

REAL ESTATE TITLES

THE PRACTICE OF REAL ESTATE LAW IN NEW YORK

EDITORS-IN-CHIEF

ADAM LEITMAN BAILEY, ESQ.

MICHAEL J. BEREY, ESQ.

New York State Bar Association publications are intended to provide current and accurate information to help attorneys maintain their professional competence. Publications are distributed with the understanding that NYSBA does not render any legal, accounting or other professional service. Attorneys using publications or orally conveyed information in dealing with a specific client's or their own legal matters should also research original sources of authority.

We consider the publication of any NYSBA practice book as the beginning of a dialogue with our readers. Periodic updates to this book will give us the opportunity to incorporate your suggestions regarding additions or corrections. Please send your comments to: Publications Director, New York State Bar Association, One Elk Street, Albany, NY 12207.

Copyright 2020
New York State Bar Association
All rights reserved
ISBN: 978-1-57969-579-8
Product Number: 421020

DEDICATION OF REAL ESTATE TITLES
TO
JAMES M. PEDOWITZ, ESQ.*

The Real Property Law Section of the New York State Bar Association hereby dedicates *Real Estate Titles*, now in its third edition, to its initial editor-in-chief, James M. Pedowitz, Esq. Although his is a name well known and respected among real property lawyers, the publication contains no mention of his numerous accomplishments. This Section intends that this oversight be remedied and that this author, scholar, mentor, teacher and friend be more fully exposed, not only to his contemporaries but also to his professional “heirs, successors and assigns.”

Jim attained the age of 91 on October 29, 2006. Born and bred in Brooklyn, Jim was graduated from the Boys High School in Brooklyn in February 1932. He earned a B.A. degree from New York University, Washington Square College in 1935 and a J.D. degree from New York University Law School in 1938. He and his Welsh-born wife, Mary, have three children: Lawrence, Dinah and David.

Jim started his title and legal career with Title Guarantee and Trust Company. It was interrupted by service in the U.S. armed forces from 1941 to 1946. He entered military service as a private and left as a lieutenant-colonel commanding a truck battalion. He then served in the Army Reserve for an additional 16 years.

Those with longer memories associate Jim with the deans of the United States title insurance industry generally and more specifically with Tigor and its earlier incarnations. At the time of his title industry retirement, he was first vice president and chief counsel of the Title Guarantee Company and vice president and eastern regional counsel of Pioneer National Title Insurance Company, later known as Tigor. Those with shorter memories remember Jim as an adjunct professor of law at New York University Law School (1971–1985) and as a visiting professor of law at St. John’s University Law School (1988–1992); in private practice in New York City as a partner with Marshall, Bratter, Greene, Allison & Tucker; special counsel with Rosenman & Colin; and later as counsel to Berkman, Henoch, Peterson & Peddy, P.C. in Garden City, New York.

Jim was president of the Bar Association of Nassau County (1971–1972), a vice president (1974–1977) and chair of the NYSBA’s Real Property

Law Section (1971–1972); council member of the Real Property, Probate and Trust Law Section of the American Bar Association; member of the board of directors, New York County Lawyers' Association (1978–1984); and an active member of various real property law committees of all of the above, as well as The Association of the Bar of the City of New York, Suffolk County Bar Association and Queens County Bar Association. He was also a member of the Committee on Character and Fitness for the Second, Tenth and Eleventh Judicial Districts of the Appellate Division, Second Department (1973–1985).

Additional professional memberships include the New York State Land Title Association, the New York Board of Title Underwriters, the American Land Title Association, American College of Real Estate Lawyers (where he was secretary and a member of the board of governors) and Anglo-American Real Property Institute. He was also an adviser to the National Conference of Commissioners on Uniform State Laws, and he served on the arbitration panel of the United States District Court, Eastern District of New York.

Jim has written numerous articles and lectured extensively for Practising Law Institute, as well as the various associations and professional groups with which he has been associated. The subjects on which he has written and lectured include title examination, title insurance, condominiums, co-ops, mortgage foreclosure, creditors' and debtors' rights, rule against perpetuities, practice guides, easements, hazardous waste super liens, real property gains tax, hidden title risks, authentication of foreign documents, solar energy easements, uniform real property acts, Indian land claims, bankruptcy, transfer of air rights and development rights, plain English, equitable distribution, zoning lot mergers, New York State transfer gains tax, lands under water and riparian rights.

Throughout his career, Jim has given freely of his advice and counsel to others, and especially to young lawyers. He has responded unstintingly, promptly and without expectation of reward as mentor and counselor to countless numbers of his legal brethren and sisters. We will forever be in his debt. It is our hope that we may emulate his prowess and be able to transmit to our legal progeny that which he has given us.

It is with deep gratitude that his dedication is recorded as a perpetual record.

* This Dedication to James M. Pedowitz was included in the Third Edition of this book, published in 2007.

INTRODUCTION

As Editors to this update to Real Estate Titles, we understood the mantle we are carrying, as well as our duty to produce a book that meets the needs of every real estate practitioner no matter how difficult the issue. At the same time, we strove to make sure that even the most basic real estate topics had not been overlooked. This has been the greatest-selling book in New York State Bar history, and we believe that it will receive an even greater audience as a result of the latest e-book technology.

The editors thank and are in awe of the authors who have contributed to the vision and contents of this treatise. These authors are some of the most influential attorneys of our time who have participated in many of the most important transactions and real estate litigation that have shaped the New York landscape. This group of authors has been called an All-Star team, a Dream team, or simply the greatest group of lawyers ever to draft a book together. But to us, we saw no ego and simply the hard work and selfless attitude of these unpaid attorneys donating their time to contribute and improve the legal profession.

Notwithstanding, while the New York State Bar Association, the Editors of Real Estate Titles and the Chapters' authors have used their best efforts in preparing this book, they make no representations or warranties with respect to the accuracy or completeness of the contents of this book, and specifically disclaim any implied warranties of merchantability or fitness for a particular purpose. Any opinions expressed are each author's alone, individually, not as a representative of his or her firm or company, and do not constitute legal advice. The Editors' and authors' firms and companies have not endorsed and specifically disclaim any association related to the accuracy, the content, or any opinions stated in this treatise.

Understanding that this is the 4th Edition of this book, we were careful to maintain the integrity of the prior work while updating and making sure each sentence of each page had been checked for continued accuracy. At the same time, unlike in past editions, the real estate world has changed in significant ways since the last writing. As a result, several new Chapters have been added and other Chapters have been removed or completely rewritten to stay current with the law. Although certain new Chapters do not directly impact title, they are included because of their importance to the transaction of real property.

Adam Leitman Bailey and Michael J. Berey

TABLE OF CONTENTS

VOLUME I

- Chapter 1 The Nature of Title and Estates in New York
Thomas P. Moonan, Esq.
John K. McAndrew, Esq.
Michael J. Berey, Esq.
Melvyn Mitzner, Esq.
Revised by Jean M. Partridge, Esq.
- Chapter 2 Search and Examination of Title
Bernard M. Rifkin, Esq.
S.H. Spencer Compton, Esq.
Revised by S.H. Spencer Compton, Esq.
- Chapter 3 Parties and Capacity to Buy and Sell
Flora Schnall, Esq.
Revised by Stuart M. Saft, Esq.
- Chapter 4 Federal Deposit Insurance Corporation
Joseph Philip Forte, Esq.
- Chapter 5 Transfers on Death
Paul J. Colletti, Esq.
James M. Pedowitz, Esq.
Revised by Douglas P. Schneidman, Esq.
- Chapter 6 Real Estate Descriptions, Plottings, Surveys and Maps
Owen F. Mangan, Esq.
John G. Hall, Esq.
- Chapter 7 Deeds
John J. Yanas, Esq.
Gary S. Litke, Esq.
Revised by Jean M. Partridge, Esq.
- Chapter 8 Mortgages
Lester M. Bliwise, Esq.
James M. Pedowitz, Esq.
Revised by Lester M. Bliwise, Esq. and Daniel Evans, Esq.
- Chapter 9 Liens and Restrictive Covenants
Melvyn Mitzner, Esq.
Revised by Vincent G. Danzi, Esq.

- Chapter 10 Proceedings to Sell, Mortgage or Lease
Bernard H. Goldstein, Esq.
Harris N. Cogan, Esq.
Albert E. Yorio, Esq.
Revised by Arthur G. Jackoby, Esq.
- Chapter 11 Contracts of Sale
James M. Pedowitz, Esq.
Revised by Karl B. Holtzschue, Esq.
- Chapter 12 Tax Titles
John E. Blyth, Esq.
Revised by Lance R. Pomerantz, Esq.
- Chapter 13 Mortgage Foreclosures and Other Actions Affecting Title
H. Jackson Sillcocks, Esq.
James M. Pedowitz, Esq.
Bruce J. Bergman, Esq.
Revised by Jackie Halpern Weinstein, Esq.
- Chapter 14 Civil and Criminal Forfeiture
James M. Pedowitz, Esq.
Revised by Alfred C. Tartaglia, Esq.
- Chapter 15 Bankruptcy
Michael F. Walsh, Esq.
Sharon Youdelman, Esq.
Julie T. Friedman, Esq.
Revised by Michael P. Sasso, Esq.
- Chapter 16 Title by Eminent Domain
Bernard Sommer, Esq.
Saul R. Fenchel, Esq.
Revised by Michael Rikon, CRE and
Joshua H. Rikon, CRE
- Chapter 17 Adverse Possession
Adam Leitman Bailey, Esq.

VOLUME II

- Chapter 18 Title to Land Under Water
James M. Pedowitz, Esq.
Meyer Scheps, Esq.
Revised by Lance R. Pomerantz, Esq.

- Chapter 19 Title to Land in Beds of Streets and Highways
James M. Pedowitz, Esq.
Meyer Scheps, Esq.
Revised by Laura E. Ayers, Esq.
- Chapter 20 Mines and Minerals
Meyer Scheps, Esq.
James M. Pedowitz, Esq.
Revised by Maureen Garvey, Esq. and
Anthony C. Lee, Esq.
- Chapter 21 Title to Railroad Properties
Meyer Scheps, Esq.
James M. Pedowitz, Esq.
- Chapter 22 Airspace and Development Rights
James M. Pedowitz, Esq.
Revised by Michael J. Berey, Esq. and
Caroline G. Harris, Esq.
- Chapter 23 Marketable Title
James M. Pedowitz, Esq.
Revised by Michael J. Berey, Esq.
- Chapter 24 Condominiums, Cooperatives, and Homeowner's
Associations
David S. Fitzhenry, Esq.
Jason A. Ganfer, Esq.
- Chapter 25 Commercial Leasing
John Busey Wood, Esq.
- Chapter 26 Title Insurance: What Every New York Lawyer
Should Know
James M. Pedowitz, Esq.
Revised by John A. Frates, Esq.
- Chapter 27 Mortgage Recording Tax
Michael J. Berey, Esq.
- Chapter 28 Transfer Taxes
Michael J. Berey, Esq.
- Chapter 29 Federal Reporting Requirements in Residential Real Estate
Transactions
Mathew C. Cahill, Esq.

- Chapter 30 Building Loan Mortgages and the New York Lien Law
Thomas A. Glatthaar, Esq.
- Chapter 31 Easements
Adam Leitman Bailey, Esq.
- Chapter 32 Title Insurance and Same-Sex Marriage
Marvin N. Bagwell, Esq.
- Chapter 33 Real Estate Finance—The Last 50 Years
Frederic L. Altschuler, Esq.
- Chapter 34 Main Street to Wall Street: The Journey to Securitization
Joseph Philip Forte, Esq.

DETAILED TABLE OF CONTENTS

VOLUME I

Dedication.....	iii
Introduction.....	v
Contributor Biographies	li

CHAPTER 1 THE NATURE OF TITLE AND ESTATES IN NEW YORK

Thomas P. Moonan, Esq.

John K. McAndrew, Esq.

Michael J. Berey, Esq.

Melvyn Mitzner, Esq.

Revised by Jean M. Partridge, Esq.

[1.0]	I.	Introduction	1-1
[1.1]	II.	Titles and the Sovereign.....	1-1
[1.2]	A.	Efforts at Definition	1-1
[1.3]	B.	The Feudal System.....	1-2
[1.4]	C.	Aboriginal Title.....	1-3
[1.5]		1. Federal vs. State Regulation of Indian Affairs	1-4
[1.6]		2. North American Indian Land Claims in New York State	1-5
[1.7]	D.	Some Vestiges of the Feudal System.....	1-10
[1.8]		1. Tax Titles	1-10
[1.9]		2. Eminent Domain	1-11
[1.10]	III.	Possessory Estates in New York	1-13
[1.11]	A.	Estates Classified as to Duration and Extent.....	1-14
[1.12]		1. Fee Simple.....	1-14
[1.13]		2. Fee Tail.....	1-15
[1.14]		3. Life Estate	1-15
[1.15]		4. Perpetual Right to Harvest Timber on Land ..	1-16
[1.16]	B.	Concurrent Ownership of Estates.....	1-17
[1.17]		1. Joint Tenancy	1-17
[1.18]		a. Creation	1-17
[1.19]		b. Severance.....	1-18
[1.20]		2. Tenancy in Common	1-20
[1.21]		3. Tenancy by the Entirety	1-21
[1.22]		a. Creation	1-22
[1.23]		b. Termination	1-22
[1.24]		c. Right of Survivorship	1-23

[1.25]	4. Incidents of Concurrent Ownership	1-24
[1.26]	IV. Future Estates And Limitations	1-24
[1.27]	A. Estates in Possession Compared with Future Estates.....	1-25
[1.28]	B. Estates in the Grantor (Reversions).....	1-26
[1.29]	C. Estates in Third Persons (Remainders)	1-27
[1.30]	V. The Recording System	1-28
[1.31]	A. Purpose	1-28
[1.32]	B. Protection from Competing Claims.....	1-29
[1.33]	1. Purchase of Property for Value	1-29
[1.34]	2. Actual and Constructive Notice	1-29
[1.35]	3. Inquiry Notice Doctrine	1-30
[1.36]	4. Executory Contract or Memorandum of Sale.....	1-32
[1.37]	VI. Marketability	1-32
[1.38]	VII. Conclusion: Real Estate Is Evolving	1-33

CHAPTER 2 SEARCH AND EXAMINATION OF TITLE

Bernard M. Rifkin, Esq.

S.H. Spencer Compton, Esq.

Revised by S.H. Spencer Compton, Esq.

[2.0]	I. Introduction	2-1
[2.1]	II. Indexes.....	2-2
[2.2]	A. Grantor-Grantee Index	2-2
[2.3]	B. Block Index	2-4
[2.4]	C. Indexing of Owners of Hazardous Waste Sites.....	2-5
[2.5]	III. The Abstract	2-6
[2.6]	A. Preparation of Abstract of Title.....	2-6
[2.7]	B. Searches.....	2-7
[2.8]	1. County Recording Office	2-7
[2.9]	2. County Clerk's Office	2-8
[2.10]	3. District Court Clerk's Office.....	2-8
[2.11]	4. Appropriate Tax Offices.....	2-8
[2.12]	C. Abstracting Instruments	2-9
[2.13]	1. Deeds.....	2-9
[2.14]	a. Type of Instrument	2-9
[2.15]	b. Parties and Addresses	2-9
[2.16]	c. Amount of Consideration	2-9
[2.17]	d. Granting Clause	2-10
[2.18]	e. Description.....	2-10
[2.19]	f. Clauses That Add to or Subtract from Premises or Reserve Right to Grantor	2-11

[2.20]	g. Encumbrances.....	2-11
[2.21]	h. Habendum Clause.....	2-11
[2.22]	i. Trust Clause.....	2-12
[2.23]	j. Proper Execution	2-12
[2.24]	k. Acknowledgment.....	2-13
[2.25]	l. Recording Date and Return Information ..	2-13
[2.26]	m. Title Number	2-13
[2.27]	n. Adverse Chain	2-13
[2.28]	2. Mortgages.....	2-13
[2.29]	a. Type of Instrument	2-14
[2.30]	b. Parties and Addresses	2-14
[2.31]	c. Amount of Mortgage and Terms of Payment	2-15
[2.32]	d. Description	2-15
[2.33]	e. Clauses that Add to or Subtract from Premises or Reserve Right to Grantor	2-15
[2.34]	f. Consolidation Clause.....	2-15
[2.35]	g. Uncommon Clauses.....	2-15
[2.36]	h. Final Steps	2-16
[2.37]	3. Other Common Instruments Affecting Mortgages.....	2-16
[2.38]	a. Assignment.....	2-16
[2.39]	b. Consolidation of Two or More Mortgages	2-17
[2.40]	c. Extension of Mortgage(s).....	2-17
[2.41]	d. Spreaders, Splitters, Participation Agreements.....	2-17
[2.42]	e. Release of Mortgage.....	2-18
[2.43]	f. Mortgage Electronic Registration System (MERS).....	2-18
[2.44]	4. Nomenclature	2-18
[2.45]	IV. Recording Act	2-19
[2.46]	A. Purpose.....	2-19
[2.47]	B. Notice Requirements	2-20
[2.48]	C. Recording Requirements	2-22
[2.49]	V. Acknowledgments.....	2-23
[2.50]	VI. Report or Certificate of Title.....	2-24
[2.51]	VII. Utilization of Title Insurance	2-25

CHAPTER 3 PARTIES AND CAPACITY TO BUY AND SELL

Flora Schnall, Esq.

