# FEDERAL STANDARD ABSTRACT
## TITLE NEWS

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# Title News

**DOB to Issue C/Os With Open Permits**

The NYC Department of Buildings has introduced a pilot program to expedite issuance of Certificates of Occupancy. The program consists in issuing final C/Os even when applications are outstanding. For example, demolition of interior partitions will not need to be signed off provided the performed work does not exceed 20% of the total floor area. In future searches, open applications may be outstanding even if the search reveals a subsequent C/O. Practitioners are warned not to assume future C/Os cure all open permits.

Naturally, not all open applications qualify for the program. All sign-offs relating to construction, electricity, elevator or plumbing must have been obtained before applying. No C/O will be issued if any open permits relate to base building life safety systems (sprinklers, standpipes, fire alarms, egress), structural and mechanical alterations, or sidewalks. For more information visit www.nyc.gov/buildings.

**Secondhand Smoke as Constructive Eviction**

On August 24, in Poyck v. Bryant, 2006 NY Slip Op 26343, the NYC Civil Court decided the novel issue of whether secondhand smoke can be grounds for constructive eviction. "…[T]his Court holds as a matter of law that secondhand smoke qualifies as a condition that invokes the protections of RPL §235-b (implied warranty of habitability) under the proper circumstances. As such, it is axiomatic that secondhand smoke can be grounds for constructive eviction" (parenthesis added). After tenants had requested on numerous occasions that the landlord take action to abate secondhand smoke emanating from the neighbor's condo unit, the tenant terminated the lease unilaterally and vacated the premises. The Court noted that the fact that the landlord had no control over the actions of the neighbor was irrelevant, as "the Court of Appeals since 1979 has clearly stated that the acts of third parties are within the scope of a landlord's responsibility pursuant to RPL §235-b." As the Court decided on a motion for summary judgment, the Court did not decide if the facts of the case actually resulted in constructive eviction.

**Online Real Estate Ads Under Scrutiny**

According to a report released by the City of New York on October 24, about one-third of real estate agents who advertise "no fee" apartments at online sites actually charge a broker fee. The report condemns this as a deceptive practice and recommends action by the New York City Department of Consumer Affairs. Craig Newmark, founder of craigslist.org, commented that of all the regions the company works in New York City has the worst problems with fraudulent real estate ads, and that he welcomed governmental assistance in the matter.

**Common Pitfall: Loss of Coverage in LLC and Partnership Re-Organizations**

It is commonplace to form partnerships and LLCs for the acquisition and management of commercial real estate. Every investor understands the need of limited liability and a contract with her business partners. What is not so clear is the risk of loss of coverage by reason of re-organization. Coverage under the 1992 Fee Policy is only effective while the insured, the LLC or partnership, continues in the same

interest as when the property was bought. If the insured subsequently accepts a new member, or if the same members re-arrange their interests, then coverage lapses. This is the result of established law that generally presumes that a new partnership is created every time a new partner joins or one leaves. The new entity that emerges would be different from the insured - albeit with the same name- thus coverage under the title policy would fail.

There are two important exceptions to loss of coverage in re-organizations. First, if the re-organization is the result of operation of law, such as may occur by death or bankruptcy of a member, but by no positive action, then the law presumes the same entity continues, and thus so does the coverage. Second, if the re-organization involves merely a conveyance to another LLC or partnership, owned by the same parties and in the same percentage interest, then coverage continues. This is not the result of the terms of the Fee Policy, but the result of Section 32 (A)(1)(a) of the TIRSA Manual, which governs title insurance. The same exception applies to conveyances from the company to its members in the process of winding up.

All other transfers of company interests will probably result in loss of coverage. The typical scenario is that of an LLC that is formed to close on a property and the members give other parties the option to join the project at a future date. If the parties decide to join, coverage lapses. The same results if one of the members decides to "cash-out".

This result can be avoided by purchasing the Fairway endorsement. The endorsement basically insures that "…the Company shall not deny liability …and shall not raise as a defense to any claim made hereunder …that (ii) any such transfer creates a new ...entity as of the date of the endorsement." The endorsement is always available post-closing and should be purchased simultaneously with the purchase, sale or transfer of an interest in the entity. Corporations do not require it because they are not deemed to be re-born on every organizational change. The endorsement is priced at 20% of the original rate. Before engaging in the next organizational change, find out if coverage would continue or if the price of the endorsement, if necessary, should be factored in the transfer cost or sales price.



If you have any questions or comments, contact us at fsa@federalstandardabstract.com