



## IPSA SCIENTIA POTESTAS EST

This Latin phrase is commonly attributed to Sir Francis Bacon. If you know what it means, pat yourself on the back! If not, read to the end of this issue of The CATIC Title Courier for the answer.

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## PUBLIC TRUST DOCTRINE IS NOW THE LAW IN NEW JERSEY

*By the law of nature these things are common to all mankind – the air, running water, the sea, and consequently the shores of the sea. No one, therefore, is forbidden to approach the seashore, provided that he respects habitations, monuments, and the buildings, which are not, like the sea, subject only to the law of nations.* From Book II of the Institutes of Justinian, Roman Emperor Justinian, circa 500 AD.



Dating back to Roman law, public rights to the seashore gave fishermen and travelers by sea unfettered access to dry land. Those public rights were maintained through the English Common Law and brought to America by the settlers of the original 13 colonies. A common law right, public access to the shore has developed in New Jersey through several court decisions, the first of which was the 1821 case of *Arnold v. Mundy*, 6 N.J.L. 1, where an owner of land adjoining the Raritan River claimed exclusive fishing rights to tidal oyster beds abutting his property. In that decision, the Court held that “[Common Property includes] ‘the air, the running water, the sea, the fish, and the wild beasts. [These are] things in which a sort of transient usufructuary possession only, can be had ....’” Unlike other public property, it was “... to be held, protected, and regulated for the common use and benefit.” Several other decisions and numerous regulations would follow as [reviewed](#) by the NJ Department of Environmental Protection.

On May 3, New Jersey Governor Phil Murphy made the Public Trust Doctrine the law of the state when he signed [P.L. 2019, Chapter 81](#) into law with an effective date of July 1, 2019. It was a long time coming, but NJ now has a law that codifies the Public Trust Doctrine, intended to ensure public access to beaches and tidal areas, and promote, protect and safeguard public access rights. The new law affects both the 127 miles of NJ oceanfront beaches as well as the more than 1,200 miles of tidally influenced rivers and bays throughout the state.

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The law supports the creation of new access points and the enhancement of existing ones, and is intended to provide the tools to defend against attempts to block access. It gives the NJ DEP broad regulatory power not only to create, enhance, and preserve public access, but also to ensure that there are necessary amenities in place to support it, including public parking and restrooms. The new law will have significant ramifications for landowners, municipalities, and developers, and will affect planning, zoning, and new construction in affected areas. It does not change the landscape, and standard title insurance exceptions for the rights of the public remain the same, but it is notable that some 1,500 years later Roman Emperor Justinian and Governor Phil Murphy wound up on the same page.

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## DON'T FORGET ABOUT RECONCILING YOUR ACCOUNTS

It seems that we are constantly hearing about the dangers of wire fraud lately. Whether through some form of business email compromise or ransomware/malware, the threats and dangers of wire fraud are constantly in the news. These dangers are real. Real estate scams jumped more than 1000% since 2015, per FBI Alert Number I-071218-PSA. We must remain vigilant in our efforts to combat these threats. We must also remember the importance of reconciling escrow accounts and protecting client fiduciary funds.

The importance of regularly auditing your escrow account is paramount. To verify that documents have been recorded, taxes have been paid, and all mortgages have been satisfied, we need only to look at our escrow or attorney trust accounts.

Fiduciary accounts reconciled using the "3-Way" format provide an outstanding check register, an outstanding deposit (or Deposit-in-Transit) register, and a trial balance. In accordance with ALTA Best Practices, reconciliation reports need to be reviewed and signed off on by management monthly. The outstanding check register should be reviewed to ensure that all mortgage payoff, tax, and recording fee checks have cleared. The outstanding deposit report should be reviewed to ensure that all funds have been received prior to disbursement. Finally, the trial balance is your most useful report for review of file shortages and dormant funds.



At CATIC Title we offer [CATIC Business Solutions](#) (bank reconciliation services) and [UCP Express](#) (escheat law compliance services) to assist you with these vital functions and allow you the flexibility to spend more time doing what you do best....closing real estate transactions and insuring title!