Revised by Stuart M. Saft, Esq.

[3.0]	I.	Individual.....	3-1
[3.1]	A.	Citizens of the United States	3-1
[3.2]	B.	Aliens	3-1
[3.3]	C.	Married Women	3-1
[3.4]	D.	Minors	3-2
[3.5]	E.	Incapacitated (Incompetent) Persons	3-3
[3.6]	F.	Incapacitated (Impaired) Persons	3-4
[3.7]	G.	Unknown and Absent Persons.....	3-4
[3.8]	H.	Dower and Curtesy	3-5
[3.9]	II.	Corporations	3-6
[3.10]	A.	Merger of Consolidation of Entities	3-6
[3.11]	B.	Business Corporations—Domestic	3-6
[3.12]		1. Purchase or Other Acquisition	3-6
[3.13]		2. Sale or Other Disposition	3-7
[3.14]		3. Dissolved Corporation.....	3-9
[3.15]		4. Ultra Vires Transactions.....	3-9
[3.16]		5. Lien of Franchise Taxes	3-10
[3.17]		6. Designation of Secretary of State as Agent to Receive Process.....	3-11
[3.18]	C.	Business Corporations—Foreign	3-11
[3.19]		1. Authority to Acquire and Sell Real Property .	3-12
[3.20]		2. Lien of Franchise Taxes	3-12
[3.21]		3. Alien Corporation Real Estate Ownership	3-13
[3.22]	D.	Limited Liability Companies—Domestic	3-13
[3.23]		1. Management	3-14
[3.24]		2. Purchase of Real Property	3-15
[3.25]		3. Sale of Real Property.....	3-15
[3.26]		4. Transactions with Managers.....	3-16
[3.27]		5. Dissolved Limited Liability Company	3-16
[3.28]		6. Lien of Filing Fees	3-17
[3.29]		7. Designation of Secretary of State as Agent to Receive Process	3-17
[3.30]	E.	Limited Liability Companies—Foreign	3-18
[3.31]		1. Authority to Acquire and Sell Real Property .	3-18
[3.32]		2. Lien of Filing Fees	3-19
[3.33]	F.	Not-for-Profit Corporations.....	3-19
[3.34]		1. Charitable Corporations and Non-Charitable Corporations	3-19
[3.35]		2. Purchase and Sale of Real Property	3-20

[3.36]	3. Property of Unincorporated, Not-for-Profit Association Transferred by Its Incorporation	3-21
[3.37]	4. Disposition of Most or All of Corporation's Assets	3-21
[3.38]	5. Special Not-for-Profit Corporations.....	3-22
[3.39]	G. Religious Corporations.....	3-24
[3.40]	1. Acquisition of Real Property.....	3-24
[3.41]	2. Sale, Mortgage and Lease of Real Property ...	3-25
[3.42]	3. Foreign Religious Corporations	3-26
[3.43]	4. Property of Unincorporated Society Transferred by Its Incorporation	3-26
[3.44]	5. Charitable Trusts	3-26
[3.45]	H. Insurance Corporations	3-27
[3.46]	1. Purchase of Real Property	3-27
[3.47]	2. Medical Expense Indemnity, Dental Expense Indemnity and Hospital Service Corporations	3-27
[3.48]	I. Holding Corporations.....	3-28
[3.49]	J. Benevolent Orders.....	3-28
[3.50]	K. Cooperative Corporations	3-29
[3.51]	L. Professional Service Corporations	3-29
[3.52]	M. Benefit Corporations	3-30
[3.53]	III. Municipal Corporations.....	3-31
[3.54]	A. Scope of Authority Regarding Real Property Transactions	3-31
[3.55]	B. Cities	3-32
[3.56]	1. Acquisitions.....	3-32
[3.57]	2. Disposition	3-33
[3.58]	C. Counties.....	3-34
[3.59]	1. Acquisitions.....	3-34
[3.60]	2. Disposition	3-34
[3.61]	D. Towns.....	3-34
[3.62]	1. Acquisitions.....	3-34
[3.63]	2. Disposition	3-35
[3.64]	E. Special and Improvement Districts	3-35
[3.65]	1. Acquisitions.....	3-35
[3.66]	2. Disposition	3-36
[3.67]	F. Villages	3-37
[3.68]	1. Acquisitions.....	3-37
[3.69]	2. Disposition	3-37
[3.70]	G. School Districts	3-38
[3.71]	1. City School Districts	3-38
[3.72]	2. Common School Districts	3-39
[3.73]	3. Union-Free School Districts.....	3-39

[3.74]	4. Central School Districts	3-40
[3.75]	5. Boards of Cooperative Educational Services	3-41
[3.76]	IV. Banks	3-41
[3.77]	A. Banks and Trust Companies.....	3-41
[3.78]	B. Savings and Loan Associations.....	3-42
[3.79]	C. Savings Banks	3-42
[3.80]	D. Credit Unions	3-42
[3.81]	E. Savings and Loan Insurance Fund	3-43
[3.82]	F. Savings and Loan Bank of State of New York	3-43
[3.83]	G. Private Bankers	3-43
[3.84]	H. New York Business Development Corporation	3-44
[3.85]	I. Banking Stock Corporations	3-44
[3.86]	V. General Associations.....	3-44
[3.87]	A. Joint Stock Associations.....	3-44
[3.88]	B. Unincorporated Associations	3-45
[3.89]	VI. Partnerships	3-45
[3.90]	A. Overview	3-45
[3.91]	1. Capacity to Buy and Sell Real Property	3-46
[3.92]	2. Dissolution and Winding Up.....	3-47
[3.93]	B. Limited Liability Partnerships.....	3-48
[3.94]	C. Domestic Limited Partnerships	3-49
[3.95]	1. Formation	3-49
[3.96]	2. Capacity to Buy and Sell Property	3-50
[3.97]	D. Foreign Limited Partnerships	3-51
[3.98]	1. Authority to Do Business	3-51
[3.99]	2. Capacity to Buy and Sell Real Property	3-52
[3.100]	VII. Public Cemetery Corporations	3-52
[3.101]	A. Acquisitions.....	3-53
[3.102]	B. Disposition	3-54
[3.103]	VIII. Fiduciaries	3-54
[3.104]	A. Overview	3-54
[3.105]	1. Capacity to Buy Real Property	3-55
[3.106]	2. Capacity to Sell Real Property	3-55
[3.107]	B. Administrators.....	3-56
[3.108]	C. Executors	3-56
[3.109]	D. Trustees of Express Trusts	3-56
[3.110]	1. Acts in Contravention of Express Trusts.....	3-57
[3.111]	2. Capacity to Buy and Sell Real Property	3-57
[3.112]	3. Case of Necessity and Unproductive Property	3-58
[3.113]	4. Limitations and Extensions of Power of Sale	3-58

[3.114]	5. Execution of Instruments	3-59
[3.115]	E. Self-Dealing by Fiduciaries.....	3-59
[3.116]	IX. Agents.....	3-60
[3.117]	A. Attorneys-in-Fact	3-60
[3.118]	B. Real Estate Brokers	3-62
[3.119]	X. Miscellaneous.....	3-62
[3.120]	A. Convicts.....	3-62
[3.121]	B. Indians	3-63
[3.122]	C. Foreign Governments.....	3-63

CHAPTER 4 FEDERAL DEPOSIT INSURANCE CORPORATION

Joseph Philip Forte, Esq.

[4.0]	I. Introduction	4-1
[4.1]	II. Capacity in Which Title Can Be Held.....	4-2
[4.2]	A. National Banks	4-2
[4.3]	B. State Banks.....	4-2
[4.4]	C. Federal Savings Associations.....	4-3
[4.5]	D. State Savings Associations.....	4-3
[4.6]	III. Coverage Under Existing Title Insurance Policies	4-3
[4.7]	IV. Federal Right of Consent.....	4-4
[4.8]	A. Statutory Grant of Power	4-4
[4.9]	B. Adopted Policy Statement.....	4-5
[4.10]	1. Recorded Interests	4-5
[4.11]	2. Unrecorded Interests	4-6
[4.12]	V. Federal Right of Redemption	4-6
[4.13]	A. Corporate Capacity.....	4-6
[4.14]	B. Receivership and Conservatorship Capacities	4-6
[4.15]	VI. Federal Right to Reject Claims	4-7
[4.16]	A. The Doctrine.....	4-7
[4.17]	B. Federal Codification.....	4-8
[4.18]	VII. Real Estate Tax Treatment	4-9
[4.19]	A. Payment of Real Estate Taxes.....	4-9
[4.20]	B. State and Local Governments' Right to Attach and Enforce Liens	4-10
[4.21]	C. Lien Priority	4-12
[4.22]	D. Penalties and Interest.....	4-13
[4.23]	VIII. Practice Tips.....	4-13
Appendix	Mandatory Grantor/Assignor Language to Be Used in Documentation Conveying Former RTC Real Estate Related (REO and Mortgages) Assets From FDIC to Third Parties.....	4-15

CHAPTER 5 TRANSFERS ON DEATH

Paul J. Colletti, Esq.

James M. Pedowitz, Esq.

Revised by Douglas P. Schneidman, Esq.

[5.0]	I.	Introduction	5-1
[5.1]	A.	Checklist of Essential Facts to Be Ascertained From Surrogate's File.....	5-2
[5.2]	1.	General File	5-2
[5.3]	2.	Transfer Tax Proceedings.....	5-3
[5.4]	B.	Effect of Death on Rights to Decedent's Property	5-3
[5.5]	C.	Statutory Law Affecting Disposition of Property	5-4
[5.6]	II.	Survivorship Rights of Co-Tenants, Joint Tenants and Tenants by the Entirety.....	5-4
[5.7]	III.	Descent by Intestacy.....	5-5
[5.8]	A.	Statutory Rules Governing Intestate Succession...	5-5
[5.9]	1.	Death prior to September 1, 1930	5-5
[5.10]	2.	Death on or after September 1, 1930, but Prior to March 1, 1964	5-6
[5.11]	3.	Death on or after March 1, 1964, but Prior to September 1, 1992.....	5-7
[5.12]	4.	Death on or after September 1, 1992.....	5-8
[5.13]	5.	Determining Degrees of Kinship.....	5-9
[5.14]	B.	Other Matters Affecting Intestate Distribution	5-11
[5.15]	1.	Dower, Quarantine and Family Exemption....	5-11
[5.16]	2.	Community Property	5-12
[5.17]	3.	Disqualification of or Bar to Right to Take....	5-13
[5.18]	a.	Election to Take Dower.....	5-13
[5.19]	b.	Abandonment of Child	5-13
[5.20]	c.	Disqualification of Spouse.....	5-13
[5.21]	d.	Killing of Decedent	5-14
[5.22]	e.	Renunciation and Agreements to Release.....	5-15
[5.23]	f.	Aliens.....	5-16
[5.24]	4.	Difficulty in Establishing Heirship	5-16
[5.25]	C.	Quality of Title of Distributees	5-17
[5.26]	1.	Vesting of Title.....	5-17
[5.27]	2.	Disqualification to Take Intestate Share	5-18
[5.28]	3.	Existing Liens and Encumbrances	5-19
[5.29]	4.	Debts and Claims against the Estate	5-19
[5.30]	IV.	Devolution by Will.....	5-20

[5.31]	A. Historical Development and Definition	5-20
[5.32]	B. General Requirements	5-21
[5.33]	1. Testator’s Capacity.....	5-21
[5.34]	2. Formalities of Execution and Attestation.....	5-22
[5.35]	3. Necessity for Probate	5-23
[5.36]	C. Rules Governing Dispositions by Will	5-23
[5.37]	1. Anti-lapse Provisions	5-23
[5.38]	2. Conditions Qualifying Dispositions.....	5-25
[5.39]	3. Pourover Trusts	5-25
[5.40]	4. Limitation on Probate of a Will and Recovery of Real Property	5-25
[5.41]	D. Identifying the Devisees: Class Disposition and Disqualification	5-26
[5.42]	1. Adopted and Posthumous Children.....	5-26
[5.43]	2. Relatives of the Half Blood and Nonmaritals	5-26
[5.44]	3. Disqualification of or Bar to Right to Take ...	5-27
[5.45]	a. Election to Take Dower.....	5-27
[5.46]	b. Disqualification of Spouse	5-27
[5.47]	c. Disposition to Attesting Witness	5-28
[5.48]	d. Killing of Decedent	5-28
[5.49]	e. Renunciation.....	5-28
[5.50]	f. Partnerships, Corporations, Unincorporated Associations.....	5-29
[5.51]	g. Aliens.....	5-29
[5.52]	E. Quality of Title of Devisees	5-29
[5.53]	1. Vesting of Title	5-29
[5.54]	2. Existing Liens and Encumbrances; Debts and Claims.....	5-30
[5.55]	F. Challenges to the Devise.....	5-31
[5.56]	1. Right of Election of Surviving Spouse.....	5-31
[5.57]	2. Right of After-born Children	5-33
[5.58]	3. Right to Contest a Charitable Testamentary Disposition	5-34
[5.59]	V. Judicial Proceedings.....	5-34
[5.60]	A. Overview of Process Papers and Proceedings	5-36
[5.61]	1. Petition	5-36
[5.62]	2. Citation.....	5-36
[5.63]	3. Service.....	5-37
[5.64]	4. Trial of Issues.....	5-37
[5.65]	5. Decrees and Orders	5-37
[5.66]	6. Qualification of Fiduciary	5-37

[5.67]	B. Accounting	5-38
[5.68]	C. Transfer Tax Proceedings.....	5-38
[5.69]	1. Death on or before May 25, 1990	5-38
[5.70]	2. Death after May 25, 1990.....	5-40
[5.71]	D. Probate of Wills.....	5-40
[5.72]	1. Persons Entitled to Probate	5-41
[5.73]	2. Petition for Probate.....	5-41
[5.74]	3. Service.....	5-42
[5.75]	4. Notice to Persons not Served or Appearing ...	5-42
[5.76]	5. Letters Testamentary	5-42
[5.77]	6. Letters of Administration With Will Annexed	5-43
[5.78]	7. Foreign Estates	5-43
[5.79]	a. Probate	5-44
[5.80]	b. Original Probate of Foreign Will.....	5-45
[5.81]	c. Ancillary Administration.....	5-46
[5.82]	E. Administration of Intestate Estates	5-46
[5.83]	1. Petition for Letters.....	5-47
[5.84]	2. Service.....	5-47
[5.85]	3. Notice to Persons not Served or Appearing ...	5-47
[5.86]	4. Probate of Heirship.....	5-47
[5.87]	5. Order for Sale of Real Property.....	5-48
[5.88]	6. Estate of a Foreign Intestate	5-48
[5.89]	F. Other Title Considerations	5-49
[5.90]	1. Effect of Decree—Limitations	5-49
[5.91]	2. Determination of Decedent’s Title.....	5-49
[5.92]	3. Estate and Inheritance Taxes.....	5-50
[5.93]	a. New York Estate Tax	5-51
[5.94]	b. Federal Estate Tax	5-51
[5.95]	c. Final Accounting	5-52
[5.96]	d. Order for Sale	5-52
[5.97]	e. Institutional Fiduciary.....	5-52
[5.98]	f. Escrow	5-52
[5.99]	VI. Claims Against the Estate.....	5-52
[5.100]	A. Funeral and Administration Expenses.....	5-53
[5.101]	B. Debts of the Decedent	5-54
[5.102]	C. Inheritance and Transfer Taxes (Estate Taxes).....	5-54
[5.103]	1. New York Transfer Tax	5-54
[5.104]	2. Federal Estate Tax.....	5-54
[5.105]	3. Unified Credit.....	5-55
[5.106]	4. Joint Tenancy and Tenancy by the Entirety ...	5-55
[5.107]	D. Legacies.....	5-56

[5.108]	E. Property Available for Payment of Claims	5-57
[5.109]	F. Accounting	5-57
[5.110]	G. Limitations on Claims and Other Title Considerations.....	5-58
[5.111]	1. Limitations on General Claims	5-58
[5.112]	2. Limitations on Legacies	5-59
[5.113]	3. Limitations on Tax Liens	5-59
[5.114]	4. General Limitations.....	5-59
[5.115]	VII. General Powers of Disposition by a Fiduciary.....	5-60
[5.116]	A. Order for Sale	5-61
[5.117]	B. Accounting	5-62
[5.118]	C. Other Title Considerations	5-63
[5.119]	1. Fiduciary's Power to Sell.....	5-63
[5.120]	2. Extinguishment of Fiduciary's Power to Sell.....	5-63
[5.121]	3. History of Fiduciary's Powers	5-64
Appendix A	Table of Descent and Distribution of Real Property Immediately Prior to Sept. 1, 1930	5-67
Appendix B	Table of Descent and Distribution of Real Property Prior to March 1, 1964	5-71
Appendix C	Table of Descent and Distribution of Real Property After March 1, 1964, But Prior to Sept. 1, 1992.....	5-75
Appendix D	Table of Descent and Distribution of Real Property on or After Sept. 1, 1992	5-81
Appendix E	Title Insurance Company Affidavit of Heirship	5-85

CHAPTER 6 REAL ESTATE DESCRIPTIONS, PLOTTINGS, SURVEYS AND MAPS

Owen F. Mangan, Esq.

