

FEDERAL STANDARD ABSTRACT TITLE NEWS

Issue #4

January 2005

OVERVIEW OF THE IMPORTANCE OF TITLE INSURANCE

The usual title policies that are issued in connection with real estate closings are the "Loan Policy" and the "Owner's Policy." Certain transactions may involve Leasehold Policies or Mortgage Leasehold Policies, both of which may include Cooperative Apartment transactions, but we will address, broadly, only the Loan Policy and the Owner's Policy.

A Loan Policy, usually referred to in the industry as a "Mortgage Policy," is indeed issued in connection with a mortgage made on real property. The priority of the lien of the mortgages is the focus of the policy. Ancillary to that is the point that the mortgagors are the appropriate party to create this lien. In the event of a foreclosure, the policy *does not insure* that the principal amount due to the mortgagee will be recovered from the foreclosure sale, only that there are no preceding liens affecting the premises. Lenders may choose not to obtain mortgages policies in some cases such as a second mortgage or even in refinances, relying on a short term search made by a title company, as a method of saving closing costs to the borrowers. Since errors do happen in searching and parties are not always who they say they are, any "claims" would be borne in these cases by the lender. Searches provided by title agents and underwriters usually contain a disclaimer that liability is limited to the amount paid of the amount of \$1,000.00. A lender would expend much more than that amount in a legal challenge to the liability limitation. Therefore, a Loan Policy is important to every mortgage transaction.

An Owner's Policy, usually called a "Fee Policy," insures the owner (individual, corporation, partnership or LLC) against all claims made prior to the date of title vesting. Fraud and forgery (whether at closing or existing in the prior chain), the validity of a mortgage or tax lien foreclosure, judgments against prior owners or unsatisfied mortgages are just some of the possible reasons for claims. Claims can also refer to easement rights, enforceability of recorded covenants and restrictions or other situations. An Owner's Policy makes what is usually one's largest investment into their safest investment. The Market Value Ride (MVR) increases the title insurer's liability as the value of the property, as it improved at the time of purchase, increases, with no limitation by percentage or dollar amount, but it is only effective for one to four family residences. An owner's policy, while certainly not mandatory, is always a wise choice.

NEW POLICIES FOR PATRIOT ACT NAME SEARCHES

Current federal regulations require title insurer and its agents to make a search of the Blocked Persons List maintained by the Department of the Treasury. This requirement arises where the title insurer or its agents act as a settlement agent by handling proceeds of a purchase or refinance; or receiving escrow deposits from parties to a transaction. The applicable law and regulations impose the search requirement on all "Financial Institutions" which is defined to include insurance companies and their agents.

Certain title insurers have stated that they believe that patriot search information does not affect title and for that reason prefers that such information not be reported within any of the schedules of any title report, commitment or other form of title evidence; such as by including an exception or requirement. Some title insurers have also said that searches made solely for the benefit of the title insurer or its agents to comply with the law should not be disclosed to anyone. However, where a lender has required the title insurer or its agents to make a search of the Blocked Persons List *and* report that search to them, the title insurer and its agents may distribute the search to the lender in the normal course of reporting. Whenever the search reveals a positive match to the party whose name searched the law imposes a special responsibility to report the transaction to the Office of Foreign Assets Control ("OFAC").

Some title insurers have established internal procedures for reviewing and confirming positive returns and for making reports to OFAC when justified. Such procedures may require that if a name search discloses an entry for the party whose name is searched, the Branch or Agent should contact the title insurer immediately. Nonetheless, when a positive return is found, under no circumstances should any party to the transaction be advised that a positive return has been reported for a possible filing of a Suspicious Activity Report ("SAR"). The law and regulations prohibit anyone from disclosing that a SAR has been filed with OFAC.

FINAL FTC REGULATION ON CONSUMER INFORMATION AND RECORD DISPOSAL

The Federal Trade Commission (FTC) has issued its final rule regarding the proper disposal of consumer report information and records under the fair and Accurate Credit Transactions Act of 2003 (FACTA) and the Fair Credit Reporting Act (FCRA). The final rule, which will be published in the Federal Register shortly, is similar to the proposed rule issued in April 2004 and will become effective June 1, 2005. The commission received more than 50 comments from industry trade organizations, businesses, consumer advocacy groups, Members of Congress, and consumers.

FACTA, which was enacted on December 4, 2003, amends the FCRA and directs the FTC, the Federal Reserve Board, the Office of the Comptroller of the Currency, the Federal Deposit Insurance Corporation, the Office of Thrift Supervision, the National Credit Union Administration, and the Securities and Exchange Commission to coordinate with one another to adopt comparable and consistent rules regarding the disposal of sensitive consumer report information. The purpose of these rules is to reduce the risk of identity theft and other consumer harm from improper disposal of a consumer report or any record derived from one. The FTC's Disposal Rule applies to any person over whom the FTC has jurisdiction that, for a business purpose, maintains or otherwise possesses such consumer report information.

The Rule requires that covered entities "take reasonable measures to protect against unauthorized access to or use of the information in connection with its disposal." The standard for disposal is flexible to allow entities covered by the Rule to determine what measures are reasonable based on the sensitivity of the information, the costs and benefits of different disposal methods, and relevant changes in technology over time. The Rule's flexibility should also facilitate compliance for smaller entities. In addition, the Rule includes specific examples of appropriate measures that would satisfy its disposal standard. The final Rule makes minor modifications to the proposed Rule, including clarification of the definitions of "consumer information" and "disposal."

COMMON QUERIES

Question. "What do I need (besides the deed) to record a deed in New York City?"

Answer. A) New York City Transfer Tax Form (RPT)
 B) New York State Transfer Tax Form (TP-584)
 C) Non-Multiple Dwelling Affidavit (unless it's a three family house or more)
 D) Smoke Alarm Affidavit (if it's a one or two family house)
 E) a Preliminary Multiple Dwelling Registration (if applicable)

Question. "My clients are divorcing. Is there a transfer tax due on a deed from former husband and wife to just the wife?"

Answer. Yes. Both New York State and New York City takes the position that the divorce decree or the separation agreement is the consideration given for the transfer (even if NO money changes hands) and the deed will be taxed at 50% of the current fair market value. If it goes from sole ownership of one spouse to the other, the rate will be 100% of the current fair market value.

Question. From a title insurance perspective, how can I dispose of the question of possible unpaid New York State Franchise Taxes and New York City Business Corporation Taxes?

Answer. Most title companies will accept any of the following:

1. Status reports from the State and City showing the taxes are paid;
2. Escrow money pending disposition of the tax;
3. Copies of tax returns from the last three (3) years plus copies of canceled checks showing payment;
4. A letter from the corporation's Certified Public Accountant on his/her letterhead stating that the returns have been filed and the taxes paid through the end of the most recent fiscal year.

*****SAVE THE DATE *****

Celebrate with us at the FSA Annual Dinner! Look for your invitation in the mail soon!

Date: Friday, February 18, 2005
Time: 6:30PM
Place: Sheraton LaGuardia East Hotel (Ball Room)

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