FEDERAL STANDARD ABSTRACT
TITLE NEWS

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Steven J. Baum, P.C. to Close?

On November 21, Steven J. Baum, P.C., New York's largest residential foreclosure firm announced "mass layoffs," generating speculation that the firm might close. It appears that the decision came down after Fannie Mae and Freddie Mac stopped referring cases to the firm. For more information, see: *http://www.newyorklawjournal.com/PubArticleNY.jsp?id=1202533111098*

NY Legal Ethics: The "No Contact" Rule and the Pro Se Attorney

The Professional Ethics Committee has issued a decision concerning the "no contact" rule and attorneys representing themselves. It is well-known that an attorney may not contact directly a party represented by another attorney in the matter at hand. In transactions, the seller's counsel cannot speak directly to the buyer, just as in litigation the defendant's counsel cannot speak directly to the plaintiff. That rule is known as the "no contact" rule.

The Ethics Committee considered the issue of how the "no contact" rule applies when a party is an attorney and is representing herself. The Committee concluded that the rule applies to all attorneys regardless of whether they are representing themselves. In effect, this means that an attorney representing herself in the sale of her home cannot contact the purchaser directly, just as in litigation an attorney representing herself cannot contact the other party directly. Notably, the Committee made no distinction between transactional and litigation matters.

Lastly, the Committee considered the argument that communications between the parties should be allowed to remain open in the interest of encouraging settlements, but did not yield. "The usual rights of nonlawyers parties to engage in direct communications are outweighed by the lawyer's professional obligation to the system of justice and the goal of protecting represented parties." The opinion can be viewed here: *http://www.nysba.org/AM/Template.cfm?Section=Ethics_Opinions&ContentID=58019&template=/CM/ContentDisplay.cfm*

Documents Involving the Same Transaction Are to Be Read Together

A family dispute culminated in an important point of law. The grandparents conveyed their home to their four children reserving a life estate. By a simultaneous but unrecorded instrument, all parties agreed that the grandparents reserved a power of appointment over the remainder interest; i.e., the right to divest their children of their remainder and vest it on other people. The power of appointment was not mentioned in the deed. The grandparents subsequently exercised the power of appointment and vested the remainder in unequal shares among their children and grandchildren. After the grandparents' death, the children and grandchildren could not agree on what percentage interest they each owned. The ones whose interests were diminished by the power of appointment claimed that it was invalid because the grandparents' deed was a complete conveyance in and of itself, and because the power of appointment did not comply with formalities (i.e., it was not recorded).

The supreme court ruled that the two documents, the deed and the power of appointment, having the same parties, date, and subject matter, were to be read together as part of one transaction. Hence, the deed was only a portion of the transaction and the simultaneous power of appointment was valid. As to the lack of recording of the power of appointment, the court ruled that it was irrelevant as to parties who are aware of it. The only point of recording is to place the world on notice of the existence of something. If a document is not recorded, a *bona fide* purchaser for value may take free of it. But as to someone who was a party to the original transaction and received a deed for no consideration, the fact of recording is irrelevant because that party is not a *bona fide* purchaser for value. The Appellate Division, Second Department, confirmed. *McLaughlin v. Logan,* 2011 NY Slip Op 08127 (2d Dep't, 11/09/2011).

Strict Liability for Leaking Underground Storage Tanks

The Department of Environmental Conservation fined a property owner and compelled the clean up of oil spillage in the property. The owner brought suit challenging the fine and the order claiming that the leaking oil tank did not belong to it but to a tenant.

The court disagreed and the Appellate Division, Third Department, confirmed. Liability for oil spills is strict and premised on "control over the property on which the discharge occurred and [a party's] failure to remediate the contamination, rather than on the ownership of the storage tank system." *Matter of Huntington and Kildare, Inc. v. Grannis,* 2011 N.Y. Slip Op. 07774, 2011 WL 5221863 (N.Y.A.D. 3 Dept.).