John G. Hall, Esq.

PART I

[6.0]	I. Introduction	6-1
[6.1]	II. Contract Provisions Pertaining to Surveys.....	6-1
[6.2]	III. Unmarketable and Uninsurable Title Relative to Survey Encroachments	6-3
[6.3]	IV. Statutory Provisions Affecting Encroachments	6-4
[6.4]	V. Liability of Surveyors and Title Insurers	6-4
[6.5]	VI. Locating an Old Survey or Ordering a New One.....	6-6
[6.6]	VII. Standards for Surveyors	6-6

PART II

[6.7] I. Introduction 6-7
[6.8] II. Descriptive Aids 6-7
[6.9] III. Legal Descriptions..... 6-8
[6.10] A. Types of Legal Descriptions 6-9
[6.11] B. Common Elements 6-10
[6.12] C. Permanent Reference Points..... 6-10
[6.13] IV. Metes and Bounds Method of Describing Real Estate 6-14
[6.14] A. Use..... 6-14
[6.15] B. Definitions 6-15
[6.16] C. Measurement 6-16
[6.17] 1. Angular Lines 6-16
[6.18] 2. Curved Lines 6-18
[6.19] V. Plat Method of Describing Real Estate 6-18
[6.20] A. Lot and Block as the Basic Units 6-18
[6.21] B. Fractionalized Platted Property 6-19
[6.22] VI. General Advice Concerning Surveys and Legal Descriptions..... 6-20
Index to Appendices A–H..... 6-23

CHAPTER 7 DEEDS

John J. Yanas, Esq.

Gary S. Litke, Esq.

Revised by Jean M. Partridge, Esq.

[7.0] I. Definition..... 7-1
[7.1] II. Form of Deed..... 7-1
[7.2] A. Basic Requisites 7-1
[7.3] B. Principal Differences in Deeds..... 7-2
[7.4] III. Parts of a Deed 7-3
[7.5] A. Formal Parts 7-3
[7.6] 1. Dates..... 7-3
[7.7] 2. Parties 7-5
[7.8] 3. Description of Property 7-7
[7.9] 4. Habendum and Granting Clauses 7-7
[7.10] 5. Execution..... 7-8
[7.11] 6. Acknowledgment 7-9
[7.12] B. Other Deed Provisions 7-11
[7.13] 1. Consideration 7-11
[7.14] 2. Exceptions and Reservations..... 7-12
[7.15] a. Generally 7-12
[7.16] b. Reservation of Power of Appointment 7-13

[7.17]	3.	“Subject to” Clauses.....	7-15
[7.18]	4.	“Same as” Clause	7-15
[7.19]	5.	Recital of Heirship or Survivorship	7-16
[7.20]	6.	Trust Clause	7-16
[7.21]	7.	Restrictive Covenants.....	7-17
[7.22]	IV.	Correction or Confirmatory Deed	7-18
[7.23]	V.	Patents	7-19
[7.24]	VI.	Delivery and Acceptance	7-20
[7.25]	A.	To Convey Title	7-20
[7.26]	1.	Unconditional or Absolute Delivery by Grantor	7-20
[7.27]	2.	Delivery to a Third Person	7-21
[7.28]	3.	Conditional Delivery by Grantor to Grantee..	7-22
[7.29]	4.	Intent to Convey	7-22
[7.30]	5.	Acceptance	7-23
[7.31]	B.	Recording	7-23
[7.32]	VII.	Other Forms for Voluntary Conveyance	7-24
[7.33]	A.	Life Estates.....	7-25
[7.34]	B.	Remainders.....	7-25
[7.35]	C.	Reversions	7-26
[7.36]	D.	Possibility of Reverter.....	7-26
[7.37]	E.	Right of Reacquisition.....	7-27
[7.38]	F.	Easements.....	7-28
Appendix A Composite Deed Form Showing Comparison of Deed Clauses and Forms			7-29
Appendix B Acknowledgments.....			7-37

CHAPTER 8 MORTGAGES

Lester M. Bliwise, Esq.

James M. Pedowitz, Esq.

Revised by Lester M. Bliwise, Esq. and

Daniel J. Evans, Esq.

[8.0]	I.	Introduction—The Mortgage	8-1
[8.1]	A.	Creation of a Lien; Equitable Mortgages	8-1
[8.2]	1.	Deeds.....	8-2
[8.3]	2.	Sale-Leaseback Transactions	8-2
[8.4]	3.	Installment Sale Contracts.....	8-3
[8.5]	B.	Obligations	8-3
[8.6]	1.	Priority of Future Mortgage Advances Under Common Law	8-3
[8.7]	2.	“Credit Line Mortgages”	8-4
[8.8]	3.	Dragnet Clause	8-6

[8.9]	II.	Properties and Interests That Can Be Mortgaged.....	8-7
[8.10]	III.	Types of Mortgages.....	8-9
[8.11]		A. Purchase Money Mortgages	8-9
[8.12]		B. Leasehold Mortgages	8-10
[8.13]		C. Building Loan Mortgages.....	8-11
[8.14]		D. Wraparound Mortgages.....	8-12
[8.15]		E. Predatory (“High-Cost”) Loans.....	8-14
[8.16]		F. Alternative Mortgage Instruments (AMIs)	8-15
[8.17]		G. Reverse Mortgages.....	8-17
[8.18]		H. Participating and Convertible Mortgages.....	8-18
[8.19]	IV.	Mechanics: Execution, Delivery And Recording.....	8-20
[8.20]		A. Execution.....	8-20
[8.21]		B. Delivery and Acceptance	8-21
[8.22]		C. Recording Requirements	8-21
[8.23]		1. Sufficiency of Legal Description	8-23
[8.24]		2. Effect of Recording	8-24
[8.25]		3. Building Loan Mortgages and Building Loan Contracts.....	8-26
[8.26]		4. Effect of Trust Fund Violations and Failure to File Notice of Lending	8-27
[8.27]		D. Home Equity Theft Protection Act.....	8-28
[8.28]		E. Mortgage Recording Tax	8-30
[8.29]		1. Imposition.....	8-30
[8.30]		a. Calculating the Tax.....	8-31
[8.31]		b. New York State Provisions.....	8-31
[8.32]		c. Series Mortgages	8-33
[8.33]		d. Consequences of Nonpayment	8-34
[8.34]		d. Apportioning Property Located in Multiple Tax Districts	8-34
[8.35]	V.	Agreements Respecting the Mortgage	8-35
[8.36]		A. Extension and Modification Agreements.....	8-35
[8.37]		B. Consolidation Agreements	8-36
[8.38]		C. Splitter and Spreader Agreements.....	8-37
[8.39]		D. Subordinations.....	8-38
[8.40]		E. Renewals	8-39
[8.41]		F. Oral Waivers	8-40
[8.42]	VI.	Mortgage Assignments.....	8-41
[8.43]		A. Instrument of Assignment	8-41
[8.44]		B. Notice	8-43
[8.45]		C. Outright vs. Collateral Assignment.....	8-43
[8.46]		D. Assignee Assurances	8-44

[8.47]	E. Assignment of Mortgage Without Payment of Additional Recording Tax.....	8-45
[8.48]	F. MERS.....	8-48
[8.49]	VII. Releases, Satisfactions, Discharges and Extinguishment.....	8-49
[8.50]	A. Partial Release.....	8-50
[8.51]	B. Requirements for Release	8-51
[8.52]	C. Satisfaction or Discharge of Mortgage	8-51
[8.53]	D. Extinguishment of Mortgage.....	8-52
[8.54]	VIII. Special Title Considerations.....	8-53
[8.55]	A. Transfer of Mortgaged Property—Personal and Property Liability; Assumptions	8-53
[8.56]	B. Due-on-Sale Clauses	8-54
[8.57]	C. Usury	8-56
[8.58]	D. Participations.....	8-59
[8.59]	E. Capital Markets Loans	8-61

CHAPTER 9 LIENS AND RESTRICTIVE COVENANTS

Melvyn Mitzner, Esq.

Revised by Vincent G. Danzi, Esq.

[9.0]	I. Overview	9-1
[9.1]	II. Liens	9-2
[9.2]	A. General Liens	9-3
[9.3]	1. Money Judgment Liens	9-3
[9.4]	a. Effective Period	9-3
[9.5]	b. Judgment Lien Versus Personal Liability (Differing Effective Periods, Partial Release, Bankruptcy).....	9-4
[9.6]	c. State Tax Warrants	9-5
[9.7]	d. Homestead Property Exempt From Lien of Money Judgment	9-6
[9.8]	e. Effect of Real Property Transfer	9-9
[9.9]	f. Judicial Sales	9-9
[9.10]	g. Sheriff's Execution	9-10
[9.11]	h. Release or Termination of Lien.....	9-12
[9.12]	2. Estate Tax Liens	9-13
[9.13]	a. Federal Liens	9-16
[9.14]	b. New York State Liens	9-16
[9.15]	3. Federal Tax Liens.....	9-18
[9.16]	a. Notice of Lien.....	9-18
[9.17]	b. Right of Redemption	9-19
[9.18]	c. Disposition of Federal Tax Liens	9-20

[9.19]	4. Environmental and Other Federal Liens	9-20
[9.20]	5. Federal Judgments.....	9-21
[9.21]	6. New York State Franchise Tax and New York City Business Corporation Tax	9-22
[9.22]	B. Specific Liens and Miscellaneous Taxes	9-24
[9.23]	1. Mechanics' Liens	9-24
[9.24]	a. Filing and Service Requirements.....	9-26
[9.25]	b. Contents of a Notice of a Mechanic's Lien	9-27
[9.26]	c. Disposition of a Mechanic's Lien.....	9-28
[9.27]	2. Real Estate Broker's Lien	9-30
[9.28]	3. New York City Liens	9-31
[9.29]	a. Emergency Repair Lien	9-31
[9.30]	b. Relocation Lien.....	9-32
[9.31]	c. Pest Control Lien	9-33
[9.32]	d. Housing Violations and Civil Penalty Lien	9-33
[9.33]	e. Canopy Lien	9-33
[9.34]	f. Parking Violations	9-33
[9.35]	g. Leaking Tap Lien.....	9-34
[9.36]	h. Vault Tax Lien.....	9-34
[9.37]	i. Building Inspection Fees Lien.....	9-34
[9.38]	j. Sidewalk Repair Lien	9-35
[9.39]	k. Environmental Control Board Liens.....	9-35
[9.40]	l. New York City Taxi and Limousine Commission Judgments.....	9-36
[9.41]	m. New York City Hazardous Substances Emergency Response Liens.....	9-36
[9.42]	n. Transit Adjudication Bureau Judgments ..	9-37
[9.43]	o. Wharf, Waterfront, Pier, Bulkhead, Platform, Driftwood Liens.....	9-37
[9.44]	p. Department of Health Liens	9-38
[9.45]	q. Tenant Harassment Lien.....	9-38
[9.46]	r. Fire Department Inspection Fee Lien	9-38
[9.47]	4. Vendee's Liens	9-39
[9.48]	5. Vendor's Liens	9-40
[9.49]	6. Equitable Lien for a Judicially Decreed Debt	9-40
[9.50]	7. Medical Assistance Lien	9-41
[9.51]	8. Real Property Tax Liens.....	9-42
[9.52]	9. Attachment	9-42
[9.53]	10. Surety Bail Bond Liens (Criminal)	9-44

[9.54]	11. Mental Hygiene Law Lien	9-44
[9.55]	12. Public Health Lien.....	9-44
[9.56]	13. Oil Spill Lien (Environmental Lien)	9-45
[9.57]	14. Inactive Hazardous Waste Disposal Site Registry Index	9-46
[9.58]	15. Condominium Common Charge Lien.....	9-47
[9.59]	16. Homeowners Association Liens.....	9-47
[9.60]	17. Liens Against Cooperative Apartment Interests	9-48
[9.61]	18. Fixtures	9-49
[9.62]	19. Oil and Gas Charge Lien.....	9-51
[9.63]	20. Social Services Department Judgments	9-51
[9.64]	21. Vehicle and Traffic Law Liens (Judgments) Outside of New York City	9-52
[9.65]	22. Metropolitan Transit Authority Liens	9-52
[9.66]	23. Child Support Liens	9-52
[9.67]	24. Public Health Law Lien	9-53
[9.68]	III. Restrictive Covenants.....	9-53
[9.69]	A. “Real” Covenants and “Personal” Covenants	9-55
[9.70]	B. Affirmative Covenants	9-56
[9.71]	C. Negative Covenants	9-56
[9.72]	D. Enforcement and Duration of Covenants.....	9-58
[9.73]	1. Enforcement	9-58
[9.74]	2. Termination.....	9-58
[9.75]	E. Statutory Provisions Applicable to Enforcement of Covenants and Conditions	9-59

CHAPTER 10 PROCEEDINGS TO SELL, MORTGAGE OR LEASE

Bernard H. Goldstein, Esq.

Harris N. Cogan, Esq.

Albert E. Yorio, Esq.

Revised by Arthur G. Jackoby, Esq.

[10.0]	I. Disposition of Real Property of an Infant	10-1
[10.1]	A. Disposition in Surrogate’s Court.....	10-2
[10.2]	B. Disposition in Supreme and County Courts.....	10-3
[10.3]	II. Disposition of Real Property of an Incapacitated (Incompetent) Person	10-6
[10.4]	III. Fiduciaries	10-7
[10.5]	A. Disposition by Trustees.....	10-7
[10.6]	B. Disposition by Other Than Trustees	10-9

[10.7]	IV. Religious Corporations; Not-For-Profit Corporations	10-10
[10.8]	V. Life Tenants.....	10-12
[10.9]	VI. Special Situations	10-13
[10.10]	VII. Conclusion.....	10-14

CHAPTER 11 CONTRACTS OF SALE

James M. Pedowitz, Esq.

Revised by Karl B. Holtzschue, Esq.

[11.0]	I. Definition.....	11-1
[11.1]	II. Form and Execution of Contract	11-1
[11.2]	III. Binders.....	11-4
[11.3]	IV. Contract Forms and Practices.....	11-6
[11.4]	V. Escrow of Down Payment.....	11-7
[11.5]	VI. Risk of Loss	11-8
[11.6]	VII. Financing (Mortgage Commitment Contingency)	11-9
[11.7]	A. Mortgage Commitment Contingency	11-9
[11.8]	B. Existing Mortgage.....	11-10
[11.9]	C. Purchase Money Mortgage by Seller	11-10
[11.10]	VIII. Condition “As Is”; Property Condition Disclosure Act	11-10
[11.11]	IX. Form of Deed, Permitted Exceptions, Survey, and Insurable Title.....	11-13
[11.12]	X. Closing Provisions.....	11-14
[11.13]	XI. Time of the Essence	11-15
[11.14]	XII. Transfer and Recording Taxes	11-15
[11.15]	XIII. Effect On Title.....	11-16
[11.16]	XIV. Enforceability—Action for Specific Performance	11-17
[11.17]	XV. Equitable Liens Created	11-18
[11.18]	XVI. Implied Covenant of Good Faith.....	11-19
[11.19]	XVII. Assignability	11-20
[11.20]	XVIII. Acknowledgment	11-20
[11.21]	XIX. Recording Requirements	11-20
[11.22]	XX. Effect of Recording a Contract Of Sale.....	11-24
[11.23]	XXI. Mortgageability	11-25
[11.24]	XXII. Installment Contracts and Possession By Contract Vendee	11-25
[11.25]	XXIII. Home Equity Theft Act.....	11-27

CHAPTER 12 TAX TITLES

John E. Blyth, Esq.

Revised by Lance R. Pomerantz, Esq.

