

Title Talk



CREATED

for

ATTORNEYS

by

ATTORNEYS

Letter From The Chairman

Dear Stockholders of Penn Attorneys:

In 1980, Penn Attorneys was formed and our stock was offered to Pennsylvania attorneys at a price of \$15 per share. Since that time, the book value of our stock has grown to \$75 per share. Additionally, aggregate dividends of \$18 per share have been paid to our Stockholders.

The Board recently declared a "5 for 1" stock split, which will return the book value to \$15 per share. This action was taken to improve the marketability of our stock by reducing its value on a "per share" basis. The Board wants the stock of Penn Attorneys to be widely held by Pennsylvania attorneys. Please recall that your stock can be transferred only to Pennsylvania attorneys and that there is a mandatory redemption at book value upon death, unless the personal representative requests authority to transfer the stock to another Pennsylvania attorney.

Please continue to promote Penn Attorneys to your associates as the most effective and efficient means of handling the title insurance needs of their clients. We remain committed to our original goal of promoting the continued involvement of Pennsylvania attorneys in real estate transactions.

The Board extends its best wishes to you for a happy holiday season.

Robert G. Dwyer
Chairman of the Board

Norwest Mortgage Tells Pennsylvania Insurance Department — See Ya' in Court —

Norwest Mortgage has responded to the Insurance Department's "request" that they stop marketing the TOP program in Pennsylvania. Stephen D. Morrison Norwest's General Counsel in a letter to Gregory Martino the deputy insurance commissioner says: "We will not

voluntarily stop producing TOP in Pennsylvania. If you still feel you have a leg to stand on, we demand that you begin a formal administrative process that can be appealed to the Pennsylvania courts or begin an action directly in the Pennsylvania courts... We will vigorously oppose in the Pennsylvania

courts any attempts by your department to force us to stop offering the TOP program in Pennsylvania pending a court determination of the legal issues involved." Stephen, stop beating around the bush — say what you really think... Ball in your court Insurance Department. ■

Mechanics' Lien Stipulation — How many is too much?

The basic requirement for protection against the filing of mechanics' liens is the filing of a valid stipulation between the owner and the General Contractor before the commencement of any improvements.

Since by definition, there is only one 'General' Contractor the title insurer can be sure that all contracts will go through him and therefore no lien can be filed by any subcontractor or supplier since they are all covered by the stipulation.

What happens, however, in the case where the owner assumes the role of 'General' Contractor and enters into stipulations with the various subcontractors? In this case the title insurer is sure that there is more than one subcontractor working on the project because he sees more than one stipulation filed. The question then becomes — did the owner / 'General' Contractor sign a stipulation with everyone he contracted with or were there a few 'on a handshake' subcontractors. There is simply no way the title insurer can be sure that all work performed was covered by a stipulation.

How can the insurer protect himself? Essentially the insurer takes the view that multiple stipulations are as good as no stipulations. He asks that a release be signed by all subcontractors and materialmen giving up their lien rights and, in addition, that an additional risk premium be paid. The release form typically used allows the insurer to view the tradesmen and suppliers by category and make at least a reasonably informed

judgment that all the people who are typically involved in a project of this type have signed off. In addition, the owner is required to sign an affidavit stating that all tradesmen and suppliers have signed. The risk premium is paid to the company to induce them to accept this release as sufficient to offer mechanics' lien coverage to the lender. An analytical look at the release tells us that if everyone did in fact sign there is no risk to the insurer and therefore no real reason to charge a premium. This, of course, is true but not the real world. Subcontractors do get fired from jobs without pay for doing shoddy work and owners and subcontractors do disagree on what the 'contracted' work actually was and part company on less than friendly terms. These disgruntled tradesmen and materialmen will be the last people the owner will think to list on the release (presumably they were replaced by someone who completed the job satisfactorily) while being the first ones who would file a lien — this is the risk the risk premium (so called mechanics' lien insurance) covers.

Note also that in this case the lender cannot get mechanics' lien coverage until the project is completed.

The one sure way around this whole complicated subject is to warn your clients and lenders that in the case where the owner is acting as the General Contractor that no construction is to be started before the recording of the mortgage. This doesn't mean that a mechanics' lien can't be filed but it does mean that the mortgage will always have priority even if a mechanics' lien is filed at some later date. ■

'Til revert do us part

In some of the older deeds we come across, especially in the middle of the state, we find language that says that upon the occurrence of a certain event the property will revert back to the grantor.

These reverter clauses cause us two problems. In the first instance, this language is inconsistent with the coverage that we are offering in the 100 endorsement which specifically states that there are no rights of reverter. In the second instance the practice of simply transcribing all the in-

formation from a prior deed onto a current deed, no matter how nonsensical the result, makes it difficult to tell who the actual 'grantor' is, which in turn makes getting a release from him or his heirs impossible. The solution? — tell us when there is a right of reverter, what triggers it (hog pens, sale of liquor, setback violations, etc.) and when it first appeared in the chain of title. Based on these facts we can make a quick decision on whether we will insure over the situation or determine the remedial work necessary before we can insure. ■

A bundle of Joy

We are often asked whether HUD requires an attorney to show his charges (including title insurance fees) in an itemized manner on the HUD-1 or whether he can just show an aggregate amount — so called 'bundling'.