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## FROM THE TRENCHES: Lis Pendens

The search disclosed a Lis Pendens filed against our property so we took exception to the LP. The seller's attorney sent us a Consent Order Vacating the Lis Pendens that was sent to the Court for filing," the agent advised. "Can we remove the exception for the Lis Pendens and proceed to closing?" This question addresses one of the biggest issues presented to a title insurer: pending litigation.

A Lis Pendens, or *notice of pendency* of a lawsuit, provides constructive notice of a court action seeking to affect real estate. It is notice to potential purchasers or mortgage lenders that their interest will be subject to

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the outcome of the litigation. N.J.S.A. 2A: 15-6 provides the statutory basis for filing a Lis Pendens:

*In every action, instituted in any court of this State having civil jurisdiction . . . the object of which is to enforce a lien upon real estate or to affect the title to real estate or a lien or encumbrance thereon, plaintiff or his attorney shall, after the filing of the complaint, file in the office of the county clerk or register of deeds and mortgages, as the case may be, of the county in which the affected real estate is situate, a written notice of the pendency of the action, which shall set forth the title and the general object thereof, with a description of the affected real estate. No notice of Lis Pendens shall be filed under this article in an action to recover a judgment for money or damages only.*



The LP itself is the signpost that advises of the litigation. It is the outcome of the litigation that can affect title, not the mere finding of the LP, so the discharge or vacating of the LP does not remove the title problem unless the litigation is terminated as well. A Consent Order discharging the LP is not enough. One of the following must also exist:

1. Plaintiff's failure to prosecute the action diligently [N.J.S.A. 2A:15-10];
2. The passage of five years from the date of filing [N.J.S.A. 2A:15-11];
3. Final judgment in favor of the defendant [N.J.S.A. 2A:15-14];
4. Defendant's posting a bond sufficient to secure plaintiff's claim [N.J.S.A. 2A:15-15]; or
5. A complete and final satisfaction of the claim against defendant, or by settlement or abandonment of the action [N.J.S.A. 2A:15-17].

Therefore, unless that Consent Order also provides for the dismissal of the litigation, the Consent Order is not enough. Our agent did the right thing by calling to discuss what needed to be done so that this transaction could be insured without the risk of loss posed by the pending litigation.

## **SOMETHING TO THINK ABOUT:**

***"IPSA SCIENTIA POTESTAS EST" MEANS KNOWLEDGE ITSELF IS POWER***

**KNOWLEDGE IS PASSED THROUGH STORYTELLING**  
**STORYTELLING GIVES SHAPE TO EXPERIENCE**  
**TRANSFORMS INFORMATION TO KNOWLEDGE**  
**MAKES WISDOM UNDERSTANDABLE,**  
**TRANSMITTABLE,**  
**PERSUASIVE,**  
**AND**  
**BRINGS ORDER TO LIFE**

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## **HOMO SAPIENS ARE WIRED FOR STORYTELLING**

### **A POWERFUL SKILL OR "A POWER OF OUR OWN"?**

Title Insurance? We tell a story too. Title insurance professionals, men and women, tell stories about the past every time we issue a commitment to insure. We gather and disseminate information and tell a story about a piece of land.

We also tell stories when we convey title knowledge to real estate professionals. We are pleased to announce that the **CATIC TITLE SCHOOL OF CONTINUING EDUCATION** has been licensed as a continuing education provider by the New Jersey Department of Banking and Insurance. Watch for notices of course offerings in the coming months. We have some great stories to share in our continuing efforts to empower our agents, attorneys, real estate brokers, and other industry partners.

The idea for this month's "Something to think about" evolved from a New York Times Op Ed written by Elena Ferrante in her discussion of the "colonization of storytelling," by men, viewed through the lens of a woman.

["Elena Ferrante: A Power of Our Own." \*The New York Times\*, 17 May, 2019.](#)

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We may be new to New Jersey, but with more than 100 years of experience among us, we know a lot about what is important to title and real estate professionals. You can rely on The CATIC Title Courier for monthly updates on changes in the law, court decisions of interest, NJDOBI news and Rate Manual or form changes, interesting underwriting issues, and articles that give you something to think about. The scheduling of educational seminars will also be highlighted in future issues.

We hope you enjoy the June 2019 edition of **THE CATIC TITLE COURIER: Different news and information from a different kind of title underwriter. See what full-time title agent support looks like!**

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