[12.0]	I.	Introduction	12-1
[12.1]	II.	Types of Tax Enforcement Proceedings	12-2
[12.2]	III.	Local Enforcement Options	12-4
[12.3]	IV.	Summary of the Statewide In Rem Procedure	12-7
[12.4]	A.	Filing	12-7
[12.5]	B.	Publication.....	12-9
[12.6]	C.	Service of Notice of Petition.....	12-9
[12.7]	D.	Notice of Arrears.....	12-10
[12.8]	E.	Redemption	12-11
[12.9]	F.	Costs of Tax Searches and Legal Fees.....	12-12
[12.10]	G.	Bankruptcy Proceedings.....	12-12
[12.11]	H.	Trial	12-13
[12.12]	I.	Default Judgment	12-13
[12.13]	V.	Effect of Mennonite on In Rem Actions	12-14
[12.14]	A.	Mennonite Rule.....	12-15
[12.15]	B.	Statutory Notice Requirements	12-20
[12.16]	C.	Application of Case Law to the Statutory Requirements.....	12-22
[12.17]	1.	Current Owners of Affected Real Property....	12-23
[12.18]	2.	Any Person with Publicly Recorded Interest .	12-24
[12.19]	3.	Other Persons Who Have Filed Declaration of Interest That Has Not Expired	12-27
[12.20]	a.	Declaration/Registration/Notice by Request in New York City	12-28
[12.21]	b.	Release of Parcels from Tax Foreclosure.	12-30
[12.22]	4.	Retroactive Application of Mennonite.....	12-32
[12.23]	5.	Potential Matters for Litigation.....	12-32
[12.24]	6.	Adequacy of Notice of Pendency; List of Delinquent Taxes	12-34
[12.25]	VI.	Summary of the State “As an Action to Foreclosure a Mortgage” Procedure.....	12-35
[12.26]	VII.	Nature and Effect of Tax Titles.....	12-36
[12.27]	A.	New Title Free and Clear	12-36
[12.28]	B.	New Title Free and Clear but Subject To.....	12-38
[12.29]	VIII.	Irregularities and Jurisdictional Defects in Tax Titles.....	12-40
[12.30]	A.	Curative Statutes (Presumptions of Regularity) and Statutes of Limitation	12-41
[12.31]	B.	Other Kinds of Curative Actions.....	12-45

[12.32]	C.	Examples of Irregularities and Jurisdictional Defects.....	12-45
[12.33]	1.	Bankruptcy	12-45
[12.34]	2.	Prepublication Defects	12-45
[12.35]	3.	Notice-Type Defects	12-46
[12.36]	a.	Errors in Name.....	12-46
[12.37]	b.	Errors in Description	12-46
[12.38]	4.	Failure to Notify Persons Statutorily Entitled to Notice	12-48
[12.39]	5.	Errors in Publication.....	12-49
[12.40]	6.	Errors in Posting.....	12-49
[12.41]	7.	Errors in Mailing and Address	12-49
[12.42]	8.	Defects in Redemption	12-50
[12.43]	9.	Improper Grantee	12-51
[12.44]	10.	Noncompetitive Bids.....	12-52
[12.45]	IX.	Federal Considerations	12-52
[12.46]	A.	The “Federal Foreclosure Bar”	12-52
[12.47]	X.	Role of Title Insurance	12-54
[12.48]	XI.	Hardships Caused by Strict Adherence to Statutory Requirements.....	12-55

CHAPTER 13 MORTGAGE FORCLOSURES AND OTHER ACTIONS AFFECTING TITLE

H. Jackson Silcocks, Esq.

James M. Pedowitz, Esq.

Bruce J. Bergman, Esq.

Revised by Jackie Halpern Weinstein, Esq.

[13.0]	I.	Overview	13-1
[13.1]	II.	<i>Lis Pendens</i>	13-1
[13.2]	A.	Filing Requirements	13-1
[13.3]	B.	Contents.....	13-2
[13.4]	C.	Service of Summons.....	13-2
[13.5]	D.	Effective Period.....	13-3
[13.6]	E.	Cancellation or Termination.....	13-3
[13.7]	F.	Who May File.....	13-5
[13.8]	III.	Mortgage Foreclosures	13-7
[13.9]	A.	Foreclosure by Action	13-8
[13.10]	1.	Commencement of Action	13-8
[13.11]	a.	90-Day Notice for Home Loans	13-8
[13.12]	b.	Default Notice/Breach Letter as Required by a Mortgage	13-10
[13.13]	c.	Commencing Action.....	13-12

[13.14]	d.	Help for Homeowners in Foreclosure	13-12
[13.15]	2.	Statute of Limitations	13-13
[13.16]	3.	Necessary Parties	13-14
[13.17]	4.	Summons.....	13-16
[13.18]	5.	The Complaint.....	13-17
[13.19]	6.	Certificate of Merit.....	13-21
[13.20]	7.	The Receiver	13-21
[13.21]	8.	Reference to Compute.....	13-24
[13.22]	9.	Judgment of Foreclosure and Sale	13-27
[13.23]	10.	Sale.....	13-29
[13.24]	a.	Notice of Sale	13-30
[13.25]	b.	Terms of Sale.....	13-31
[13.26]	c.	Conduct of Sale	13-32
[13.27]	11.	Reforeclosure and Strict Foreclosure ...	13-33
[13.28]	12.	Transfer Taxes.....	13-34
[13.29]	13.	Writ of Assistance	13-35
[13.30]	14.	Report of Sale and Surplus Money Proceedings	13-35
[13.31]	B.	Federal Foreclosure—Multifamily.....	13-36
[13.32]	C.	Federal Foreclosure—Single Family	13-37
[13.33]	IV.	Partition	13-37
[13.34]	A.	Purpose.....	13-37
[13.35]	B.	Who May Bring Action.....	13-38
[13.36]	C.	Necessary Parties.....	13-39
[13.37]	D.	Additional Parties.....	13-40
[13.38]	E.	Procedural Requirements	13-41
[13.39]	F.	Entry of Judgment	13-42
[13.40]	V.	Sheriff’s Sales	13-44
[13.41]	A.	Money Judgments	13-44
[13.42]	1.	Satisfaction of Docketing Requirement	13-45
[13.43]	2.	Creditors’ Rights	13-46
[13.44]	3.	Effective Period of Lien and Judgment.	13-47
[13.45]	4.	Exemptions.....	13-48
[13.46]	B.	Execution.....	13-49
[13.47]	C.	Sale of Real Property.....	13-50
[13.48]	1.	Notice	13-50
[13.49]	2.	Delivery of Execution	13-52
[13.50]	3.	Purchaser’s Rights.....	13-53
[13.51]	4.	Distribution of Sale Proceeds.....	13-53
[13.52]	5.	Enforcement	13-54
[13.53]	VI.	Curative Actions Under RPAPL Article 15	13-55

[13.54]	A. Commencement of Action	13-55
[13.55]	B. Necessary Parties.....	13-58
[13.56]	C. Contents of Complaint and Answer	13-58
[13.57]	D. Judgment	13-59

CHAPTER 14 CIVIL AND CRIMINAL FORFEITURE

James M. Pedowitz, Esq.

Revised by Alfred C. Tartaglia, Esq.

[14.0]	I. Introduction	14-1
[14.1]	II. Statutes	14-2
[14.2]	A. Federal.....	14-2
[14.3]	B. New York State	14-4
[14.4]	C. Local.....	14-5
[14.5]	III. Innocent Owner Defense	14-6
[14.6]	A. Federal Innocent Owner.....	14-6
[14.7]	B. State Noncriminal Defendant	14-9
[14.8]	IV. Federal Relation-back Doctrine.....	14-10
[14.9]	V. Perfecting Title Acquired By Forfeiture	14-11
[14.10]	A. Federal Procedure.....	14-11
[14.11]	B. New York State Procedure	14-14
[14.12]	VI. Caveats For Purchasers, Mortgagees, Landlords and Lessees.....	14-17
[14.13]	A. Mortgagor/Mortgagee	14-17
[14.14]	1. Notice Requirements	14-17
[14.15]	2. Innocent Owner Defense	14-18
[14.16]	B. Landlord/Lessee	14-20
[14.17]	VII. Disposition Of Forfeited Property	14-20
[14.18]	VIII. Conclusion.....	14-22

CHAPTER 15 BANKRUPTCY

Michael F. Walsh, Esq.

Sharon Youdelman, Esq.

Julie T. Friedman, Esq.

Revised by Michael P. Sasso, Esq.

[15.0]	I. Introduction	15-1
[15.1]	A. Commencement of Case Under Bankruptcy Code	15-5
[15.2]	1. Voluntary Cases	15-9
[15.3]	2. Involuntary Cases	15-9
[15.4]	3. Creation of Debtor's Estate	15-12
[15.5]	B. Bankruptcy Code Provisions Regarding Real Estate	15-12

[15.6]	1. Liquidation Cases.....	15-13
[15.7]	2. Reorganization and Readjustment Cases	15-13
[15.8]	C. Property of the Debtor’s Estate	15-15
[15.9]	1. Relevance of Non-Bankruptcy Law.....	15-16
[15.10]	2. Types of Debtor Interests	15-17
[15.11]	3. Unenforceability of Restrictions on Transfers of Property from Debtor to Estate.....	15-17
[15.12]	4. Turnover of Property to Trustee.....	15-18
[15.13]	5. Trustee’s Avoiding Powers	15-19
[15.14]	a. Strong-Arm Powers	15-19
[15.15]	b. Avoidance of Judgment Liens	15-20
[15.16]	c. Avoidance of Statutory Liens	15-21
[15.17]	d. Avoidance of Preferential Transfers.....	15-22
[15.18]	e. Avoidance of Fraudulent Transfers	15-27
[15.19]	f. Prepetition Foreclosure Proceedings Avoidable as Preferences	15-29
[15.20]	g. Avoidance of Postpetition Transfers	15-31
[15.21]	h. Recovery of Avoidable Transfers.....	15-32
[15.22]	i. Abandonment	15-34
[15.23]	ii. Unscheduled Property	15-35
[15.24]	D. Notice and a Hearing.....	15-35
[15.25]	II. Use, Sale or Lease of Property During Administration of Bankruptcy Case	15-36
[15.26]	A. Limitations Based on Insolvency, Financial Condition of Debtor or Ipso Facto Bankruptcy Clauses	15-37
[15.27]	B. Ordinary Course of Business	15-38
[15.28]	1. Liquidation Cases.....	15-38
[15.29]	2. Reorganization Cases	15-38
[15.30]	3. Request for Adequate Protection	15-39
[15.31]	a. Scope of Protection.....	15-39
[15.32]	b. Entitlement to Protection.....	15-40
[15.33]	c. Chapter 12 Cases	15-43
[15.34]	d. Adequacy of Protection	15-44
[15.35]	C. Outside Ordinary Course of Business	15-45
[15.36]	1. Procedure.....	15-45
[15.37]	2. Adequate Protection	15-47
[15.38]	D. Use, Sale or Lease of Proceeds or Profits	15-47
[15.39]	1. Cash Collateral	15-47
[15.40]	2. Procedure.....	15-49
[15.41]	3. Adequate Protection	15-51
[15.42]	4. Postpetition Effect of Security Interests.....	15-51

[15.43]	E. Sale of Property Free and Clear of All Liens or Other Interests	15-52
[15.44]	1. Adequate Protection	15-52
[15.45]	2. Additional Requirements.....	15-53
[15.46]	a. Chapter 12.....	15-55
[15.47]	b. Dower and Curtesy	15-55
[15.48]	c. Interests of Co-owners.....	15-55
[15.49]	3. Contractual and Other Prohibitions on Transfers	15-56
[15.50]	4. Procedure.....	15-57
[15.51]	a. Notice.....	15-57
[15.52]	b. Co-owner's Right to Purchase at Sale	15-57
[15.53]	c. Application of Secured Debt to Purchase Price Bids.....	15-58
[15.54]	d. Distribution to Co-owners	15-58
[15.55]	5. Avoidance of Successor Liability	15-58
[15.56]	6. Effect of Sale.....	15-60
[15.57]	a. Appeal from Order Authorizing Sale	15-60
[15.58]	b. Revocation of Sale if Competitive Bidding Chilled by Agreement Among Bidders.....	15-61
[15.59]	7. Exemptions.....	15-61
[15.60]	III. Recovery of Real Property After Commencement of Bankruptcy Case.....	15-63
[15.61]	A. Automatic Stay	15-64
[15.62]	B. Exceptions to Automatic Stay	15-67
[15.63]	C. Relief from the Stay	15-68
[15.64]	1. General Grounds for Relief	15-68
[15.65]	2. Single Asset Real Estate Cases	15-72
[15.66]	3. Procedure.....	15-73
[15.67]	IV. Postpetition Liens on Real Property	15-75
[15.68]	A. Priming Liens and Adequate Protection.....	15-76
[15.69]	B. Cross-Collateralization.....	15-78
[15.70]	C. Roll-ups	15-79
[15.71]	D. Releases from Causes of Action.....	15-79
[15.72]	E. Drop-Dead Clauses	15-80
[15.73]	F. Protection Against Reversal on Appeal	15-80
[15.74]	V. Leases and Executory Contracts.....	15-80
[15.75]	A. Procedure.....	15-82
[15.76]	B. Assumption of Executory Contracts	15-86
[15.77]	C. Assignment of Executory Contracts.....	15-89
[15.78]	D. Rejection of Executory Contracts	15-91

[15.79]	VI. Plan of Reorganization Under Chapter 11	15-96
[15.80]	A. Confirmation of Chapter 11 Plan	15-100
[15.81]	1. Unimpaired Classes.....	15-101
[15.82]	2. Requirements for Confirmation	15-102
[15.83]	a. Best Interests and Feasibility Tests	15-102
[15.84]	b. Fair and Equitable Test for Unsecured Creditors	15-103
[15.85]	c. Absolute Priority Rule.....	15-103
[15.86]	d. New Value Exception.....	15-104
[15.87]	e. Miscellaneous Requirements.....	15-105
[15.88]	3. Fair and Equitable Test for Secured Creditors	15-105
[15.89]	a. Valuation of Collateral	15-106
[15.90]	b. Indubitable Equivalent Test.....	15-107
[15.91]	c. Interest Rate Payable to Creditors	15-109
[15.92]	4. Classification of Claims and Interests.....	15-109
[15.93]	a. Substantially Similar Claims	15-109
[15.94]	b. Unsecured Deficiency Claims	15-110
[15.95]	B. Effect of Confirmation of Chapter 11 Plan	15-113
[15.96]	1. Discharge of Debtor	15-114
[15.97]	2. Secured Creditor’s Failure to File Proof of Claim	15-115
[15.98]	3. Exemption from Stamp or Similar Tax	15-117
[15.99]	VII. Overview of Chapter 12 and Chapter 13.....	15-119
[15.100]	VIII. Conclusion.....	15-123

CHAPTER 16 TITLE BY EMINENT DOMAIN

Bernard Sommer, Esq.

Saul R. Fenchel, Esq.

Revised by Michael Rikon, CRE and

Joshua H. Rikon, CRE

[16.0]	I. Who May Condemn	16-1
[16.1]	A. Generally	16-1
[16.2]	B. Scope of Taking for a Public Use	16-2
[16.3]	II. Nature of Eminent Domain Titles	16-3
[16.4]	A. Extinguishment of Infirmities of Title	16-4
[16.5]	B. Limits on Power of Eminent Domain	16-5
[16.6]	C. Rights of Reverter	16-6
[16.7]	III. Marketability of Eminent Domain Titles	16-7
[16.8]	A. Property Acquired for Park Use.....	16-7
[16.9]	B. Remainder Parcels.....	16-8
[16.10]	C. Determination of Statutory Authority for Taking	16-9

[16.11]	IV.	Rights of Underlying Fee Owners.....	16-11
[16.12]	A.	Easement Takings	16-11
[16.13]	B.	Reverter Rights.....	16-12
[16.14]	1.	Generally	16-12
[16.15]	2.	Railroads.....	16-12
[16.16]	V.	Effect Of Sale of Property on Condemnation Claims.....	16-14
[16.17]	VI.	Resolving Conflicting Claims of Ownership of Condemnation Proceeds	16-15

CHAPTER 17 ADVERSE POSSESSION

Adam Leitman Bailey, Esq.

[17.0]	I.	Introduction	17-1
[17.1]	II.	Application of Pre/Post-2008 Laws by Appellate Divisions.....	17-3
[17.2]	A.	The 2008 Adverse Possession Amendments	17-4
[17.3]	III.	Requirements for Adverse Possession Pre-Amendment and Post-Amendment	17-7
[17.4]	A.	In General.....	17-7
[17.5]	B.	Essentials of Adverse Possession Under Written Instrument or Judgment.....	17-7
[17.6]	C.	Essentials of Adverse Possession Under Claim of Title Not Written	17-8
[17.7]	IV.	Traditional Elements to Qualify for Adverse Possession.....	17-9
[17.8]	A.	Open and Notorious Possession	17-10
[17.9]	B.	Exclusive Possession.....	17-11
[17.10]	C.	Continuous Possession	17-12
[17.11]	D.	Hostile Possession Under Claim of Right.....	17-12
[17.12]	E.	Tacking.....	17-14
[17.13]	F.	Color of Title.....	17-15
[17.14]	V.	Tenants in Common	17-16
[17.15]	A.	Determining an Ouster	17-17
[17.16]	VI.	Proof and Pleading of Adverse Possession	17-19
[17.17]	VII.	Disclaimer	17-21
[17.18]	VIII.	Land Under Water	17-21
[17.19]	IX.	Municipal Lands.....	17-22
[17.20]	X.	Streets, Roads and Highways	17-23

VOLUME II

CHAPTER 18 TITLE TO LAND UNDER WATER

James M. Pedowitz, Esq.