In Regulation X issued November 2, 1992 (an expansion of RESPA) there is an Appendix A (instructions for Completing HUD-1 Settlement Statement). This section would seem to indicate that either method is acceptable. If the 'bundling' method is used the overall fee is entered on line 1107 and also enter on that line the line numbers of the services which are included in this overall fee. ■

You Heard It Here

Penn Attorneys now has an audio tape available which reviews all our forms and procedures. The tape is available free of charge and is ideal for new employees or as a refresher course for veterans. Call our office if you would like a copy. ■

Subdivision Restrictions

Subdivision covenants and conditions have long been considered to be 'part and parcel' of what you acquire when you buy a lot that is subject to such covenants and conditions. This includes both the benefits and restrictions. A common restriction is a setback line. The setback lines can become a part of the subdivision restrictions either by the Developer's unilateral act (typically to insure aesthetic appeal and hence lot value) or by city or township ordinances which then become part of the subdivision map. In either case, it becomes part of the subdivision restrictions which the 100 endorsement insures against violation of. It is important to note that whatever the origin of the setback line, a variance granted by a municipal authority does not override the rights of other property owners subject to the restrictions to enforce them. In the same vein, the developer cannot unilaterally alter the restrictions once lot sales have begun. The same logic applies to a rezoning by a municipal authority of lots within a subdivision from residential to commercial even though the restrictions call for all lots to be residential.

There are certain instances when we will insure over violations such as setback lines (time in place and degree of violation being the critical factors) and commercial vs. residential (existence of previous violations and general character of area being determinants) but these are exceptions to the rule. ■

Liened Forever!

It has recently come to our attention that there is another lien that continues indefinitely with no need for revival. Title 42 PA C.S. § 9728 (collection of restitution, reparation, fees, costs, fines, and penalties) allows a judgement to be entered which "shall maintain its priority indefinitely and no writ of revival need be filed." It appears that the judgment

would be in favor of the probation department although the term "other appropriate governmental agency" appears in the Act.

Please alert your searchers.

— *Our thanks to David Wertime of Greencastle for passing this on to us.* ■

Get the Lead Out

The disclosure requirements for all pre 1978 houses called for in the Residential Lead-Based Paint Hazard Reduction Act of 1992 were originally scheduled to go into effect on

October 28th, 1995. The implementation date has been pushed back indefinitely until HUD and the EPA work out some final details. ■

Did you know?

Pennsylvania is the fifth largest state in terms of Gross Title fees paid. ■

More on Bulk Transfers

Please note that 43 P.S. § 788.3 applies to transfers by every employer. The Department of Revenue has stated that the term employer is not limited to corporations and partnerships but includes sole proprietorships. Based on this we might find ourselves in the situation of having to obtain a clearance certificate, for example, on an individual employing a secretary who buys and re-

furbishes homes as his business or one who owns and manages small commercial buildings.

Remember that any sale consisting of 51% or more of the Pennsylvania assets (by value) could lead to any taxes owed by the seller to be attached to the transferred property. (See the 2nd Quarter, 1995 issue of Title Talk for the procedures to follow.) ■

East Side — West Side All Around the State

Yup, that old tune applies to us. Penn Attorneys now has an office in the Montgomery County area to assist our attorneys in the east side of the state. Our employee there is very well versed in our forms and procedures as well as the general closing process. If you are in the east side of the state and need some assistance give us a call to set up an appointment. NB: All processing and technical questions should still be directed to our Erie office. ■

Disbursing Charges

We've received quite a few calls lately inquiring about a \$35.00 charge that title agents are imposing on the sellers for disbursing funds. This extra charge is both authorized and mandatory under the new rating bureau filings.

Once again, Penn Attorneys is not a member of the Rating Bureau — our attorneys are free to charge whatever they choose for their services. ■

A Taxing Matter

Clarifying the status of taxes and assessments is the cause of more letters and phone calls than all other matters combined.

When reporting taxes and assessments please report the specific period they are paid through ("current" is not acceptable) and if subsequent periods are due and payable or not yet due and payable (the lenders insist on this being spelled out on the policy).

If school taxes are on a fiscal year please report them paid through 6/30/XX not simply the year. Some districts bill on a calendar year basis, if so report 12/31/XX.

Avoid follow up calls and letters and help us speed up your processing. ■

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Ladner for Less

We have negotiated with the George T. Bisel Company for a discounted rate on the excellent publication Conveyancing in Pennsylvania by Ladner. The regular price is \$138.00* including tax and shipping - your price until January 31st, 1996 is \$99.00 including tax and shipping and the 1996 update which will be available early next year. Call Bisel at 1-800-247-3526 and identify yourself as a member of Penn Attorneys Title Insurance Co.

(*NB: We have been informed that the "regular" price for Ladner will be increased sometime next year.) ■

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