

# THE DAILY RECORD

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## Title TRACK

# Real estate law — then and now

On the eve of my retirement from the title insurance industry and practicing law full time, I thought it would be interesting to reminisce about some of the changes that have taken place in the practice of real estate law and the title insurance industry. Although not much has changed from an industry standpoint, technological advances have changed the way the overall process is conducted.

From a real estate practice standpoint, not a lot has changed — at least from a legal perspective. There is still a contract to review or prepare, a client to advise, title issues to clear, documents to prepare and a closing to take place. Title insurance and examining title hasn't changed much either. We still use abstracts in this part of New York, to examine the title looking for a proper chain of title, liens and encumbrances, and so forth. What has changed is the underlying process.

Advancements in technology have changed the way real estate transactions are conducted. Changes include (but are not limited to) how a property search is prepared, how a legal document is recorded, how a contract is reviewed and approved, and how a closing is conducted. Here are some of these changes:

**Then:** Taking weekend road trips to look at open houses.

**Now:** Sitting at home on the computer, looking at virtual tours of homes to pinpoint the few that you really want to walk through.

**Then:** Taking time off from work to meet with a loan officer at the bank to make your loan application — and don't forget to bring all your required documentation.

**Now:** Sitting at home, submitting a loan



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application electronically via the internet, and uploading all of your required documentation.

**Then:** Real estate agent sends a copy of the contract (which was wet signed) to both attorneys via fax and regular mail, who then review and fax and mail their comments.

**Now:** Contracts and approval letters are sent via e-mail, usually with e-signatures.

**Then:** Any conversations among the parties (i.e., client, real estate agents, attorneys, and bank personnel), were done via telephone.

**Now:** Conversations now conducted almost exclusively via e-mail.

**Then:** Abstracts and title commitments distributed among the parties via mail or by hand delivery.

**Now:** Abstracts scanned and e-mailed, with original abstract delivered, and title commitment delivered electronically via email or upload.

**Then:** A two page HUD-1 Settlement Statement.

**Now:** A five-page Closing Disclosure.

**Then:** HUD-1 Settlement Statement likely prepared at the closing table, with some lenders accepting a handwritten HUD-1.

**Now:** Closing Disclosure must be prepared in advance, with delivery to the borrower at least three days prior to the closing date.

**Then:** Standing in line at the County Clerk's Office to record documents.

**Now:** Recording document electronically via "e-recording."

And one last change just for fun — but in reverse order:

**Now:** No smoking in the office, and sometimes even on the grounds of the office building.

**Then:** Smoking allowed, and I do remember several attorneys (who will remain nameless, although many of you will know who they are) lighting up cigars in the closing room. It was a real treat when two of these attorneys were part of the same closing.

My belief is that the electronic recording of documents will eliminate the need to visit the County Clerk's office altogether. I also believe (based on reliable sources) that "online closings" will become the norm — including remote online notarization of documents. The use of technology may also allow for the automated examination and preparation of title commitments.

I'm sure there are other changes that I have missed here, and it is not always easy to predict what the future might hold or when some of these changes might take place. As for the lawyering part, I don't see that changing any time soon. Thanks for sharing this trip down memory lane with me.

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