Meyer Scheps, Esq.

Revised by Lance R. Pomerantz, Esq.

[18.0]	I.	Overview	18-1
[18.1]	II.	History	18-2
[18.2]	III.	Grants of Lands Under Water by the State	18-4
[18.3]	IV.	Inalienability of Certain City-Owned Lands Under Water	18-6
[18.4]	V.	Colonial Patents and Charters	18-7
[18.5]	VI.	Conditions in State Grants	18-7
[18.6]	VII.	Application for Grant of Land Under Water	18-10
[18.7]	VIII.	Surrender of Grant.....	18-10
[18.8]	IX.	Collateral Attack on Grant	18-10
[18.9]	X.	Extent of Grant—Limitations	18-11
[18.10]	XI.	Navigability and Public Interest.....	18-12
[18.11]	XII.	When Is a Body of Water Navigable?.....	18-13
[18.12]	XIII.	Rights of the United States—Federal Navigational Servitude.....	18-14
[18.13]	XIV.	Bulkhead and Pierhead Lines.....	18-16
[18.14]	XV.	Eminent Domain—Its Exercise over Land Under Water	18-16
[18.15]	XVI.	Riparian Rights in Absence of Grant	18-17
[18.16]	XVII.	Rights of Upland Owner Under State Grant	18-19
[18.17]	XVIII.	Title and Lien Priorities	18-19
[18.18]	XIX.	Filling Operations—Effect on Title	18-20
[18.19]	XX.	Tidal and Freshwater Wetlands— Environmental Laws	18-21
[18.20]	XXI.	Effect of Elements on Riparian Titles.....	18-23
[18.21]	XXII.	Description of Riparian Land.....	18-25

CHAPTER 19 TITLE TO LAND IN BEDS OF STREETS AND HIGHWAYS

Meyer Scheps, Esq.

James M. Pedowitz, Esq.

Revised by Laura E. Ayers, Esq.

[19.0]	I.	History	19-1
[19.1]	II.	Definitions.....	19-4
[19.2]	III.	General Aspects of Title.....	19-4
[19.3]	IV.	Rights in Public and Private Streets	19-6

[19.4]	V.	Manner of Creation of Public Highways.....	19-7
[19.5]	A.	Prescription.....	19-7
[19.6]	B.	Dedication	19-8
[19.7]	C.	Statutory Creation	19-10
[19.8]	VI.	Maps	19-11
[19.9]	A.	Official Maps.....	19-11
[19.10]	B.	Subdivision Maps.....	19-12
[19.11]	C.	Effects on Owner’s Ability to Build	19-14
[19.12]	VII.	Change of Street Grade	19-14
[19.13]	VIII.	Loss of Access.....	19-15
[19.14]	IX.	Street Closings and Abandonments.....	19-15
[19.15]	X.	Private Easements in Public Highways	19-16
[19.16]	XI.	Public Easements in Highways	19-17
[19.17]	XII.	Ownership of Fee in Lands in Streets	19-18
[19.18]	XIII.	Condemnation Procedures.....	19-20
[19.19]	XIV.	Resale or Lease by County and State	19-21
[19.20]	XV.	Street Encroachments	19-22

CHAPTER 20 MINES AND MINERALS

Meyer Scheps, Esq.

James M. Pedowitz, Esq.

Revised by Maureen Garvey, Esq. and

Anthony C. Lee, Esq.

[20.0]	I.	Introduction	20-1
[20.1]	II.	Definitions	20-1
[20.2]	III.	Oil and Gas as Minerals	20-4
[20.3]	IV.	Property Rights in Minerals—Real or Personal?	20-5
[20.4]	V.	Ownership	20-6
[20.5]	A.	Mineral Lands and Minerals	20-6
[20.6]	B.	Oil and Natural Gas.....	20-8
[20.7]	C.	Inferior Estates or Interests; Rights	20-9
[20.8]	D.	Co-tenancy and Joint Ownership	20-10
[20.9]	VI.	Transfer of Estates or Interests in Mines and Minerals.....	20-10
[20.10]	A.	Conveyancing.....	20-10
[20.11]	B.	Options to Purchase.....	20-12
[20.12]	C.	Exceptions and Reservations.....	20-12
[20.13]	VII.	Miscellaneous Rights of Surface and Mineral Owners.....	20-14
[20.14]	VIII.	Mining Leases	20-14
[20.15]	A.	Form and Validity of Mining Leases	20-15
[20.16]	B.	Rules of Construction of Leases.....	20-16

[20.17]	C. Rights of Lessees in Oil and Gas Leases	20-17
[20.18]	D. Implied Provisions of Lease	20-17
[20.19]	E. Sale, Assignment or Sublease of Leasehold	20-18
[20.20]	F. Termination, Forfeiture, Abandonment of Leases	20-18
[20.21]	1. Expiration of Stated Term Leases	20-19
[20.22]	2. Abandonment	20-20
[20.23]	3. Rights Upon Termination or Forfeiture	20-21
[20.24]	IX. Mineral Waters	20-22

CHAPTER 21 TITLE TO RAILROAD PROPERTIES

Meyer Scheps, Esq.

James M. Pedowitz, Esq.

[21.0]	I. Introduction	21-1
[21.1]	II. Statutory History	21-1
[21.2]	III. Incorporation of Railroads	21-1
[21.3]	IV. Acquisitions of Real Property	21-2
[21.4]	A. Powers of Railroad Corporations	21-2
[21.5]	B. Statutory Condemnation.....	21-3
[21.6]	C. Adverse Use	21-5
[21.7]	V. Nature and Quality of Title Acquired by Condemnation	21-6
[21.8]	VI. Quality of Title Acquired by Conveyance	21-10
[21.9]	VII. Entitlement to Adjacent Lands Under Water or to Riparian Rights.....	21-13
[21.10]	VIII. Effect of Abandonment on Title.....	21-15

CHAPTER 22 AIRSPACE AND DEVELOPMENT RIGHTS

James M. Pedowitz, Esq.

Revised by Michael J. Berey, Esq. and

Caroline G. Harris, Esq.

[22.0]	I. Overview	22-1
[22.1]	II. Airspace.....	22-2
[22.2]	A. Support and Access	22-2
[22.3]	B. Methods of Connecting Airspace to the Surface...	22-3
[22.4]	C. Special Problems	22-3
[22.5]	D. Descriptions.....	22-4
[22.6]	E. Airspace Over Railroads	22-5
[22.7]	F. Airspace Over Streets and Highways.....	22-6
[22.8]	G. Airspace Over Buildings in Cooperative or Condominium Ownership	22-8

[22.9]	III.	Transferable Development Rights—Suffolk County Farmland.....	22-10
[22.10]	IV.	Transferable Development Rights—Suffolk County Pine Barrens	22-12
[22.11]	V.	Zoning Lot Mergers and Development Rights Transfers in New York City	22-12
[22.12]	A.	Definition of Floor Area	22-14
[22.13]	B.	Definition of Zoning Lot—Zoning Lot Mergers 1961–1977	22-15
[22.14]	C.	Amendment to ZR—1977 Amended Definition of Zoning Lot.....	22-16
[22.15]	D.	Parties in Interest.....	22-17
[22.16]	1.	Certification of Parties in Interest by a Title Insurance Company.....	22-19
[22.17]	E.	The “Minkin Memo”	22-20
[22.18]	F.	Zoning Lot Development Agreement	22-22
[22.19]	G.	Title Insurance	22-24
[22.20]	H.	Transfer of Development Rights From Landmark Property	22-25
[22.21]	VI.	Special Purpose Districts.....	22-27
[22.22]	A.	Special Midtown District	22-28
[22.23]	B.	East Midtown Subdistrict of the Special Midtown District.....	22-28
[22.24]	C.	South Street Seaport Subdistrict	22-29
[22.25]	D.	Special Hudson Yards District	22-29
[22.26]	E.	Special West Chelsea District	22-30
[22.27]	F.	Theatre Subdistrict	22-31
[22.28]	VII.	Large Scale Developments	22-32
[22.29]	VIII.	Inclusionary Housing	22-33
[22.30]	IX.	City Planning Commission Approval Process	22-33
[22.31]	X.	Decisions of Interest.....	22-34
	Appendix A	Deed Transferring Development Rights to Suffolk County	22-39
	Appendix B	Zoning Lot and Development Agreement.....	22-41
	Appendix C	City of New York Zoning Resolution	22-49
	Appendix D	Declaration of Zoning Restrictions and Accompanying Forms.....	22-53
	Appendix E	New York City Development Rights Endorsement	22-67

CHAPTER 23 MARKETABLE TITLE

James M. Pedowitz, Esq.

Revised by Michael J. Berey

[23.0]	I.	Overview	23-1
[23.1]	II.	Proof of Title	23-4
[23.2]	III.	Defects and Encumbrances	23-6
[23.3]	A.	Defects.....	23-6
[23.4]	B.	Encumbrances	23-12
[23.5]	1.	Easements.....	23-14
[23.6]	2.	Restrictive Covenants.....	23-15
[23.7]	3.	Survey Encroachments.....	23-17
[23.8]	4.	Tax Titles	23-20
[23.9]	IV.	Reasonable Expectations and Insurable Title.....	23-23
[23.10]	V.	Statutory Remedies	23-25
[23.11]	VI.	TIRSA Owner Extended Protection Policy (for a One-to-Four Family Residence) (TOEPP).....	23-32
[23.12]	VII.	Conclusion.....	23-33

CHAPTER 24 CONDOMINIUMS, COOPERATIVES, AND HOMEOWNERS' ASSOCIATIONS

David S. Fitzhenry, Esq.

Jason A. Ganfer, Esq.

[24.0]	I.	Introduction	24-1
[24.1]	II.	Condominiums	24-2
[24.2]	A.	Title Insurance	24-2
[24.3]	B.	The Condominium Act.....	24-3
[24.4]	1.	Declaration of Condominium.....	24-3
[24.5]	2.	Condominium By-Laws	24-4
[24.6]	3.	Submission of Property to a Condominium Regime	24-5
[24.7]	4.	Recording Requirements	24-6
[24.8]	5.	Conveyances of a Condominium Unit	24-7
[24.9]	6.	Blanket Mortgages and Other Blanket Liens Affecting a Unit at Time of First Conveyance	24-8
[24.10]	7.	Mortgage Recording Tax Credit	24-8
[24.11]	8.	Liens Against Common Elements and Condominium Units	24-9
[24.12]	9.	Condominium Lien for Common Charges.....	24-10
[24.13]	10.	Borrowing by a Condominium's Board of Managers	24-12

[24.14]	11. Separate Assessment of Property Taxes for Condominium Units	24-13
[24.15]	12. Withdrawal from the Provisions of the Condominium Act	24-14
[24.16]	C. Miscellaneous Issues Affecting Condominiums ...	24-14
[24.17]	1. Condominiums as Unincorporated Entities....	24-14
[24.18]	2. A Condominium Board’s Right of First Refusal.....	24-14
[24.19]	3. Restrictions and Prohibitions	24-15
[24.20]	4. Common Expense Allocations in Commercial and Mixed-Use Condominiums	24-15
[24.21]	5. Condominium Within a Condominium.....	24-16
[24.22]	III. Cooperatives.....	24-16
[24.23]	A. Cooperative Corporations	24-16
[24.24]	B. Nature of Ownership Interest in Shares of Stock and Proprietary Lease.....	24-16
[24.25]	C. Character of Interest in Shares of Stock and Proprietary Lease.....	24-17
[24.26]	D. Security Interests Against Shares of Stock and Proprietary Lease.....	24-18
[24.27]	E. Insuring Validity of Proprietary Lease.....	24-18
[24.28]	F. Qualification as Cooperative Housing Corporation.....	24-19
[24.29]	IV. Homeowners’ Associations.....	24-20
[24.30]	A. No Statutory Authority.....	24-20
[24.31]	B. Elements of a Homeowners’ Association	24-20
[24.32]	1. The Homeowners’ Association	24-20
[24.33]	2. Cluster Developments	24-20
[24.34]	3. Covenants, Restrictions, and Easements	24-21
[24.35]	4. Lien of Homeowners’ Association Assessments	24-21
[24.36]	5. Bylaws of a Homeowners’ Association	24-22
[24.37]	C. Miscellaneous Issues Relating to Homeowners’ Associations	24-22
[24.38]	1. Property Survey.....	24-22
[24.39]	2. Mortgages.....	24-22
[24.40]	3. Property Taxes.....	24-22
[24.41]	4. Insuring Validity of Association Structure....	24-23
[24.42]	5. Umbrella Homeowners’ Associations.....	24-23
[24.43]	V. Martin Act	24-23
[24.44]	VI. Transfer Taxes	24-24

CHAPTER 25 COMMERCIAL LEASING

John Busey Wood, Esq.

[25.0]	I.	Introduction	25-1
[25.1]	I.	What Is a Lease?	25-2
[25.2]	II.	Who Is the Landlord and Who Is the Tenant?	25-4
[25.3]	III.	What Is the Leased Premises?	25-5
[25.4]	IV.	Term of the Lease	25-6
[25.5]	V.	Possession or Control	25-8
[25.6]	VI.	Premises	25-9
[25.7]	VII.	Area	25-10
[25.8]	VIII.	Use	25-14
[25.9]	IX.	Demised Premises Appurtenances	25-17
[25.10]	X.	Repairs, Compliance With Laws and Various Other Covenants	25-18
[25.11]	XI.	Condemnation	25-23
[25.12]	XII.	Alterations	25-25
[25.13]	XIII.	Compliance With Laws	25-31
[25.14]	XIV.	Defaults and Conditions of Limitation	25-35
[25.15]	XV.	Re-entry by Landlord	25-40
[25.16]	XVI.	Services	25-42
[25.17]	XVII.	Custom of Dealing and Waivers	25-45
[25.18]	XVIII.	Electricity and Water	25-46
[25.19]	XIX.	Assignment, Mortgaging and Subletting—Alienation of Interests	25-53
[25.20]	XX.	Rentals	25-62
[25.21]	A.	Base Rent	25-62
[25.22]	B.	Escalations	25-64
[25.23]	C.	Other Considerations	25-65
[25.24]	D.	Taxes	25-66
[25.25]	E.	Porters Wage or Penny Wage Formulae	25-70
[25.26]	F.	Operating Expense	25-72
[25.27]	G.	Consumer Price Index	25-76
[25.28]	XXI.	Subordination of Leasehold and Fee Title—Superior Interests	25-77
[25.29]	XXII.	Security Deposits	25-79
[25.30]	XXIII.	Quiet Enjoyment of Title and Possession	25-81
[25.31]	XXIV.	Work Letter	25-82

**CHAPTER 26 TITLE INSURANCE: WHAT EVERY
NEW YORK LAWYER SHOULD KNOW**

James M. Pedowitz, Esq.

Revised by John A. Frates, Esq.

[26.0]	I.	Overview	26-1
[26.1]	A.	New York Insurance Law Article 64 (“Title Insurance Corporations”) Governs Title Insurance in New York State	26-2
[26.2]	B.	Judiciary Law	26-3
[26.3]	C.	Need for Title Insurance.....	26-3
[26.4]	D.	The Title Insurance Process and the Nature of Title Insurance	26-4
[26.5]	E.	Title Insurance Agents	26-6
[26.6]	II.	Disclosures	26-8
[26.7]	A.	Disclosure of Fees and Good Faith Estimates	26-8
[26.8]	B.	Disclosure—Affiliated Persons.....	26-10
[26.9]	III.	Commissions and Rebates Prohibited	26-12
[26.10]	IV.	Insuring Forms	26-13
[26.11]	V.	TIRSA’s Rate Manual	26-14
[26.12]	A.	The Insured.....	26-17
[26.13]	B.	Reduced Premiums.....	26-18
[26.14]	C.	Policy Endorsements—Standard Endorsements ...	26-19
[26.15]	D.	Policy Endorsements—Other	26-19
[26.16]	VI.	Coinsurance and Reinsurance	26-20
[26.17]	VII.	Owner’s Need for Separate Coverage	26-21
[26.18]	VIII.	Analysis of Alta Title Insurance Policies (as Amended for New York)	26-22
[26.19]	A.	Covered Risks	26-22
[26.20]	1.	Covered Risk—Vesting of Title Other Than as Stated in Policy	26-25
[26.21]	2.	Covered Risk—Defect, Lien or Encumbrance on Title	26-26
[26.22]	3.	Covered Risk—Unmarketability of Title.....	26-29
[26.23]	4.	Covered Risk—No Right of Access to and From the Land	26-30
[26.24]	5.	Other Covered Risks	26-30
[26.25]	6.	Covered Risks—Loan Policy	26-31
[26.26]	7.	Attorneys’ Fees and Defense Costs.....	26-33
[26.27]	B.	Exclusions and Exceptions from Coverage.....	26-34
[26.28]	C.	Conditions of the Policy	26-36
[26.29]	D.	Continuation of Insurance	26-37
[26.30]	E.	Notice of a Claim	26-39

[26.31]	F. Defense and Prosecution of Actions	26-41
[26.32]	1. Noncumulative Liability	26-44
[26.33]	2. Subrogation	26-44
[26.34]	3. Arbitration	26-45

CHAPTER 27 MORTGAGE RECORDING TAX

Michael J. Berey, Esq.

