ctic.com/titleissues/v16n1.pdf](http://www.cmetro.ctic.com/titleissues/v16n1.pdf)) Furthermore, the more extensive coverages in the 2006 ALTA owners policy will surely encourage purchasing of owners policies, particularly in Western and Central New York State.

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## CLE Courses Ticor's Commitment to Our Customers

We are in the process of sponsoring, organizing and administering continuing legal education (CLE) courses in an effort to be approved as an Accredited Provider by the New York State Continuing Legal Education Board.

Over the next two and a half years, the Northern New York Ticor offices will be presenting seven more CLE courses to our valued customers. Clark Schaffner, manager of our Lockport office, heads our CLE team with assistance from Josephine Carra, district counsel in our Rochester office, and Peter Battaglia, underwriting counsel from our Buffalo office.

Our first CLE program entitled "Real Property and Title Insurance Issues" (quite creative) was presented to approximately 40 attorneys on September 28, 2006 in Lockport, NY. Mark Burhans presented title issues relating to water boundaries (which affects many counties in New York State). Peter Battaglia covered legal and practical implications of survey examination, and Clark Schaffner covered recent developments in RESPA, the proposed 2006 ALTA policy, and the status of inquiries into the title insurance industry by the former New York State Attorney General. All attendees received 2.5 credit hours of CLE, along with very useful information for their practices, as well as refreshments—ALL FOR FREE!

Each of our other Northern New York offices will be conducting free seminars throughout the coming year, so watch for announcements, or contact our office nearest you and request to be added to the invitation list. This is just one more service we offer to our loyal customers.

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*The Title Examiner* is a periodic newsletter of Ticor Title Insurance. Please let us know if you would like to see a particular topic addressed in a future issue or if you have any questions regarding an article.