

Title Talk

PennAttorneys
TITLE INSURANCE CO

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for

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by

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Letter from the Editor

The whole conveyancing process as we know it is in danger of being radically changed as a result of pending legislation in Congress.

H.R. 1858 would allow bank holding companies to buy or establish insurance companies and agencies (this would include title insurance). I feel that if this bill is passed the next logical step would be that these captive agencies or companies will move to control the whole closing process.

It is imperative that you contact your members of Congress and voice your opposition to H.R. 1858 and any other proposed legislation that would permit banks to control the closing process.

Have we so soon forgotten the lack of checks and balances that made the R-T-C necessary or will H.R. 1858 (or a bill like it) give us another reminder this decade? If we get another lesson the resulting problems will be much closer to home — your client's home that is. (Details inside) ■

Beware of Bankruptcies

Please be aware that the basic title search will not reveal bankruptcy filings. A separate search of the bankruptcy records in the Federal District where the parcel is situated must be conducted in order to reveal whether the seller has filed for bankruptcy.

A service has recently been implemented which may make it easier for some of you to conduct bankruptcy searches. The service, called the Voice Case Identification System (VCIS), is now available in both the Eastern and Western Districts of Pennsylvania. Access-

ing VCIS by entering the name of the seller will provide you with the following information: whether a bankruptcy has been filed, and if so, the chapter and case number, date filed, presiding Judge, and current status of the case.

Simply call VCIS using a touch tone telephone, and follow the instructions. The VCIS numbers are:

Eastern District:
(215) 597-2244
Western District:
(412) 355-3210

Unfortunately, VCIS is not available in the Middle District of Pennsylvania. ■

COVER THE FACTS ON YOUR FAX COVER

In order to avoid delay in the processing of your Commitments and Policies and to assure a quick response to questions, please be sure that your fax cover sheet contains at least the following information (where applicable):

- a) Your name;
- b) Your telephone and fax numbers;
- c) Your Commitment/Policy number; and
- d) The name of the individual at Penn Attorneys to whom the fax is being directed. ■

Banks Selling Title Insurance:

Recent Developments

In the January and April, 1993 issues of our Newsletter, we reported on attempts by banks, including one Pennsylvania lender, to become involved in the business of issuing title insurance.

Obviously, widespread involvement of banks in title insurance would not bode well for real estate attorneys. The American Land Title Association (ALTA), which represents the title insurance industry, and which is opposed to banks selling title insurance, has since won cases which prohibit banks from selling title insurance outside of very small towns (cf. ALTA v. Ludwig).

Because of this litigation, most lenders have taken a "wait and see" position with respect to getting involved with title insurance.

Now, however, lender interest in getting involved in providing title insurance is being stirred up again because of hearings underway by the U.S. House of Representatives Banking Committee regarding H.R. 1858 (The Financial Institutions Regulatory Relief Act).

Provisions in proposed H.R. 1858 would allow bank holding companies to acquire or establish insurance agencies and companies.

ALTA wishes the public to recognize the inherent dangers in allowing lenders to sell title insurance.

First, with traditional title insurance, the agent is independent from the underwriter; losses suffered by underwriters are often recovered from agents. Lenders serving as both underwriter and agent will not have the ability to recover losses caused by title claims.

Second, earnings on title insurance average only 3% of what a lender earns on the average loan transaction. Priorities will dictate that lenders insure over title risks in order to "make the deal."

Third, even though lenders are prohibited from insisting upon the use of a specific title insurer, it is likely that borrowers will feel that their chances of having their loans processed will be greater if they purchase title insurance from the lender-owned agency.

Your future as an independent closing attorney will be placed in jeopardy if lenders are allowed to establish their own title insurance companies and agencies.

It is imperative that you contact your member of Congress to voice your opposition to this pending legislation. ■

More on Bankruptcy:

Preferential Transfers

A bankruptcy search will inform you as to whether a party has filed bankruptcy up to the date the search is conducted.

However, a search will not protect your client from the possibility that the sale could be determined to be a preferential transfer under section 547 of the Bankruptcy Act. A preferential transfer may be deemed to have occurred when a debtor transfers property within 90 days before filing, or after filing bankruptcy.

To help protect yourself from

claims as a result of preferential transfers, you should prepare an affidavit to be signed by the seller at each closing wherein the seller states that he has not filed bankruptcy and will not do so within 90 days after the closing.

Please note that Penn Attorneys' standard Buyers' and Sellers' Certification does not include language covering bankruptcy. However, we now have a Long Form Certification which includes this language. Please contact us if you would like a supply. ■

TOP is Illegal In PA

We reported to you about Norwest Mortgage Inc.'s Title Option Plus (TOP) program in our First Quarter, 1995 issue of "Title Talk."