[27.0]	I. Introduction	27-1
[27.1]	II. New York City	27-1
[27.2]	III. Elements of the Mortgage Tax	27-3
[27.3]	IV. Multiple Counties	27-4
[27.4]	V. Underpayment of Tax	27-5
[27.5]	VI. Title Insurance	27-6
[27.6]	VII. Mortgages	27-7
[27.7]	VIII. Dormant Mortgages	27-7
[27.8]	IX. Exemptions	27-8
[27.9]	X. Supplemental Mortgages	27-11
[27.10]	XI. Spreader Agreements	27-12
[27.11]	XII. Taxable Amount	27-14
[27.12]	XIII. Swap Agreements	27-16
[27.13]	XIV. Partial Security	27-16
[27.14]	XV. Credit Line Mortgages	27-17
[27.15]	XVI. Guarantee Mortgages	27-19
[27.16]	XVII. Partially Securing Multiple Obligations	27-19
[27.17]	XVIII. Other Issues	27-23
[27.18]	XXIV. Resources	27-23

CHAPTER 28 TRANSFER TAXES

Michael J. Berey, Esq.

[28.0]	I. Overview	28-1
[28.1]	II. Rates of New York State and New York City Transfer Taxes	28-2
[28.2]	A. New York State Real Estate Transfer Tax (RETT)	28-2
[28.3]	B. New York State Supplemental Tax	28-3
[28.4]	C. Additional (“Mansion”) Tax	28-4
[28.5]	D. New York City’s Real Property Transfer Tax	28-4
[28.6]	E. Residential or Commercial RPTT Rates	28-5
[28.7]	G. RPTT Rates for Bulk Sales of Condominium and Cooperative Units	28-6
[28.8]	H. Reduced RETT Rates for REITS	28-8
[28.9]	I. Transfer Tax Returns	28-9
[28.10]	III. Application of the RETT and RPTT	28-10

[28.11]	A. Transfers Subject to Tax	28-10
[28.12]	B. Consideration	28-13
[28.13]	C. Continuing Lien Deduction	28-18
[28.14]	D. Exemptions.....	28-19
[28.15]	E. “Step Transaction” Doctrine, the “Mere Change” Exemption and Controlling Interests.....	28-22
[28.16]	E. Credits Applied	28-24
[28.17]	IV. Application of the Mansion Tax.....	28-24
[28.18]	V. Interest and Penalties.....	28-26
[28.19]	VI. Other Transfer Taxes.....	28-26
[28.20]	A. Broome County	28-27
[28.21]	B. Columbia County	28-27
[28.22]	C. Erie County	28-27
[28.23]	F. City of Mount Vernon, Westchester County.....	28-28
[28.24]	G. Peconic Bay Region Community Preservation Fund, Suffolk County	28-28
[28.25]	H. City of Peekskill, Westchester County.....	28-29
[28.26]	I. Red Hook, Dutchess County	28-29
[28.27]	J. Tompkins County.....	28-30
[28.28]	K. Town of Warwick, Orange County	28-31
[28.29]	L. City of Yonkers, Westchester County.....	28-32
[28.30]	M. Tax on Real Estate Transfers in Towns	28-32

**CHAPTER 29 FEDERAL REPORTING REQUIREMENTS IN
RESIDENTIAL REAL ESTATE TRANSACTIONS**

Matthew C. Cahill, Esq.

[29.0]	I. Introduction	29-1
[29.1]	II. Geographic Targeting Orders.....	29-2
[29.2]	III. Renewal and Expansion of the GTOs	29-4
[29.3]	IV. Clarification of Certain Terms Under the GTOs.....	29-6
[29.4]	V. Future Legislation.....	29-7

**CHAPTER 30 BUILDING LOAN MORTGAGES AND THE NEW
YORK LIEN LAW**

Thomas A. Glatthaar, Esq.

[30.0]	I. Overview	30-1
[30.1]	II. Mechanics’ Liens and Priority	30-2
[30.2]	III. What Makes a Building Loan a Building Loan?.....	30-6
[30.3]	IV. Filing Requirements for Building Loan Contract.....	30-9
[30.4]	V. Use of Building Loan Proceeds.....	30-13
[30.5]	A. Lienable (or Hard) Costs.....	30-13
[30.6]	B. Non-Lienable (or Indirect) Costs	30-16

[30.7]	VI. Reimbursement of Owner Under the Building Loan Contract	30-20
[30.8]	VII. Commencement of the Improvement	30-21
[30.9]	VIII. Preparing a Section 22 Affidavit	30-22
[30.10]	IX. Modification of Building Loan Contracts	30-24
[30.11]	X. Subordination penalty	30-29
[30.12]	A. Filing a Knowingly False § 22 Affidavit	30-30
[30.13]	B. Filing of a Materially False § 22 Affidavit	30-30
[30.14]	C. Failure to File a Building Loan Contract	30-31
[30.15]	D. Filing of a Building Loan Contract Without a § 22 Affidavit	30-32
[30.16]	E. Failure to File a Modification of a Building Loan Contract	30-32
[30.17]	XI. Scope of Subordination	30-33
[30.18]	XII. Project Loan Considerations	30-37
[30.19]	XIII. Re-allocation of Funds After the Commencement of the Improvement	30-41
[30.20]	A. Re-allocation of Funds Within the Building Loan Mortgage Itself	30-42
[30.21]	B. Re-allocation of Funds From the Building Loan to the Project Loan	30-45
[30.22]	C. Re-allocation of Funds From the Project Loan to the Building Loan	30-46
[30.23]	XIV. Diversion of § 13 Trust Funds and Lien Priority	30-48
[30.24]	XV. Structuring the Mortgage Loan: How Many Mortgages Do I Need?	30-49
[30.25]	XVI. Article 3-A Considerations	30-52
[30.26]	XVII. Notices of Lending	30-58
Appendix	New York Lien Law Affidavits	30-71

CHAPTER 31 EASEMENTS

Adam Leitman Bailey

[31.0]	I. Easements	31-1
[31.1]	A. Creation of Easements	31-1
[31.2]	B. Easement in Gross Versus Easement Appurtenant	31-2
[31.3]	C. Types of Easements	31-2
[31.4]	1. Grant or Declaration	31-2
[31.5]	2. Reservation	31-3
[31.6]	3. Prescription	31-3
[31.7]	a. Common Law	31-4

[31.8]	b. How an Easement by Prescription Is Acquired	31-5
[31.9]	c. The Burden of Proof	31-6
[31.10]	d. Applying the Prescriptive Easement Doctrine	31-7
[31.11]	e. Landlord and Tenant Rights	31-9
[31.12]	4. Estoppel	31-10
[31.13]	5. Necessity	31-11
[31.14]	6. Implication	31-11
[31.15]	D. Special Types of Easements	31-12
[31.16]	1. Beam Rights	31-12
[31.17]	2. Party Walls	31-12
[31.18]	a. Use of Party Walls	31-13
[31.19]	3. Light and Air	31-15
[31.20]	4. Access to Adjoining Property to Make Improvements or Repairs	31-15
[31.21]	5. Environmental Easements	31-16
[31.22]	E. Relocation of Easements	31-16
[31.23]	F. Termination of Easements	31-18
[31.24]	1. Abandonment	31-19
[31.25]	2. Merger	31-21
[31.26]	3. End of Necessity	31-21
[31.27]	4. Demolition	31-21
[31.28]	5. Recording Act	31-22
[31.29]	6. Abuse	31-22
[31.30]	7. Condemnation	31-22
[31.31]	8. Adverse Possession	31-23
[31.32]	9. Release	31-23

CHAPTER 32 TITLE INSURANCE AND SAME-SEX MARRIAGE

Marvin N. Bagwell, Esq.

CHAPTER 33 REAL ESTATE FINANCE—THE LAST 50 YEARS

Frederic L. Altschuler, Esq.

[33.0]	I. Introduction	33-1
[33.1]	II. Real Estate Downturns in the 1970s	33-1
[33.2]	III. Real Estate Downturns in the 1980s and 1990s	33-2
[33.3]	IV. The 2008 Real Estate Downturn	33-3
[33.4]	V. Real Estate Documentation	33-3
[33.5]	VI. REMICS and RTC	33-4

[33.6]	VII. Commercial Mortgage-Backed Securities (CMBS)....	33-7
[33.7]	VIII. The Borrower	33-9
[33.8]	IX. Utilization of Non-Recourse Guaranties	33-13
[33.9]	X. Reserves and Cash Management.....	33-16
[33.10]	XI. Lessons Learned	33-18

CHAPTER 34 MAIN STREET TO WALL STREET: THE JOURNEY TO SECURITIZATION

Joseph Philip Forte, Esq.

[34.0]	I. Introduction	34-1
[34.1]	II. Moving Away From Main Street	34-2
[34.2]	A. FHA/VA Loans	34-3
[34.3]	B. Government-Sponsored Entities	34-4
[34.4]	C. Private Label MBS	34-5
[34.5]	D. Credit Enhancement	34-6
[34.6]	III. Growth in CMBS	34-8
[34.7]	A. Market Dislocations—Before and After	34-10
[34.8]	C. Great Financial Crisis.....	34-13
[34.9]	D. Mandated Risk Retention	34-18
[34.10]	E. Pre-GFC	34-19
[34.11]	F. Originate to Distribute.....	34-21
[34.12]	G. Dodd-Frank Act	34-22
[34.13]	H. Proposed Rule	34-23
[34.14]	I. Final Rule	34-24
[34.15]	J. CMBS Post-Final Rule.....	34-25
[34.16]	IV. Market Development.....	34-27
[34.17]	A. Tax Aspects of Securitization	34-27
[34.18]	1. Grantor Trusts	34-27
[34.19]	B. REMICS.....	34-29
[34.20]	C. REMIC Loan Structuring.....	34-30
[34.21]	D. Consolidated Note	34-31
[34.22]	1. Background	34-32
[34.23]	2. New York Consolidated Note	34-34
[34.24]	E. Prepayment: Yield Maintenance vs. Defeasance..	34-38
[34.25]	F. REMIC Qualification	34-39
[34.26]	G. Defeasance Procedure	34-39
[34.27]	H. State Advisory Opinion.....	34-40
[34.28]	V. Representations and Warranties	34-41
[34.29]	A. Main Street Market	34-41
[34.30]	B. Secondary Market	34-41
[34.31]	C. Purpose of Representations/Warranties	34-42
[34.32]	D. Repurchase Obligation	34-42

[34.33]	E. Record/Contract Conflict	34-43
[34.34]	F. Commercial Mortgages	34-43
[34.35]	G. Representations and Warranties	34-44
[34.36]	VI. Loan Information in the Securitized Market	34-44
[34.37]	A. Information Reporting Package	34-46
[34.38]	VII. Loan Administration.....	34-47
[34.39]	A. Servicers/Master Servicers.....	34-48
[34.40]	B. Sub/Primary Servicers.....	34-49
[34.41]	C. Special Servicers	34-49
[34.42]	VII. Mezzanine Finance.....	34-50
[34.43]	A. Subordinate Mortgages	34-50
[34.44]	B. Soft Seconds.....	34-51
[34.45]	C. Mezzanine Financing	34-52
[34.46]	D. Intercreditor Agreement	34-54

Table of Authorities
Index

ABOUT THE EDITORS

ADAM LEITMAN BAILEY, ESQ.

Actively at the helm of the law firm he built from scratch, Adam Leitman Bailey, Esq. practices residential and commercial real estate law. Among New York's most successful and prominent real estate attorneys, Mr. Bailey is one of two attorneys from a law firm with less than 30 attorneys that has been ranked in *Chambers & Partners*, honored with a Martindale-Hubbell "AV" Preeminent rating, a *Best Lawyers* ranking for himself and his law firm and selected by Super Lawyers as one of New York's "Top 100" attorneys, a list that included only five real estate law firms' attorneys.

The internationally esteemed *Chambers & Partners* has repeatedly selected Mr. Bailey as one of New York's Leading Lawyers in Real Estate. The *Commercial Observer* named him as one of New York's Most Powerful Real Estate Attorneys. After Mr. Bailey's firm used a forgotten statute to prevail in a landmark case, the *Wall Street Journal* quoted a prominent New York developer's attorney who called the holding a "game changer" affecting real estate nationwide. In another case, the settlement Bailey received was the largest condominium settlement in history for one building, and in another transaction, he obtained the largest government grant (\$21 million) for a cooperative in New York history. *The Commercial Observer* ranked another victory among their "15 Most Fascinating New York Real Estate Cases of the 21st Century." Most recently, Mr. Bailey secured the largest settlement in New York City history for a property casualty lawsuit.

In 2011, Mr. Bailey wrote *Finding The Uncommon Deal: A Top New York Lawyer Explains How to Buy a Home for the Lowest Possible Price*. The book gained Bailey the 2012 "First Time Author" award granted by the National Association of Real Estate Editors. Mr. Bailey has also been elected a Fellow of the American College of Real Estate Lawyers (ACREL), where he serves on the Insurance and Title Insurance committees, and is a former member of the American College of Mortgage Attorneys (ACMA).

MICHAEL J. BEREY, ESQ.

Michael J. Berey, Senior Underwriter for the Manhattan office of the First American Title Insurance Company, has been active in New York's title insurance industry for over 40 years. For almost two decades, he was First American's Chief Underwriting Counsel for New York State and a

Senior Vice-President of the company. In 2014, he received the New York State Bar Association Real Property Law Section's Professionalism Award, and in 2016 he received the Lifetime Achievement Award of the New York State Land Title Association. He was on the Executive Committee of the New York State Bar Association's Real Property Law Section from 2000–2014 and on the Executive Committee of the New York State Land Title Association from 2000–2014. He was President of the New York State Land Title Association from August 2013 to September 2014. He was the Chairperson of the State Bar's Real Property Law Section's Task Force on Electronic Recording, the Section's Webmaster from 2000-2014, and the Chairperson of NYSLTA's Law Committee from 2010-2013.

A Fellow of the American College of Real Estate Lawyers, and formerly a member of the American College of Mortgage Attorneys, Mr. Berey has authored numerous articles on issues relating to real property, including New York's transfer taxes and mortgage recording tax and title insurance, and has been a frequent lecturer. Since 1997, he has authored *Current Developments*, a regularly issued bulletin on real estate and title insurance-related New York case law and legislation, which is distributed by email. He graduated from Boston College Law School in 1976.

ABOUT THE AUTHORS

FREDERIC ALTSCHULER, ESQ.

Fredric Altschuler is currently a senior counsel at Cadwalader, Wickersham & Taft LLP, one of the country's premier law firms, after more than two decades as a partner in the Real Estate Group. Mr. Altschuler's clients include institutional lenders, investment banks and private equity funds, real estate developers, public entities overseeing major metropolitan authorities, and other entities involved in real estate finance. Mr. Altschuler has been recognized as one of the country's leading real estate lawyers by *Chambers USA*, *Super Lawyers*, *Who's Who Legal* and *The Best Lawyers in America*, which named him a 2020 Lawyer of the Year.

Since 1973, Mr. Altschuler has represented numerous clients with respect to the acquisition, financing, mortgage securitization, disposition, and leasing of commercial real estate. He has represented lenders in connection with construction, interim and permanent financings of real estate (such as land assemblages, hotels, regional shopping centers, office buildings, industrial parks, mixed-use projects, and residential and commercial condominiums and cooperatives), workouts of nonperforming loans, foreclosures and acceptances of deeds in lieu of foreclosure, and dispositions of properties acquired in workouts and foreclosures.

Since joining Cadwalader in 1992, Mr. Altschuler has represented institutional lenders and investment banks in connection with the origination and securitization of commercial mortgage loans (both single-asset and pools), including the establishment of numerous commercial conduit programs. In addition, Fred has represented investors acquiring performing and nonperforming loans and properties, including the financing of such purchases, and restructuring and disposition of the purchased assets.

Mr. Altschuler is also active in the public sector, having represented Battery Park City Authority since 1981 with respect to the development of the area, including the World Financial Center, the Holocaust Museum, the first residential leasehold condominium project in New York State, and with the relocation of the New York Mercantile Exchange; the City of New York, including with respect to the Metrotech Project in downtown Brooklyn; and the State of New York and the Metropolitan Transportation Authority in connection with numerous mixed-use development projects. A graduate of Syracuse University with a B.A., Fred earned his J.D. at St. John's University.

LAURA E. AYERS, ESQ.

New York Attorney Laura E. Ayers focuses her solo-law practice on real property litigation. Ms. Ayers's years of experience in dealing with the special issues that arise in complex real property disputes makes her often sought out and retained as special counsel to municipalities and by other litigators. Ms. Ayers is a frequent lecturer on various real property topics including, the Highway Law, Easement Law, and Boundary Line Disputes for the New York State Association of Professional Land Surveyors, and the New York State Arborists ISA Chapter, Inc., among others.

