

From the President's desk...

You've heard them before...those pearls of wisdom that we've learned over time: "Make hay while the sun shines." "What goes up must come down." "Every cloud has a silver lining."

These truisms were formed to teach us life's little lessons, giving something to keep us grounded when things are too good to be true (like the 2000-2005 real estate boom)—or something positive when "doom and gloom" (the current housing slump) surrounds us.

This is the time to examine the challenges that the real estate transaction marketplace has given us and look for what is possible.

- Can the industry recover from the mortgage crisis?
- Can title professionals survive in the meantime?
- Will purchasers demand better representation?
- Will the legal profession step forward or retreat from the closing table?

As much as I would like to answer these questions or put a spin on the current market conditions, to make things look better than they really are...I can't. But I can tell you that I do see a silver lining.

- There are cash and pre-approved buyers actively seeking to purchase in this "Buyers Market".
- The FHA has extended government-backed mortgage insurance to allow for the immediate sale of vacant, foreclosed properties to legitimate owner-occupants/borrowers.
- Refinances are back since lenders have expedited their efforts, working with troubled borrowers to prevent additional foreclosures.
- Consumers need the expertise and advice of an Attorney—more than ever before!

As we enter the summer season, we hope for the usual increase in real estate transactions. Penn Attorneys will be here to provide you with underwriting guidance and prompt service. Here comes the sun!

Josephine K. Lubiejewski, President

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Title Tidbits

REALTY TRANSFER TAXES

In transactions involving an assignment of agreement or contract for sale, the PA Department of Revenue has taken the position that realty transfer tax is due as if there were actually two transactions, contrary to the analysis contained in prior Title Alert 2008-01. That is, transfer tax is due on the original contract sales price, and due again on the ultimate purchase price, as if there were two transactions. E.g., if the original contract sales price is \$100,000.00 and the sale contract or agreement is assigned for \$20,000.00, the Dept. would assess transfer tax on \$100,000.00 AND \$120,000.00 for a total of \$2,200.00. Presumably, the local transfer tax would follow the same process. For a detailed explanation of the Department's position on this and other Realty Transfer Tax situations, see

www.revenue.state.pa.us/revenue/lib/revenue/RTT_2008-01.pdf

AWARD OF ARBITRATORS/ NO LONGER A LIEN DURING APPEAL

Previously, under Rule 1307 of the Rules of Civil Procedure, an Award of Arbitrators became a lien when entered on the judgment index, and specifically maintained its lien status during the pendency of an appeal. This Rule has been changed, effective January 1, 2008, to provide that the lien is created by entry of judgment on the award, and that judgment shall be entered only if no appeal has been filed. If appeal had been filed within 30 days, then the **lien shall attach following the verdict or court order on the appeal.**

DOMESTIC RELATIONS LIEN SEARCH

The internet search for Domestic Relations delinquencies <https://www.humanservices.state.pa.us/cs/ws/index.aspx> does not provide for entry of middle initials, but for first name and last name only. If one attempts to enter a middle initial in the First Name block (e.g., Paul J.) the system will search for the first name "Paulj" and not display items found under the name, Paul.

"GAP" COVERAGE

We still occasionally, receive demands for so-called "Gap" endorsements, possibly because mortgage processors have neglected to update their checklists. The new ALTA 2006 title insurance policies, in Covered Risk 14 of the Loan policy and Covered Risk 10 of the Owner policy, respectively provide coverage for the period up to the recording of the insured mortgage or deed, obviating the need for any such additional affirmative coverage.

OWNER POLICY ISSUED AFTER ACQUISITION OF TITLE

When Penn Attorneys is asked to issue an Owner policy of title insurance at some time after the acquisition of the title by the proposed insured, (e.g., at the time of a refinance transaction) the effective date of the policy will either be the date of the recording of the Deed into the owner or, alternatively, if issued at the time of a refinance—the newly brought down date for the transaction. If a date other than the date of recording of the Deed into the owner is used, the so-called "volunteer" exception will be added on the Owner policy:

"Estates, claims and encumbrances created, suffered or assumed after the acquisition of title to the Land by the Insured."

NEW FORM: IRS FORM 8300

IRS Form 8300—Report of Cash Payments Over \$10,000 Received in a Trade or Business was revised in March 2008 to change the formatting of some of the boxes on the form. No substantive changes have been made, however, the new form must be used for transactions occurring after March 31, 2008. Instructions are included with the Form. You may access this form at: www.irs.gov/pub/irs-pdf/f8300.pdf .

