

FEDERAL STANDARD ABSTRACT

TITLE NEWS

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Title News

THE MORTGAGE CRISIS

It's hard to escape the troubles of the mortgage industry if you pay attention to the news lately. The closing of American Home Mortgage, rumors about other lenders and dips in the stock market have created an atmosphere of concern about the housing industry, to put it mildly. Further, experts are saying that the decrease in house prices and the slump in new housing construction across the nation will not end any time soon. It is becoming increasingly difficult for those with bad credit to borrow money, which in turn puts downward pressure on house prices, as there are fewer buyers out there competing for an increasing number of properties. Put simply: as demand falls, so do house prices. The New York Times has even reported that would-be borrowers of jumbo mortgages applied for in order to buy luxury Manhattan properties are feeling the credit crunch. Lenders are increasingly asking buyers to put up more of the purchase price and finance less of the purchase, even for properties costing two or three million dollars – or more, and even when the borrower shows a prodigious Wall Street income. And lenders often are doing so at the last minute, sometimes killing the deal and putting the buyer's down-payment in jeopardy.

According to the New York Times, however, things may get even worse. Most of the defaults seen so far have been the result of bad loans and, in some cases, fraud perpetrated by lenders or borrowers. The next set of loans in danger of default, according to the Times, are those with adjustable rate mortgages, and many of the borrowers who took them don't know the rates are about to adjust. These mortgages were quite popular in 2005 and 2006, when underwriting standards were avowedly much looser. For such a mortgage, after an abnormally low initial interest rate, the rate increases after two years,

now in 2007, or next year in 2008, to a higher rate which will mean hundreds of dollars more each month for many consumers. The resets for 2007 will reach their peak this coming October, per Credit Suisse. At that time, \$50 billion in mortgages will jump to a higher interest rate for the first time ever. \$1 trillion or 12% of the nation's total mortgage debt is scheduled to reset to a higher rate now or next year. A few years ago, however, in 2002, for example, only a few billion dollars in mortgages were resetting each month.

What does this all mean? It's hard to say. Many remain qualifiedly optimistic, despite these occurrences, but no one is sure of the outcome. The one significant change therefore is the uncertainty as to the mortgage industry which a few years ago seemed unthinkable.

ADVERSE POSSESSION

This issue comes up most often with regard to a survey and survey reading. Usually, there is a strip of land that the seller of a property may not be in possession of. That strip of land may be in the possession of a neighbor because a fence falls short of the property lines or the neighbor has been using the strip of land for an extended period. Adverse possession is where a person is able to take title to property by first holding it in possession without actual title to the property. After a statutory period of ten years, per section 311 of the Real Property Actions and Proceedings Law, the person's possession "ripens" into title, as it were. In order to fully convert possession into title, a plaintiff must file an adverse possession claim or counterclaim in court.

To establish adverse possession, a would-be owner must show that the possession is hostile and under a claim of right, actual, open and notorious, exclusive and continuous. Each of

these elements must be shown by clear and convincing evidence. *Brand v. Prince*, 35 N.Y.2d 634 (1974).

Hostile possession means that possession is inconsistent with the rights of the person in title. If, for example, one neighbor uses a strip of land to plant flowers in the land owned by a next-door neighbor, and it is done unknowingly, such possession is still “hostile” even though it’s done by accident. RPAPL section 512 states that land is considered possessed where:

1. It has been usually cultivated or improved.
2. It has been protected by a substantial enclosure.
3. It has been used for the supply of fuel or fencing timber.

Open and notorious possession means that possession is visible and public. An easement for a pipe that runs underground and is never recorded, for example, would not meet this criterion. And while such an element of adverse

possession seems fairly simple on the surface, it may become much more complicated when the legal description in the recorded deed is erroneous. In such an instance, if the current owner acknowledges the prior owner’s title to the property, even merely by attending a meeting with the prior owner within the ten-year statutory period for an adverse possession claim, then the current owner has no claim of adverse possession – nor can the current owner rely on the deed, of course, either. *Van Gorder v. Masterplanned, Inc.*, 78 N.Y.2d 1106 (1991). In *Van Gorder*, a prior owner came back and re-took the property because the descriptions in two deeds were wrong and there was no claim for adverse possession.

The above case qualifies as the sort of “nightmare” one never wants to see, from a purchaser’s perspective. The lesson to be learned is that details matter, especially in deeds and surveys. Further, one needs to understand the elements of adverse possession so that one will never unknowingly forfeit an adverse possession claim without a fight.

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