Ms. Ayers received her Bachelors of Science in Biochemistry and Biophysics from Rensselaer Polytechnic Institute and her Juris Doctor from Albany Law School of Union University.

MARVIN BAGWELL, ESQ.

Mr. Bagwell is Vice-President and Chief New York State Counsel for Old Republic National Title Insurance Company and is based in New York City. Formerly, he was the President of Bagwell & Associates Title Agency LLC, a Manhattan- and White Plains-based title insurance agency. Before that, he was Vice-President and Eastern Divisional Counsel for United General Title Insurance Company.

Mr. Bagwell is a 1976 graduate of Harvard College (*magna cum laude*) and a 1979 graduate of Harvard Law School. Mr. Bagwell began his career in title insurance in 1986 as a claims attorney and underwriting counsel with Title USA, and later advanced to the position of chief or senior counsel for TRW Title, Nations Title and Fidelity Title.

Mr. Bagwell is the author of over 70 published articles on real property and title insurance issues. He is a frequent contributor to the *New York Law Journal* for which he writes a quarterly article on title insurance. His articles have also been published in the *New York Real Estate Reporter* and in *Settlement Services Today*. He is also the editor of the updated section on title insurance in *Warren's Weed*. Mr. Bagwell is a Past President of both the New York State Land Title Association and of the Title Insurance Rate Service Association. Mr. Bagwell is also a nationally recognized lecturer on title insurance and real property law. He is a certified Continuing Legal Education instructor for Virginia and for Pennsylvania and has served as a lecturer for the City Bar, the State Bar and the Practising Law Institute. Mr. Bagwell sits on the Executive Board of the Real Property Section of the New York Bar Association and serves as one of

the Editors of the Section's Journal. He was elected a Fellow of the American College of Real Estate Lawyers. Mr. Bagwell is licensed to practice law in Virginia and in New York.

LESTER M. BLIWISE, ESQ.

Lester M. Bliwise is a partner at Seyfarth Shaw LLP, resident in its New York City office. He has extensive experience in conventional and capital market mortgage lending, acquisitions and dispositions, joint venture investments, and debt restructurings and workouts. Mr. Bliwise's practice is national in scope and encompasses all property types, including office, retail, industrial, apartment, and hotel properties. He has served as counsel to insurance companies, commercial and investment banks, pension funds and their advisors, institutional owners and investors, and others.

Mr. Bliwise is a Fellow of the American College of Real Estate Lawyers and the American College of Mortgage Attorneys and was elected as a Fellow of the New York Bar Foundation. He has been recognized for real estate law in *The Best Lawyers in America* (since 2008) and is listed in *New York Super Lawyers* for Real Estate (since 2006).

Mr. Bliwise is a past Chair of the New York State Bar Association's Real Property Law Section as well as a past Chair of that Section's Real Estate Financing Committee. He presently serves as a member of the Real Property Law Section's Executive Committee. He is also a member of the New York City Bar Association, the CRE Finance Counsel, and the International Council of Shopping Centers and its U.S. Law Conference Program Committee.

Mr. Bliwise has spoken at numerous programs and seminars throughout the country, including those for the International Council of Shopping Centers, the American College of Real Estate Lawyers, the Practicing Law Institute and the New York State Bar Association. He has also published articles on real estate and finance matters in various publications.

Mr. Bliwise earned a J.D. from Brooklyn Law School, where he was an editor of the *Brooklyn Law Review*. He also earned a B.A. from Rutgers College. He is admitted to practice in New York.

MATTHEW C. CAHILL, ESQ.

Matthew C. Cahill is a Vice President and Corporate Underwriting Counsel at First American Title Insurance Company. Mr. Cahill's respon-

sibilities include underwriting commercial transactions, overseeing the New York underwriting department as well as establishing underwriting policies and procedures in New York.

Mr. Cahill has been an underwriter at First American for over 17 years, serving as Senior Divisional Underwriting Counsel for the National Commercial Services Division and Senior Underwriting Counsel at the New York Division prior to that. He is an active lecturer in First American's Continuing Legal Education program.

Mr. Cahill formerly served as In-House Counsel to Superior Bank FSB/Alliance Funding Company providing counsel to the Servicing Division specializing in regulatory compliance as well as supervising contested litigation. Previously, Mr. Cahill was in private practice.

Mr. Cahill received his B.A. in Journalism from the State University of New York, College at Buffalo in 1991 and also studied at the University of South Australia. He received his J.D. from Thurgood Marshall School of Law in 1994. He is admitted to the bar in the state of New York.

S.H. SPENCER COMPTON, ESQ.

S.H. Spencer Compton is a vice president and special counsel at First American Title Insurance Company in New York City.

He is the Secretary of the New York State Bar Association's Real Property Law Section, as well as a frequent contributor to Lexis/Nexis electronic publications, NYSBA's *Real Property Law Journal*, and *The Practical Real Estate Lawyer*. Mr. Compton is a frequent lecturer for First American as well as The Practising Law Institute and ICSC-LAW.

Prior to joining First American, he practiced real estate law in New York City for 11 years, with an emphasis on commercial leasing and financing transactions. Mr. Compton earned his undergraduate degree in 1972 from New York University and his law degree in 1989 from Brooklyn Law School, where he graduated *cum laude*. Prior to attending law school, he was a screenwriter and film producer.

DANIEL J. EVANS, ESQ.

Daniel J. Evans is a partner in Seyfarth Shaw LLP's New York City office. His practice concentrates on representing members of the lending and borrowing communities in connection with real estate finance matters, workouts and restructurings. In recent years, this work has empha-

sized the structuring and closing of mortgage and mezzanine loan transactions for securitization in the capital markets, as well as interim/bridge loans, construction and permanent loan transactions. He has closed numerous fee and leasehold financings of commercial and residential developments, industrial centers, shopping centers, resorts, hospitality properties, condominiums and office buildings and has extensive experience with financing real estate projects across the United States. His experience also includes the representation of institutional investors in the sale of mortgage loans, mezzanine loans, B-notes and participation interests in whole loans, and numerous mortgage and mezzanine workouts and restructurings.

Mr. Evans recently moderated the “Bridging the Gap: Bridge Lending and the CRE CLO Market” panel at Commercial Observer’s 2019 Fall Financing Commercial Real Estate Forum and has lectured on various commercial real estate finance topics for several years. He has also previously published articles on real estate finance matters in other publications.

Mr. Evans earned a J.D. from the University of California, Hastings College of the Law, where he was a member of the *Constitutional Law Quarterly*, and a B.A. from Lehigh University. He is admitted to practice in New York.

VINCENT G. DANZI, ESQ.

Vincent G. Danzi is Chief UCC Counsel at AmTrust Title Insurance Company (AmTrust Title), an AmTrust Financial company. Mr. Danzi is also the corporate counsel of AmTrust Title’s sibling company, First Nationwide Title Agency, LLC. He is a member of the Executive Committee of the New York State Land Title Association (NYSLTA), the Chairperson of the Law Committee of the NYSLTA and is a member of several committees at the American Land Title Association: including the Government Affairs Committee, the State Legislative/Regulatory Affairs Committee, and the Data and Analytics Workgroup.

Prior to joining AmTrust Title, Mr. Danzi was Senior Vice President and General Counsel at the Manhattan-based OneTitle National Guaranty Company. Before OneTitle, for nearly a decade Mr. Danzi served as General Counsel to Long Island-headquartered Equity Settlement Services, Inc., a national title insurance agent and settlement services provider.

A frequent contributor to legal and title-related organizations and periodicals, Mr. Danzi's articles have appeared in such publications and media outlets as the *New York Law Journal*, *National Public Radio*, the *New York State Bar Association Real Property Law Journal*, *The Legal Description*, *ALTA's TitleNews*, *The Title Report*, *RespaNews.com*, and many others. Mr. Danzi has many speaking engagements to his credit, including at venues such as October Research's National Settlement Services Summit, the American Land Title Association's Annual Convention, American Conference Institute's conferences on Class Actions and Mortgage Servicing, the New York State Land Title Association Annual Convention, the 10th International Legal Alliance Summit & Awards, and others.

Mr. Danzi earned a B.A. in History from the University of Texas at Austin and then a J.D. from the State University of New York University at Buffalo Law School.

DAVID S. FITZHENRY, ESQ.

David Fitzhenry is a partner at the New York law firm of Ganfer Shore Leeds & Zauderer LLP. He practices primarily in transactional real estate matters and cooperative and condominium law. A graduate of New York Law School, he represents a wide variety of clients, including lenders, developers, sponsors, purchasers, sellers, landlords, tenants, condominium associations, and cooperative apartment corporations. He often acts as special counsel to major retailers, educational corporations, medical centers, and various nonprofit organizations pursuing conversions of existing properties to commercial condominiums, including the creation of complex leasehold condominium structures. In addition, he regularly counsels privately held businesses on the bulk purchase of unsold cooperatives shares and unsold condominium units, as well as the subsequent required filings with the New York State Department of Law. He is a member of the Real Property Law Section of the New York State Bar Association and a member of the New York City Bar Association's Cooperative and Condominium Committee.

JOSEPH PHILIP FORTE, ESQ.

Joseph Philip Forte became the General Counsel of AmTrust Title Insurance Company in January 2020 after 47 years as a real estate finance partner in several major New York City law firms. He has worked through six cycles of downturns and recoveries of real estate markets that began with the failure of the early mortgage REITs in the mid-70s; the interest rate spike and disintermediation crisis in the late 70s and early 80s; the

partnership syndication crisis subsequent to the adoption of the Tax Reform Act of 1986; the savings and loan crisis and the RTC workouts in the early 90s; the market disruption after the Russian debt crisis in August 1998 through the most recent financial crisis.

Mr. Forte has advised FNMA and FHLMC on a variety of issues. He has also represented the nation's commercial real estate finance industry in the development of the ASTM's original environmental risk assessment standards; with others in the adoption of the 1994 Bankruptcy Code amendments; as principal draftsman of the Capital Consortium's Capital Markets Ratable Mortgage form; and in challenging the American Land Title Association's original Creditors' Rights Exclusion to its title insurance policies across the U.S. He was also involved in obtaining the New York state tax authorities' acceptance of CMBS defeasance and the use of consolidated mortgage notes in commercial mortgage transactions in New York; in the drafting of a standard co-lending agreement for the Life Insurance Company Task Force of the Mortgage Bankers Association; as amicus curia in the GGP and ESH bankruptcies; as a draftsman in the CMBS industry effort to establish standard mandatory nonbinding mediation procedures governing mortgage putbacks for representation and warranty breaches in CMBS transactions; and as co-chair of the Real Estate Roundtable (RER) High Volatility Commercial Real Estate (HVCRE) Working Group developing regulatory/legislative clarification of the HVCRE Rule as it affects bank construction lending; and member of CREFC LIBOR Task Force involved in the transition to new replacement benchmark rate in place of LIBOR and as chair of the RER's LIBOR Working Group on its meeting and correspondence with the U.S. Treasury and IRS to develop a tax free safe harbour for financial contracts transitioning away from LIBOR.

Mr. Forte frequently publishes and speaks on mortgage finance and workouts, capital markets, regulatory and related issues and is the recipient of several "Best Article" awards from legal and industry publications on commercial real estate finance topics; is co-chair of PLI's annual "CMBS & The Real Estate Lawyer" program; is the founder and publisher of CREFC's *CRE Finance World* magazine since 1999; and has been the Contributing Editor of Lexology's annual *Getting the Deal Through - Real Estate* and author of that publication's Global Overview and USA Chapter since 2013. He is a fellow of the American College of Real Estate Lawyers, the American College of Mortgage Attorneys, and the Anglo-American Real Property Institute (served as 2015 Chair), as well as the New York City and New York State Bar Associations. He is

also active in the leadership of several real estate and mortgage finance industry associations.

JOHN A. FRATES, ESQ.

John A. Frates has worked in the title insurance industry since 1985 as a title closer, examiner and reader. From 1990 to 1998, he served as a regional claims counsel, commercial underwriting counsel and operations manager for two national title companies in New York as well as other states. Since joining Stewart Title Insurance Company in 1998, he has served in several capacities: Claims Counsel, Direct Operations Manager, and New York State Counsel. Following those positions John was named Executive Vice President and General Counsel for the New York Underwriter. In 2018, John was promoted to Agency District Manager for New York and New Jersey, President and General Counsel of Stewart Title Insurance Company. John also serves as Senior Vice President and Regional Underwriting Counsel/Senior Underwriter for Stewart Title Guaranty Company for New York and New Jersey.

Mr. Frates is a sustaining member of the New York State Bar Association, and an officer and member of the New York State Land Title Association (NYSLTA) executive committee. He also served as President of the Title Insurance Rate Service Associations, Inc. from 2016–2017 and is currently a member of the executive committee.

Mr. Frates earned his B.A. from Franklin and Marshall College and his J.D. from the University of Dayton School of Law. He is admitted to practice law in the states of New York and Connecticut.

JASON A. GANFER, ESQ.

Jason A. Ganfer is Co-Chair of the Complex Title Litigation Practice at GanferShore Leeds & Zauderer, LLP. He is a seasoned attorney whose practice focuses on representing clients in complex disputes relating to real estate and title including fraud, boundary disputes, forgery and lien priority disputes. Mr. Ganfer effectuates creative strategies to cure title defects or “clouds on title” for insureds, title companies and owners of real property. He also advises on coverage matters relating to title insurance

Mr. Ganfer additionally represents purchasers, sellers and developers in real estate transactions including purchases, sales, leases, financing and the establishment of cooperatives and condominiums.

Prior to joining Ganfer Shore Leeds & Zauderer, he worked in house at Fidelity National Title Insurance Company as a claims counsel on the Mid-Atlantic team and New York-Connecticut Team and subsequently as an Associate Major Claims Counsel.

Mr. Ganfer has spoken on title insurance and mortgage fraud before various bar associations as well as at various title insurance companies. He is presently co-chair of the American Bar Association Real Estate, Condemnation and Trust Litigation sub-committee on title insurance.

Mr. Ganfer is a 2002 graduate of Columbia College and a 2005 graduate of Brooklyn Law School. He has been named a 2017, 2018, and 2019 Super Lawyers Rising Star.

MAUREEN GARVEY, ESQ.

Maureen Garvey, Esq. serves as Underwriting Counsel and Director of Title Operations for First American Title Insurance Company's Direct Division Office in Rochester New York and in this capacity provides underwriting and title clearance guidance in connection with residential and commercial matters throughout New York State.

Ms. Garvey attended Brooklyn Law School and throughout her career has focused on real estate, foreclosure and title matters. She is a member of the Monroe County Bar Association's Real Estate Council and chairs the Council's survey subcommittee. She also serves on the Board of the Mortgage Bankers Association of Greater Rochester and is active in facilitating the organizations community outreach and charitable endeavors.

THOMAS A. GLATTHAAR, ESQ.

Thomas A. Glatthaar has been a Senior Vice President and Chief Commercial Underwriting Counsel (New York) for Fidelity National Title Insurance Company since 2007. Prior to that, he was President of Title Resource Agency, Inc., a title insurance agency based in New York City, and prior to that, he was Vice President and Chief Counsel for First American Title Insurance Company of New York.

Mr. Glatthaar is a graduate of Providence College (B.A., 1980) and received his J.D. from Fordham University School of Law (1988). He was admitted to the New York Bar Association in 1989, and is a member of the Title and Transfer Committee.

CAROLINE G. HARRIS, ESQ.

Caroline G. Harris is the Managing Partner of GoldmanHarris LLC and Goldman Harris II LLC (a WMBE), NYC zoning and land use boutiques. She has a combination of public and private sector experience, providing her clients with in-depth zoning and land use analyses; representation in public land use approvals; and negotiation of private zoning lot mergers and transfers of development rights.

Ms. Harris is considered an expert in zoning, serving as an expert witness or special counsel in litigation. She has published articles, taught continuing legal education seminars, and been a panelist about zoning at a variety of programs.

Crain's New York Business recognized her in Crain's 2018 Legal List—Leading Women Lawyers in NYC, "100 New Yorkers named to the inaugural list of Leading Women Lawyers in New York City" (December 2017). The Real Deal, "Land-Use Royalty, A Look at the Top Planning and Zoning Lawyers in NYC" (2011) "crowned" her one of NYC's "zoning royalty." She is recognized by Super Lawyers and the International Advisory Experts Award: Land Use Law Award (2018).

Ms. Harris is Vice-President of City Lore and a member of the Urban Design Forum. She is past-president of Women in Housing and Finance; a recent board member of the Coalition of Women's Initiatives in Law; and a former member of the Land Use Committee of the NYC Bar Association.

KARL B. HOLTZSCHUE, ESQ.

