FEDERAL STANDARD ABSTRACT
TITLE NEWS

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Title News

Mortgage Fraud Ring Indicted in New York City

Louis Sandella, Michael Sandella, Danielle Moss, Geraldine Moss, Kim Moss Fontanez, Gary Shaw, Ida D'Angelo, and Andreas Perdikos were arraigned on 4-25-06 for criminal enterprise and other crimes in relation to a mortgage fraud ring. Other than falsifying documents to obtain bank approval on inflated mortgage loans, certain conspirators are also charged with outright pocketing their clients' loan proceeds. A transaction set out in the indictment as an example of the scheme concerns the January, 2004 sale of a house in Flatbush, Brooklyn. Although the true purchase price of the property was $310,000, the conspirators falsely told the bank that the purchase price was $450,000, and applied to the bank for loans totaling that amount. The criminal enterprise gave the bank false information about the financial condition of a "straw buyer" that it recruited as a front man in the transaction, and submitted a forged appraisal report. The group then pocketed the bulk of the inflated amount, and allowed the loan to go into default. If convicted, the conspirators face up to twenty-five years in prison.

Failure to Publish LLC Formation May Result in Malpractice

Effective 6-01-06, new LLCs must comply with publication requirements within 120 days of creation. Failure to comply will result in the suspension of its authority to transact any business. However, acts of such LLC will still be considered binding as to third parties relying on its authority. The difference lies in that the members may not be protected by limited liability until the publication requirements are "substantially complied with." An attorney who fails to advise her clients to comply with publication might expose her clients to personal liability and might be liable herself for malpractice. See Chapter 767 of the Laws of 2006 for the new publication requirements.

Landlord Prosecuted for Mortgage Fraud Scheme

Robert Palano, 51, fraudulently obtained more than $4 million dollars in mortgage loans on 104 rental properties he owned in Buffalo. After pocketing the loan proceeds, Palano absconded to Florida, leaving at least ten lenders with defaulted loans secured by properties worth far less than the debt. The investigation revealed that Palano had procured grossly inflated appraisals and that he had lied in his applications by denying that he was subject to a lawsuit in an unrelated mortgage fraud case. The default on the loans caused the eviction of dozens of families from the rental properties. On 4-28-06 Palano pleaded guilty to grand larceny and scheme to defraud and faces up to seven years in prison.

Peter Port and Others Convicted for Participating in Mortgage Fraud Scheme

Peter Port, Barry Fauntleroy, and Devon Bowie were sentenced on 3-27-06 for defrauding the Department of Housing and Urban Development (HUD). According to the indictment, the conspirators located properties in poor condition in Essex County and represented to buyers that significant renovations would be made prior to sale. After the buyers agreed on a price, the conspirators would produce false documentation, including appraisals, W-2 forms, verifications of mortgage payments and employment, pay-stubs, gift letters, leases, attorney escrow letters, and bank statements, and would then prepare applications for FHA loans. Once the banks approved the mortgage loans, the conspirators would purchase the properties and re-sell them to the buyers with little or no improvement, sometimes even using the HUD funds for the first purchase. Port, the owner of Port Abstract, the title agent in many of the transactions, was sentenced to five months in prison for his involvement, and Fauntleroy, the main investor, was sentenced to twenty-one months.

Perfecting the Closing

Transfer Tax Returns for Trusts and Estates In New York City

New York City has taken the position that all transfer tax returns from trusts and estates must include the individual fiduciaries as co-grantors. A deed from a trust normally shows one grantor, the trust, and an individual signing as trustee. In order to record such a deed in New York City, the Real Property Transfer Tax (RPTT) and the TP584 returns would have to list two grantors, the trust and the trustee, but be signed only one, as trustee. Transfer tax returns on deeds from estates must be prepared in the same way. Note that the practice applies to TP584s filed in the Five Boroughs. When the same form is used to convey property in other counties, there is no requirement that the trustee appear individually as well.

New Rules Regarding Re-Issue Rates

In the wake of the on-going class action against title insurers for refusing to offer re-issue rates, the Title Insurance Rate Service Association, Inc. (“TIRSA”) has drafted new, clearer rules regarding their availability. The amount of the discount itself has not changed.

It used to be that a borrower was entitled to the re-issue rate if: 1) a policy of title (mortgage or fee) had been issued in the last ten years, and 2) there had been no change in the ownership of the property, and 3) the legal description referred to the same property. Whether a policy of title has been issued in the last ten years is now entirely irrelevant. Whereas the discount used to be based on the fact that a policy had been issued, the discount now applies whenever:

1) the Vesting Instrument –such as a deed- was executed for full consideration and “created” within the last ten years, OR an Existing Mortgage was “created” within the last ten years; AND

2) “no change of ownership” has occurred since that instrument was created; AND

3) the new mortgage and policy describe "the same property as set forth in the" instrument.

Title companies are to rely on public records for the consideration amount and determine whether full consideration was paid. Note that credit line mortgages that normally require no title insurance may work to facilitate the discount rate on a later date. For example, A buys premises in 1992 for $200,000 taking a mortgage loan in the amount of $160,000. In 2003, she pays off the outstanding balance of the mortgage by taking a no-cost credit line mortgage – without title insurance- in the amount of $150,000. When A refinances again in 2006, she won't be entitled to a discount based on her vesting instrument because it is over ten years old. However, according to the new rules, the credit line mortgage recorded in 2003 would entitle her to the discounted rate, regardless of the fact that no title insurance was issued at the time. The New York State Department of Insurance has approved the new rules in Section 14 of the TIRSA Manual.

On Referees' Compensation

The law states that on foreclosure sales over $50,000 a referee may charge $500, and that any fees above that must be expressly authorized by the courts (see CPLR 8003 [a] and [b]). Common practice reveals that referees regularly charge more than $500. For example, $500 might be a sufficient amount if the buyer in foreclosure is the mortgagee, so no closing of title ceremony is needed, but it is usually deemed insufficient when the buyer is a third party and the referee must attend a full closing in addition to conducting the sale. In addition, adjournment fees and cancellation fees are commonplace. This discrepancy between the law and the practice sometimes results in stalled closings. In the usual case, the attorneys do not complain about reasonable fees charged for a referee's time, but rather about their legality. There is no record that such fees have been previously approved by the courts and they are reasonably concerned about letting their clients pay illegal fees.

The supreme court recently addressed this issue in JPMorgan Chase Bank v. Pizzini, 2006 NY Slip Op 26130, decided on 4-05-06. After finding the above fact pattern, the court delved into different scenarios that may result in extra compensation for the referee and laid down guidelines as to what fees will be henceforth approved the court. The supreme court declared that a referee's attendance at a closing cannot be conditioned on pre-payment of her fees and directed that the following paragraph be appended to all judgments appointing referees to sell:

> "For any scheduled sale canceled on less than 48 hours notice to the referee, the referee shall be entitled to an additional $250.00 for each said scheduled sale, subject to the approval of the court at the time of the confirmation of the sale pursuant to CPLR 8003 (b). In the event the referee attends a sale which is canceled without prior notice to the referee, the referee shall be entitled to an additional $500 for attending a re-scheduled sale, subject to the approval of the court at the time of the confirmation of the sale pursuant to CPLR 8003 (b). For a third party closing, the referee shall be entitled to an additional fee of $500, subject to the approval of the court at the time of the confirmation of the sale pursuant to CPRL 8003 (b). All parties may address the court as to the reasonableness of such fees, including the adequacy thereof, on the motion to confirm the report of sale or by separate motion."

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