

# FEDERAL STANDARD ABSTRACT

## TITLE NEWS

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### Title News

#### **FDIC Alert: No NORTHRIDGE BANK**

The FDIC has issued a Special Alert regarding fraudulent checks drawn on Northridge Bank. There is no such banking institution. Certified funds from said purported bank with the words "CASHIER'S CHECK" printed vertically on the left side have been fraudulently offered as legal tender. The checks display one of two logos. One is a logo of a "1" superimposed on a map of the United States, encircled by a globe. The other logo consists of the letters "NB." The routing numbers refer to unrelated, legitimate institutions. FDIC Special Alerts may be accessed from the FDIC's website at [www.fdic.gov/news/specialalert/2006/index.html](http://www.fdic.gov/news/specialalert/2006/index.html). You can subscribe to Special Alerts at [www.fdic.gov/about/subscriptions/index.html](http://www.fdic.gov/about/subscriptions/index.html).

#### **Brooklyn Foreclosures: Standard Judgment of Foreclosure and Sale**

The King's County Supreme Court issued a memorandum that contained standardized forms that are to be used for the Order of Reference and the Judgment of Foreclosure and Sale in King's County. The Judgment of Foreclosure and Sale contains a provision that allows the referee to transfer title only to the successful bidder at the auction. It will no longer be possible to bid successfully on a property and then create a company to receive title. Likewise, parties that make it their business to re-sell properties before closing by assignment will have to go through the more cumbersome procedure of receiving the property themselves and then re-selling it at a second –albeit perhaps simultaneous– closing of title. If you are interested in copies of the forms please contact us at (718) 888-7778, or e-mail us at [fsa@federalstandardabstract.com](mailto:fsa@federalstandardabstract.com).

#### **Competition for Affordable Housing in Coney Island Announced**

As of May 30<sup>th</sup>, 2006 the City of New York is accepting proposals for the development of a 65,000 square foot area in Coney Island, bounded by Surf Avenue and privately owned land to the south, West 29<sup>th</sup> Street to the east, P.S. 329 to the north, and West 30<sup>th</sup> Street to the west. The site will be conveyed to the winning developer for \$1 nominal consideration and the City will provide up to \$5,000,000 of capital funds. A minimum of 20% of the residential units must be affordable to households earning a maximum of 80% of the Area Median Income, and 40,000 square feet of the area must be dedicated to a community center. Proposals will be evaluated based on the applicant's experience, feasibility, financing ability, residential affordability, quality of the community center program and design, among other factors. The City also seeks an operator for the community center.

# Perfecting the Closing

## Attorney Escrow Accounts Essential

A lawyer who is in possession of funds belonging to another person incident to her practice of law must maintain such funds in an escrow account (DR 9-102 (b)(1)). The account must bear the designation “Attorney Special Account”, “Attorney Trust Account”, or “Attorney Escrow Account” and the same must be displayed on its checks and deposit slips (DR 9-102(b)(2)). Escrow accounts are not free from service charges and they do accrue interest, which belongs to the depositor. A lawyer should provide the banking institution with the client’s social security number or tax identification number to prevent tax consequences to herself. The lawyer may deposit funds reasonably sufficient to maintain the account.

When the funds “are too small in amount or are reasonably expected to be held for too short a time to generate sufficient interest income to justify the expense of administering a segregated account” (Judiciary Law Sec.497 (2)), the attorney may deposit them in an Interest On Lawyer Account (IOLA). Any interest generated on an IOLA is forwarded by the banking institution to the IOLA Fund and any service charges on the account are paid by the IOLA Fund, saving the attorney the impossible task of allocating interest earned and service charges among her clients. No social security number or tax identification number is linked to an IOLA. “The decision as to whether funds are nominal in amount or expected to be held for a short period of time rests exclusively in the sound judgment of the lawyer or law firm” (Judiciary Law Sec. 497 4.(b)). Contrary to popular belief, the interest collected by the IOLA Fund is not used for the protection of defrauded clients and depositors, but for financing legal services to the indigent. The IOLA, being an escrow account, must also be properly designated in the account name, checks and deposit slips.