Karl B Holtzschue, was partner and head of real estate departments at Webster & Sheffield (1966-1988) and O'Melveny & Myers in New York City (1988-1990). He was Chair, Committee on Real Property Law of the Association of the Bar of the City of New York (1987-1990), Chair, NYSBA Real Property Law Section (2007-2008), recipient of the NYSBA RPLS Professionalism Award in 2012, and a Member of the American College of Real Estate Lawyers. He is the author of *Holtzschue on Real Estate Contracts and Closings* (PLI). He is a former Adjunct Professor at Columbia Law School, Columbia Business School, and Fordham Law School. Mr. Holtzschue graduated from Dartmouth College in 1959 and Columbia Law School in 1966.

ARTHUR G. JACKOBY, ESQ.

Arthur G. Jackoby is chair of Herrick, Feinstein LLP's Real Estate & Title Insurance Litigation Group, which represents numerous real estate developers, commercial real estate owners and real estate managers and all of the major title insurance companies in New York and New Jersey in complex real estate litigation. In his 30-year career, he has successfully litigated and resolved hundreds of real estate and corporate court, arbitration and mediation disputes in the Northeast.

Prior to joining Herrick, Mr. Jackoby was Special Trial Counsel in the SEC's Division of Enforcement. While at the SEC, he prosecuted stock and accounting frauds, insider trading matters and stock market manipulation cases involving individuals, public companies, broker dealers and their principals. He was also assigned as a special Assistant U.S. Attorney to the U.S. Attorney's Financial Crimes Unit for the District of New Jersey.

Mr. Jackoby taught trial practice at Cardozo Law School, a class on insider trading and securities law at NYU's School of Continuing Education, and has been a lecturer on title insurance at New York Law School. He has consistently been ranked as one of New York City's leading commercial litigation attorneys by Super Lawyers (2006-2019) issued by Thomson Reuters.

ANTHONY C. LEE, ESQ.

Anthony C. Lee, Esq. is an attorney in private practice and a licensed Title Insurance Agent in Rochester, New York and Of-Counsel to Pheter-son Spatorico, LLP, focusing his practice on real estate and title matters. Prior to returning to private practice, Mr. Lee spent almost six years as Underwriting Counsel for First American Title Insurance Company in their Rochester, New York, office covering residential and commercial matters throughout New York State. Prior to joining First American, Mr. Lee was in private practice focusing on real estate and title matters, as well as small business law and writing title insurance as an agent for Ticor Title Insurance Company, and Monroe Title Insurance Company (now part of Stewart).

Mr. Lee received his undergraduate degree from the State University of New York at Buffalo and his JD from Boston University School of Law. He is a member of the respective real estate sections of the Monroe and Erie County Bar associations, as well as the New York State Bar Association and American Bar Association.

JEAN M. PARTRIDGE, ESQ.

Jean M. Partridge, co-founder and principal of Benchmark Title Agency, LLC, has been in the title insurance business for over 30 years. Prior to establishing Benchmark Title Agency, LLC, in 2005, she was a Senior Vice President and Branch Counsel of First American Title Insurance Company of New York and a member of their Board of Directors.

Ms. Partridge began her career in the title insurance industry while attending law school at Pace University School of Law. Upon graduation, she continued working at L & H Abstract Corporation. She remained with First American Title Insurance Company of New York after they acquired L & H Abstract Corporation.

Presently, Ms. Partridge serves on the Executive Committee of the New York Land Title Association as Vice Chair of the Agents Section and President Elect. She also chairs the title insurance Government Regulation committee and is the co-chairperson of their liaison committee with all County Clerks of the Hudson Valley Region. Additionally, she serves on the Associations newsletter and E Recordings committees. Additional affiliations include the New York State Bar Association; Westchester County Bar Association, Women's Bar Association of Westchester County, White Plains Bar Association; and National Association of Realtors. Formerly, Jean served on the Board of Directors of the Westchester Women's Bar Association.

Ms. Partridge earned her undergraduate degree from the State University of New York at Stony Brook and her law degree from Pace University School of Law. She is admitted to practice law in New York State and Connecticut. She is also rated AV for ethical standards and legal ability by Martindale-Hubbell peer review.

LANCE R. POMERANTZ, ESQ.

Lance R. Pomerantz is a sole-practitioner whose practice has focused on land title law for more than 25 years. Mr. Pomerantz attended Boston University School of Law and was admitted to the Massachusetts Bar in 1981. He then served as Special Assistant Corporation Counsel to the Collector-Treasurer of the City of Boston. Responsible for a staff of 10, he supervised and performed title examinations for tax lien enforcement proceedings while also participating in litigation in both state and federal trial and appellate courts, and various state agencies. His responsibilities included most matters involving City finances, serving as general trust

counsel to various municipal trustees and participating in bankruptcy and admiralty litigation in federal district court.

Since his admission to the New York State Bar, his practice has focused on land title transactions and litigation. His expertise is in the title aspects of many practice areas, including sales and mortgage transactions, land-use, foreclosures, Torrens matters, co-op transfers, subdivision map and street abandonments, real estate taxes, Surrogate Court matters, adverse possession, beach access, rights-of-way, mineral rights, feudal grants and colonial charters, land under water, and condemnations. He regularly consults on and/or testifies as an expert in title disputes pending in the New York State courts.

Mr. Pomerantz is a longstanding member of the Suffolk County Bar Association, where he was instrumental in drafting the legislation suspending the use of Torrens registration in New York, as well as serving as chair of the Real Property Committee. He is also a member of the New York State Bar Association, serving on the Title and Transfer Committee of the Real Property Law Section. He has served on the Law Committee of the New York State Land Title Association since 2013 and, as a member of the American Land Title Association, is one of the longest-tenured members of the Title Counsel Committee as well as the Real Property Records Committee.

Throughout his career, Mr. Pomerantz has published articles on a wide-ranging variety of topics in *Title News*, *The Docket*, *Title Law Quarterly* and *The Suffolk Lawyer*. Since 2011, he has been the editor and publisher of *Constructive Notice: the Land Title Law Newsletter*. In 2016, he testified against a proposed change to the Federal Rules of Evidence before a committee of the Judicial Conference of the United States.

JOSHUA A. RIKON, ESQ.

Joshua Rikon, a partner at Goldstein, Rikon, Rikon & Houghton, P.C., has practiced eminent domain law in New York since 2003, when he was admitted to practice as an attorney and counselor at law. He received his Juris Doctor degree from the Thomas M. Cooley Law School in 2002 and his Bachelor of Arts degree from Hofstra University in 1999. Prior to being admitted to practice, Joshua completed his law school's externship requirement at Steinhardt Pesick & Cohen, P.C., one of Michigan's finest eminent domain, condemnation, and land use law practices.

Mr. Rikon is a member of the New York State and American Bar Associations as well as the New York City and Westchester County Bar Associations. He served as the Vice-Chairman of the Condemnation Committee of the ABA Section of Real Property, Trust and Estate Law. Joshua has taught continuing legal education courses, he was awarded the CRE designation from The Counselors Of Real Estate, he is a member of Scribes, the American Society of Legal Writers, and he has also been designated a “Rising Star” by Super Lawyers, a lawyer rating company. Joshua serves on the Board of Governors of the Shames Jewish Community Center on the Hudson.

MICHAEL RIKON, ESQ.

Michael Rikon, a partner at Goldstein, Rikon, Rikon & Houghton, P.C., was selected for the prestigious Lifetime Achievement Award for 2020 by the International Association of Top Professionals (IAOTP) for his outstanding leadership, proficiency, influence and dedication to the legal profession. Mr. Rikon is being recognized for this honor for dedicating over 52 years of his life’s work as a practicing attorney. While in the legal field, Mr. Rikon has inspired many and excelled in every position he has ever served. His impressive background of previous roles include: Serving with the SSGT 99th Signal Battalion in the US Army Reserves, Assistant corporation counsel for the city of New York, Law Clerk for the New York State Court of Claims, Partner of Rudick and Rikon where he also specialized in Real Estate Law and litigation in the Court of Claims.

Mr. Rikon earned a Bachelor of Science at New York Institute of Technology and Doctor of Jurisprudence at Brooklyn Law School, followed by a Master of Laws at New York University. Mr. Rikon was admitted to the New York Bar Association, the Southern and Eastern Districts of the US District Court, the Second, Fifth and 11th Circuits of the US Court of Appeals, and the US Supreme Court.

Mr. Rikon is a sought-after lecturer, public speaker and contributor to numerous articles and professional journals. He is also a blog contributor for *Bulldozers at Your Doorstep* and contributor to the *New York Law Journal*. Currently, Mr. Rikon is the New York State designated eminent domain attorney for the Owners’ Council of America, Former Assistant corporation counsel of condemnation law special committee member of the New York Bar Association, member and condemnation committee member of the Association of the Bar of the City of New York and member and director of the Owners Counsel of America.

Throughout his career, Mr. Rikon has been active in his community and recognized worldwide for his outstanding leadership and commitment to the legal profession. He has received many awards, accolades and has been featured in numerous publications and magazines. For 2020 he was featured on the famous Reuters Building in Times Square, NYC and graced the front cover of TIP (Top Industry Professionals) Magazine. For 2019, he was honored by the International Association of Top Professionals (IAOTP) as Top Attorney of the Year at their annual awards gala at the Bellagio Hotel in Las Vegas. For 2018 he was selected for the Albert Nelson Marquis Lifetime Achievement Award by Marquis Who's Who and listed in more than 60 editions of Who's Who in America, Who's Who in American Law and Who's Who in the World. Named Top Lawyer of New York, to Best Lawyers in Eminent Domain and Condemnation Law in New York, Mr. Rikon has also been listed in Super Lawyers for Eminent Domain. In 2006, Mr. Rikon received the Business Leadership Award from NYIT Alumni Federal and has been an AV Preeminent rating with Martindale Hubbell.

STUART M. SAFT, ESQ.

Stuart M. Saft, practice group leader of Holland & Knight's New York Real Estate Practice Group, co-chair of the Condominium Development and Conversion Team, and former co-chair of the Hospitality, Resort and Timeshare Group, has extensive experience in the development, financing, leasing, conversion-to-condominium and cooperative ownership, exchange, syndication, sale-leaseback, timeshare, restructuring, acquisition and sale of residential, commercial and hospitality property throughout the United States. Mr. Saft also represents lending institutions in mortgage lending and workouts.

Mr. Saft is the former chair of the board of directors of the National Cooperative Bank and the New York City Workforce Investment Board. Mr. Saft has written 40 books on Commercial Real Estate and more than 100 articles on real estate, economics and finance, and writes a monthly column for *Habitat* and *The Mann Report*.

MICHAEL P. SASSO, ESQ.

Michael P. Sasso is a Divisional Senior Vice President and Senior Underwriting Counsel at First Nationwide Title Agency LLC, an AmTrust Financial company. Prior to joining First Nationwide, Mr. Sasso was Senior Underwriting Counsel with First American Title Insurance Company, serving as a member and ultimately chairman of its Bankruptcy Practice Group.

Prior to moving into the title insurance industry Mr. Sasso was in private practice where he concentrated on real estate and bankruptcy law. Prior to his private practice Mr. Sasso was a senior associate at a boutique bankruptcy firm on Long Island in the bankruptcy and reorganization department where he participated in many “single asset” real estate reorganizations as debtor’s counsel. Subsequently, he joined the staff of a Bankruptcy Panel Trustee in New York City.

Mr. Sasso is a graduate of Brooklyn Law School, and earned a B.S. in finance from St. John’s University.

DOUGLAS P. SCHNEIDMAN, ESQ.

Douglas P. Schneidman, a partner at Sullivan & Wooster LLP, represents individuals, family businesses, and banks and trust companies in trust and estate matters. His practice includes estate planning for high-net-worth individuals, formation and administration of charitable foundations, as well as all aspects of estate and trust administration. Doug also handles probate and other Surrogate’s Court matters, including estate and trust litigation.

ALFRED C. TARTAGLIA, ESQ.

Alfred Tartaglia is principal law clerk to the judge in the supreme court of the state of New York. He has worked in the Appellate Division, First Department; the Appellate Term, First Department; and the Law Department of Supreme Court, New York County. At the Appellate Division, Mr. Tartaglia was editor-in-chief of all published memoranda, civil and criminal, and the author of the official court training manual for court attorneys, titled *The Preparation of Civil Appeals*. He continues to research complex legal issues, and draft decisions pertaining to both criminal and civil law issues.

From 1998 to 2002, Mr. Tartaglia taught a three-hour writing course to law students designed to develop proficiency in legal writing, at the New York County Lawyers’ Association writing workshop, where his curriculum and written materials are still used. Mr. Tartaglia is a frequent speaker at the Judicial Institute, where he has moderated programs and lectured to attorneys and judges on topics such as trial practice, jury charges and verdict sheets, ethics, settlement skills and techniques, labor law indemnity and no-fault law. He writes for a number of legal publications, including *Warren’s Weed New York Real Property*.

A graduate of Duke University and New York Law School, Mr. Tartaglia is a former board member and present chair of the Continuing Legal Education Committee, Columbian Lawyers Association, First Department and serves on the Executive Committee of the Real Property Law Section of the New York State Bar Association.

JACKIE HALPERN WEINSTEIN, ESQ.

Jackie Halpern Weinstein, a partner in Adam Leitman Bailey, P.C.'s Foreclosure and Title Litigation Groups, has expertise in title litigation and prosecuting residential and commercial mortgage foreclosure proceedings throughout New York State. She is admitted to practice law in the states of New York and New Jersey and is admitted to practice federally in the Southern District, Eastern District, and Northern District of New York, United States District Courts, as well as the United States Court of Appeals for the Second Circuit.

Mrs. Weinstein represents many of the largest banks in the world, both directly and with the most prominent mortgage loan servicing companies. Mrs. Weinstein handles the foreclosure proceeding as early as ensuring proper service of the § 1304 Ninety Day Notice, action commencement, and loss mitigation, all the way through transferring the premises by Referee's Deed, REO closings, and claiming and obtaining surplus funds. Additionally, Mrs. Weinstein negotiates, structures, and drafts Purchase and Sale Agreements for the transfer of Notes, Forbearance Agreements between Lenders and Borrowers, and Agreements to Assign Foreclosure Bids between the highest bidders and interested purchasers prior to closing. She continues to represent the lenders and note holders after bankruptcy filings as well, including moving for relief from the automatic stays imposed, filing proofs of claim, and spearheading 363 sales.

Extensively trained in investigation and fraud detection, Jackie Halpern Weinstein also represents leading lenders in defending their priority lien positions against title defects. Her title insurance defense work covers a substantial breadth, ranging from lien priority disputes, boundary discrepancies, and non-recording defects to mortgage fraud, mortgage rescue schemes, and forgeries. Ms. Weinstein is named a Super Lawyer Rising Star and was featured as one of the "Top 50 Women Attorneys in the New York Metropolitan Area."

Ms. Weinstein received a Bachelor of Science in Communication Studies from Boston University and achieved her Juris Doctorate at New York

Law School, where she was a member of both the Law Review and the Harlan Scholars Honors Program.

JOHN BUSEY WOOD, ESQ.

John Busey Wood is a member of the commercial real estate group in the New York City office of the national law firm Akerman LLP and advises public and private companies on national real estate transactions, development of mixed use and retail projects, retail centers and portfolio property master and ground leasing. For over 40 years, Mr. Wood has represented owners and tenants in the design and negotiation of commercial leases covering in excess of 100 million square feet of retail, industrial, office and mixed-use projects. He has national experience in developable land, property acquisitions, and large scale retail and office developments. He is a noted authority on ground leases and portfolio master leases and helped lead a national team on a purchase, sale and master lease transaction involving 327 super market properties and several hundred dealerships. In addition, Mr. Wood has advised, directed teams, and designed correlated construction contracts for conversions and renovations in New York City, exceeding 8 million square feet, with values greater than \$4 billion. Mr. Wood is a licensed Class “A” commercial real estate broker, a Certified Public Accountant and holds B.B.A. (Accounting and Economics), M.B.A. (Accounting and Finance), and J.D. degrees.

Mr. Wood frequently lectures on commercial leasing and construction contract techniques, transaction structuring and master leasing at Columbia University-ISDE Graduate Law and Economics Program and at the New York University Graduate School and Schack Real Estate Institute. He also lectures at PLI, where he is the New York and national Chairman of the Milton Friedman Leasing Lectures, and at the executive and annual meetings of the ABA and AICPA. Mr. Wood has frequently served as a “party selected” and federal arbitrator and is an American Arbitration Association Commercial Panelist and formerly on the board of legal advisers to the former National Title Guaranty Company.

Mr. Wood is the senior author of the national treatise *Negotiating and Drafting Office Leases*, published by Law Journal Seminars-Press and supplemented two times per year. He is the author of the textbook, *Navigating the Dangerous Shoals of a Commercial Lease*, published by New York University Graduate School, and hosts the commercial leasing educational websites www.officeleasingusa.com and www.leasingnyc.com, which supplement his lectures. Mr. Wood is listed in Who's Who Registry of Global Business Leaders, NY Super Lawyers and ALM Distinguished

Lawyers. Mr. Wood is AV Preeminent® peer rated by Martindale-Hubbell and was peer-nominated and elected an American Bar Foundation Fellow.