

FEDERAL STANDARD ABSTRACT

TITLE NEWS

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Title News

ALTA Adopts New Policies

The American Land Title Association ("ALTA") has adopted new policies expected to replace the widely used 1992 Owner's and Loan Policies. Broadly speaking the new policies are an improvement in two ways: First, they incorporate into their main body coverage that has become a habit to request as a separate endorsement, such as liens appearing between the closing date and the recording date, which are today covered by the New York Standard Endorsement. Second, they restate coverage that was inherent, but difficult to see; e.g. misfiling of closing instruments, undue influence exerted on transferors, and creditor's rights affecting prior transfers. Before becoming available in New York State, they are subject to approval by the Insurance Department, who will decide if the same rate schedule will apply. It is highly probable that a new Standard New York Endorsement will come into existence accordingly. The 1992 Policies are expected to remain available for the benefit of any parties uncomfortable with the new policies.

Negative Amortization Under Scrutiny

Recent publications report recurrent instances of residential borrowers unable to fulfill obligations assumed under negative amortization loans. In the typical scenario, the borrower used to pay monthly payments on a fixed loan and was lured to refinance

by the promise of artificially low monthly payments. After the introductory low-rate period ends, payments drastically increase as they are adjusted to the real value of the loan with an adjustable rate, plus recoupment of the loss the bank suffered during the introductory period. Borrowers complain that the terms of the loan were not fully explained to them and that banks and mortgage brokers benefited from their unconscionability. Sandra Thompson, a director at the Federal Deposit Insurance Corp., testified that some borrowers were not qualified to make the payments required by their loans, and that banks had loosened standards considerably. The FDIC and other agencies are expected to issue regulations prescribing higher scrutiny of borrowers' ability to pay. Sandra F. Braunstein, a director at the Federal Reserve, said the central bank is rewriting Truth-in-Lending regulations to address these loans.

Chinatown and Lower East Side Acquisition Program

The City of New York through the Department of Housing Preservation and Development is offering subsidies for the purchase of residential properties in Chinatown and the Lower East Side. Up to \$100,000 per dwelling unit is available to fill the gap between the acquisition cost and private debt supportable by the project. To qualify, the purchaser must be a non-profit organization and abide by rent regulation laws, and make the units available to low

and moderate income tenants. For a map of the area under subsidy and a complete list of the requirements visit:

<http://www.nyc.gov/html/hpd/html/developers/rfp.shtml>

A Blow to MERS

On August 8th, 2006, the Supreme Court in Suffolk County decided *LaSalle National Association v. Lamy*, where the court declared invalid an assignment of mortgage from MERS to another lender. The mortgage had been recorded showing MERS, as nominee for the original lender, and had later been assigned by MERS to another lender. The court reasoned that a mortgage is incidental security to indebtedness. Therefore, a "nominee" who has no interest in the note cannot assign the mortgage. The court also noted irregularities in the allonge to the note. It is unclear whether the assignment of mortgage would have been declared invalid in the absence of the irregularities. Said irregularities consisted of: (1) failure to affix the allonge to the note, (2) lack of specificity linking the allonge to the note, and (3) the fact that it was undated.

As stated above, it remains unclear whether the assignment of mortgage was void on its face, or whether it was deemed invalid because the allonge was void. In the former case, this would be troubling to any bank that closed a CEMA with an assignment from MERS. The banks might not be able to foreclose on the mortgages that had been purportedly assigned. This journal hopes the Appellate Division will overturn the decision or take the latter view, where the assignment is void only because the allonge is void. The decision can be viewed at:

http://www.courts.state.ny.us/reporter/3dseries/2006/2006_51534.htm

Gindi v. International Trade Ltd.

Although Purchaser failed to appear at closing, Seller was ordered to return the Purchaser's deposit because Seller had failed to clear certain title exceptions. The Purchaser's failure to demonstrate its financial ability to buy was irrelevant in the face of Seller's inability to convey clear title. *Gindi v. International Trade Ltd.*, 12 Misc. 3d 1182 (NY Supreme Court, New York County, decided 7-17-06).

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