COMMON MISTAKES COMPLETING FORM 8300

The IRS has identified the following common errors in completing the form:

- A. Checking box 1a or 1b. Box 1a should only be used if one has filed a previous Form 8300 that is now being amended. Box 1b should only be used if voluntarily reporting a transaction that one would not normally be required to report because it is a suspicious transaction. For instance, the total of the cash payments do not exceed \$10,000, but the transaction still looks suspicious to you. Consequently, in most instances, neither box 1a, nor box 1b should be checked when completing the form.
- B. Completing Part II with the same information found in Part I of the form. Part II is only to be used if the transaction was conducted on behalf of more than one person. Thus, the TIN in box 6 should never be the same as the TIN in box 19.

You should take care not to make these mistakes, as they may result in forms being returned and penalties being imposed.



Closing On a Promise

—*Not* a Best Practice

You know the familiar story. You have to close by Thursday. That doesn't give you much time to do a proper search and collect the information to close the transaction. Nevertheless, you have accepted the responsibility and now have to meet the deadline.

Best practice for closing a transaction where there are defects is **not** to close on the *promises* of paperwork to come.

You may be left "holding the bag" for a mortgage or existing title defect if you choose to rely on promises, i.e.:

1. Subordination Agreement to come, subordinating a mortgage or other lien
2. Promises to pay Federal Estate and/or PA Inheritance taxes or to file the Returns.
3. An Indemnity to clear an unsatisfied mortgage or other open title matter or defect.

The best practice underscores the need to make sure that if we are to insure the priority of a new mortgage or Deed of Trust, over

an existing recorded mortgage or other title matter that remains open, we do so only when we are in possession of a clear, unequivocal and recordable subordination, satisfaction or indemnification instrument.

Any practice whereby you are closing or agree to close without a satisfactory Subordination, Satisfaction or Escrow Indemnity "in hand" or "of record" must immediately cease.

A recent article reported that a national equity lender has suddenly made a significant change to its practice of providing subordinations of its second mortgages. It is not difficult to anticipate that other lenders will, if they have not already done so, make the same change.

While some second mortgage lenders were formerly willing to subordinate to refinances of first mortgages where there was little or no cash out, in a declining market they are much less inclined to do so, since the decline

can result in less value to cover their liens. In fact, a lender may consider a borrower's need to re-finance as providing leverage to get itself out of the existing loan altogether.

It is Penn Attorneys' policy that no title Insurance be afforded insuring the priority of the lien of a new mortgage or Deed of Trust over an existing mortgage or Deed of Trust in reliance upon a pending Subordination Agreement.

Agencies *promising* to issue indemnities for matters still open of record need to provide a letter of indemnity from the former title provider *in advance of settlement* listing Penn Attorneys Title Insurance Co. and the Approved Attorney as the Indemnitee. The indemnity letter should specify the open matter. Proof should always be provided as to the payment of open liens.

If there is a defect, you must have the Indemnity, Subordination Agreement or other document IN HAND before closing.

Nothing Like the Real Thing:

IMPORTANT NOTICE

Only Commitments and Policies issued by Penn Attorneys Title Insurance Co. are the "real thing"!

Any models or forms created through settlement or legal software programs are VOID and are not to be used by any Penn Attorney® Approved Attorney for transmission to clients or lenders.

We Want You To...



- Check the expiration date of your Professional Liability Insurance and send your declarations page to Penn Attorneys.
- Execute and return your Approved Attorney Agreement to us (if you have not yet done so!)
- Respond to memos requesting additional information to complete your files and policies.
- Cash or deposit all refund checks within 30 days of receipt.



Filing Cabinets For Sale

- Letter size in Black or Cream
- 4 or 5 Drawer, Vertical
- Excellent or Good condition
- Cabinets are at our office in Erie, PA

First come—first served.

Contact Jennifer MacGregor
for more details at 814-454-8278.



Penn Attorney's Holiday Schedule

Our office will be closed on:

Friday, July 4, 2008 **Independence Day**
Monday, Sept 1, 2008 **Labor Day**



If you will need a Commitment or Instant Policy for a settlement to be held on the above-listed holidays, please be sure to submit your request 2 business days prior to the holiday:



- **Wednesday, July 2nd**, for Independence Day
- **Thursday, August 28th**, for Labor Day

For special requests, contact:

Tracy L. Chipoletti, Ops Manager 814-451-8867 or 1-800-352-2216