FEDERAL STANDARD ABSTRACT
TITLE NEWS

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Title News

The Department of Buildings Cracks Down on Illegal Housing in Queens
Landlord Charged with Reckless Endangerment

The Department of Buildings ("DOB") has joined forces with NYPD, Queens District Attorney Richard A. Brown, and the Department of Investigation to curb illegal housing in Queens. Armed with a search warrant, officials raided the building at 32-15 48th Street in Astoria. The building was a multi-family walk-up which had been illegally converted into a Single Room Occupancy ("SRO") housing 11 residents. The DOB found hazardous gas pipelines and electric wiring, inoperable fire escapes, no sprinklers, and no smoke or carbon monoxide detectors, among other defects. The landlord faces fines and violations totaling more than $40,000, and has been criminally charged with Reckless Endangerment in the first degree. District Attorney Brown expressed his intention to continue such raids, "Working with the NYPD, the Department of Buildings and the Department of Investigations, I will utilize the prosecutorial and investigative resources of my office to vigorously prosecute those who profit from such illegal housing."

"Discharge Compliance Certificate" Required in the Town of Mamaroneck

Effective January 1st, 2006, transfers of real estate in the unincorporated area of the Town of Mamaroneck will require a Discharge Compliance Certificate, which is a certification that all of the connections leading from a parcel comply with the laws regulating the discharge of liquids. Failure to comply will cause the Town to deem the occupancy of the same illegal. See Section 106-49 of the Town Code. In order to procure said Discharge, a licensed plumber must conduct an investigation and submit a report to the Building Department.

Eminent Domain in Urban Blight Prevention

The Supreme Court, Appellate Division, Third Judicial Department recently upheld a decision in favor of the City of Hudson to condemn two adjacent parcels by reason of urban blight, *In the Matter of Keegan V. City of Hudson,* decided on 11-03-05, Index no. 97945. The court cited the test of *Matter of Russin v Town of Union Broome County,* 133 AD2d 1014, 1015 [1987], "a public use is generally found in and of itself if (1) the project will eliminate or prevent slums or blighted areas, even if the property is subsequently developed privately, or (2) the project will provide low-rent housing." The court found "urban blight" where the buildings were declared unsafe, suffered structural deficiencies, and were the subject of numerous

violations over the course of at least 11 years. The court did not concern itself with whether the condemnation would produce low-rent housing finding the test disjunctive; i.e. to eliminate urban blight or provide low-rent housing.

Contract Rescission Clause

The Appellate Division, Second Department allowed a seller of real estate to rescind a contract of sale by returning the down payment when the contract stipulated that the seller would convey free of tenants, but was unable to evict them; the buyer was unwilling to accept subject to the tenancy; and the contract allowed the seller to rescind under those circumstances. The purchaser's claim for damages beyond the return of the down payment was rejected. *Jin Ming He v. Jong Tien Ho*, 2005 NY Slip Op 08952.

Perfecting the Closing

Why Not to Use a Quitclaim Deed in non-Consideration Transfers

The client meets with the attorney and asks for a deed transfer from herself to her children. The attorney faces the option of either using a Quitclaim Deed or a Warranty Deed. Both deeds would effectively pass title to the children, the difference lies in the warranties. The quitclaim deed conveys whatever title grantor may have, if any; the warranty deed conveys whatever title grantor may have, and warrants that it is marketable. If a defect is found in the title after the conveyance –such as any lien-, the grantor of a warranty deed would be liable, while the grantor of the quitclaim deed would not be. Remembering this, the attorney reasons, "this is a non-consideration transfer. It would not be fair for the grantor to be liable to the grantees for any liens against the property, if they are receiving it for free." The attorney then decides to use the quitclaim deed.

While the above reasoning is correct, it misses an important point: The continuation of coverage under the fee policy. Conveying by quitclaim deed forfeits the title insurance the grantor may have. If any lien or defect is later discovered, such as unpaid water, open mortgages, or a missing interest, the fee policy will not cover the grantees. If the insurance has been forfeited, a title company will not indemnify the buyer's title company and the seller may be unable to convey title.

Conveying by warranty deed avoids this result. Section 2 of the Conditions and Stipulations of the ALTA Fee policy, as approved in 1992 reads:

> The coverage of this policy shall continue in force as of Date of Policy in favor of the insured only so long as the insured retains as estate or interest in the land, or […] shall have liability by reason of covenants of warranty made by the insured in any transfer […]. This policy shall not continue in force in favor of any purchaser from the insured […].

By its own terms, ALTA coverage would continue after conveyance by warranty deed, *provided the grantee is not a purchaser; i.e. provided it is for no consideration.* This clause also applies when the transfer is to a company owned by the insured.

It is possible to imagine scenarios where a quitclaim deed might be preferable; for example, if there is animosity between the parties, or if the grantor is afraid grantee's creditors may subrogate into grantee's rights, which could accrue a claim against grantor. While every real estate attorney would be wise to consider the continuation of coverage, one should stay in perspective and evaluate what might be best for each specific case. A creative attorney, however, might be able to draft a deed to continue coverage and protect the client, for example, by limiting the warranty to defects in existence as of the date of grantor's original purchase.

Appendix to Continuation of Coverage: The Grantor's Purchase Money Mortgage

A less crucial but equally ignored facet of continuation of coverage is that on grantor's purchase money mortgage. The same Section 2 of Conditions and Stipulations continues coverage in the event the seller decides to hold back a mortgage and collect the balance of the purchase price in future payments. The language in the policy is very specific, "[coverage continues] … so long as the insured … holds an indebtedness secured by a purchase money mortgage given by a purchaser from the insured…" A fee policy continued this way is not a loan policy. There are some differences which are usually inconsequential to the casual lender, but could be problematic to the professional one. For example, while a loan policy continues coverage as the loan is serviced from lender to lender, coverage under a fee policy is severed when consideration is given. Any attempt to sell the mortgage loan would cancel the insurance. Another difference is that the loan policy insures the priority of the mortgage, while the fee policy would not. This is not as troublesome as it appears because under Section 13 of the Lien Law, a purchase money mortgage has priority over most liens that run with the buyer. Lastly, a loan policy picks an insured amount on the closing date, while a fee policy carries on the amount stipulated when it was issued. If the fee policy is very old and the market is booming, the coverage might not suffice.

Industry Curiosities

Does Marketable Title mean free of ghosts?

A Florida judge has been called to decide whether a commercial lease may be voidable because the premises are haunted. The lawsuit involves two restaurateurs who leased commercial space at a mall, but stopped renovations and rescinded the lease when people reported seeing ghosts. The landlord claims 2.6 million dollars in damages and rejoins that even if the lessee proves the existence of ghosts, it remains to be proven whether they are "bad ones." The landlord also suggested having the premises exorcized, but the lessee felt compelled to decline because the Catholic ritual would conflict his religious ban as a Jehova's Witness not to meddle in spiritual matters. (*The Associated Press 9-12-05, "What's Worse, Being Sued – or Haunted?")* The building was allegedly an undercover brothel and the spirits, those of the illegitimate children and the piano player. A company called Orlando Ghost Tours used to take visitors to the premises until they were sold in 2001. (*St. Petersburg Times Online, 09-09-05.)*