Attorney-escrowed funds are protected from embezzlement by the New York Lawyers’ Fund for Clients’ Protection. Currently, the Fund provides coverage up to \$300,000 per client. Note that the coverage is afforded per client and not per check. In the case of an attorney who regularly disburses mortgage loans, coverage of \$300,000 may very well mean only partial coverage. For example, a property bought for \$500,000 with 80% financing would be financed with a mortgage loan in the amount of \$400,000, which would mean that \$100,000 would not be covered by the Fund. The New York State Banking Department has manifested an interest in the usage of this coverage and has taken to fining banks and companies who disburse mortgage proceeds from non-escrow accounts (3 NYCRR Sec. 38.7 (a)(7)). However, the Fund’s protection does not depend on whether the funds were deposited in an escrow account but on whether an attorney embezzled them (22 NYCRR 7200.8). The fact that the monies were given to the attorney “as attorney” or were deposited in an escrow account serves as prima facie evidence that the attorney held the same in escrow. If the attorney placed escrow funds in her business account, the client-depositor would still be covered by the Fund. The Fund is financed by a portion of the attorney biennial registration fee.

A banking institution is required to forward a dishonored check report to the New York Lawyers’ Fund “whenever a properly payable instrument is presented against an attorney special, trust or escrow account which contains insufficient available funds, and the banking institution dishonors the instrument for that reason” (A.D. Rules Sec 1300.1 (c)). The report must be mailed to the Fund within five business days. The Fund will then hold the report for up

to ten business days to allow the banking institution an opportunity to withdraw a report provided by inadvertence or error. Depositing extra funds in the account does not constitute a reason for withdrawal (*idem*, (g)). If the overdraft is not cleared, the report is forwarded to the local grievance committee for inquiry and disciplinary action. Only accounts with the above-mentioned designations are subject to the reporting rules; accounts designated as “closing account”, “settlement account” or “mortgage disbursement account” are not escrow accounts and are not subject to the reporting rules.

Because of the reporting rules these accounts are regarded as more secure than personal accounts. Oftentimes parties to a real estate transaction will not accept a seller’s personal check or the attorney’s business account check, but will accept the attorney’s escrow account check. This becomes an issue when unforeseen escrows or charges are agreed upon at closing, but all mortgage funds have already been certified, so it is not feasible to re-write the checks. At this point, everyone looks at the seller’s attorney who is about to receive a certified check to herself “as attorney” and they ask her if she could write checks back from her escrow account, despite the fact that the certified funds have not cleared in her account yet. The Committee on Professional Ethics has addressed this issue in Opinion 737, dated 2/01/01, and has answered in the negative. Being in “possession” of certified funds was not deemed to be free of risk because payment can be stopped, the payor-bank may fail, or the certified check could be lost or stolen, resulting in a loss to a different client. Note that escrow checks dishonored for any reason other than lack of funds -such as a stop-payment order-, are not required to be reported by the banking institution. Hence, absent any risk of insufficient funds, an attorney’s escrow check is hardly any more secure than an attorney’s business account check.

Only attorneys may be signatories on escrow accounts (DR 9-102(e)), although a decision of the Committee on Profession Ethics has approved the execution of such checks by a paralegal with a stamp bearing the attorney’s signature, provided close scrutiny by the principal (Opinion 693, 8/22/97). In the event the sole signatory of an escrow account passes away, an application may be made to the Supreme Court for an order designating a successor signatory, who shall be a member of the bar in good standing. Should an attorney find herself in possession of unclaimed funds –e.g. should the client die and no heirs are known, or when the client cannot be located-, she is required to seek a judicial order to fix the lawyer’s fees and disbursements, and to deposit the client’s share with the New York Lawyers’ Fund for Client Protection. Like most legal records, an attorney is required to keep all records of her escrow and business accounts for at least seven years (DR 9-102(d)). In the event a law firm dissolves, appropriate arrangements must be made for the maintenance of the firm’s records, either by a former partner or the successor law firm. In the absence of an agreement, the local Appellate Division has the authority to impose an arrangement.

**If you have any questions or comments, or if you have an inquiry that you would like us to address in upcoming issues, please contact us at [fsa@federalstandardabstract.com](mailto:fsa@federalstandardabstract.com).**

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