TOP is touted by Norwest as an alternative to traditional title insurance, wherein Norwest Mortgage guarantees title to the property for a fee which is slightly less expensive than the typical title insurance premium. In essence, Norwest is self-insuring its mortgages thereby attempting to circumvent the need to obtain title insurance through an independent underwriter.

The Pennsylvania Insurance Department has taken the position that the TOP program is title insurance (as defined by 40 P.S. § 910-1). Since Norwest Mortgage is not licensed as a title insurer in Pennsylvania, the Department has determined that TOP constitutes the unlicensed transaction of insurance in violation of Pennsylvania Insurance Laws. The Department has ordered Norwest to immediately cease and desist the TOP program in Pennsylvania. ■

Allow Us....

Sometimes the language on one of our Certification forms does not quite fit a particular situation you are confronted with.

Please do not alter Certifications without consulting Penn Attorneys. Allow us to provide you with the appropriate modification language. ■

Restrictive Covenants And Civil Rights

Restrictive covenants, often found in deeds, or in separate restrictive covenant agreements, impose limitations on how a particular parcel of property may be used.

The Civil Rights Act, 42 U.S.C. § 3604 (1968), states that it is unlawful "to make, print or publish, or cause to be made, printed or published any notice, statement or advertisement, with respect to the sale or rental of a dwelling to any person because of race, color, religion, sex, handicap, familial status, or national origin."

This statute has been interpreted by the Department of Justice as applying to restrictive covenants.

Therefore, if your abstract reveals restrictive covenants based on any of the classifications listed in 42 U.S.C. § 3604,

First, do not distribute copies of the covenants to anyone without first crossing out or whiting out the offending restriction.

Second, make sure that copies of the restrictions contain the following language on the first page:

"restrictions indicating a preference, limitation or restriction based on race, color, religion, sex, handicap, familial status, or national origin are hereby deleted to the extent such covenants, conditions and restrictions violate 42 U.S.C. § 3604(c)."

Also, please make sure you alert Penn Attorneys so that we can make the appropriate notation on your Commitment.

If you have questions as to whether a particular restriction violates 42 U.S.C. § 3604, please contact Penn Attorneys. ■

MOBILE HOME ALERT!

No, a tornado is not on the way. Now that we have your attention, please be reminded that we must be notified when a mobile home exists or is intended to be placed on a property. If so, requirements will appear on your Penn Attorneys Commitment instructing you to certify that no encumbrances are noted on the title, and that all taxes, including any special trailer assessments have been paid. We will also provide you with a form upon which you must furnish proof of surrender of the trailer title. Please feel free to call us if you have any questions. ■

Conveyancing of Partnership Property:

General vs. Limited Partnerships

Pennsylvania recognizes two basic types of partnership entities: the general partnership and the limited partnership.

The creation of a general partnership is determined by the intent of the partners. A general partnership may be governed by a written partnership agreement, but such an agreement is not necessary for the formation of a general partnership.

On the other hand, a limited partnership must comply with statutory requirements for organization, including a written agreement, and the appointment of at least one general and one limited partner.

With respect to a general partnership, the partners are personally liable for partnership debts. However, a judgement against an individual general partner is not considered a lien against partnership property unless it can be conclusively shown that said judgement is based upon a partnership debt.

With respect to a limited partnership, a judgement against an individual limited partner is never a lien against partnership property because limited partners have no liability for partnership debt. A limited partner's loss is limited to the amount of his investment in the limited partnership.

Legally speaking, general partnership property may be held either in the name of the partnership, or in the name of an individual partner or partners. However, from a title insurance perspective, we assume that property titled in the name of an individual or individuals without specific reference to a partnership is not partnership property.

Where a partnership agreement exists, check to see if the agreement specifies procedures for conveying property. If no partnership agreement exists, or if the authority to convey real estate is not set forth, all partners should be required to join in the execution of the instrument.

Pursuant to statute, the terms of a limited partnership will usually be set forth in a written limited partnership agreement. Said agreement will usually set forth how and under what circumstances partnership property may be conveyed. Limited partnership property may only be conveyed by its general partner or partners in accordance with the procedures set forth in the agreement.

Lastly, whether the partnership is limited or general, property held in the name of a partnership may only be conveyed in the name of the partnership. ■

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Absolutely FREE!

If your office would like a refresher course on applying for title insurance, please contact us to set up an appointment.

Someone from Penn Attorneys will meet with you in your office and review forms, commitments, policies and title issues. This review session may be particularly helpful in those offices with new staff members. Also available is training on our "Instant Policy" program, which allows you to release a completed policy to the lender within days of the closing. ■



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