

FEDERAL STANDARD ABSTRACT

TITLE NEWS

Issue #26

December 2006

Title News

SUPPLEMENT ON CHECKING POWER OF ATTORNEY ENCLOSED

Alternative Credit Rating

Many immigrants, even after living many years in the country, become disappointed when they are finally ready to purchase a home and their mortgage application is rejected because they have no credit history. Since no one extends credit to them when they first arrive, many immigrants learn to live paying for everything cash and never build a credit history. Most are uninformed of the long-term difficulty this poses. Oftentimes, immigrants are forced to settle on “subprime” rates despite years of timely payments and financial responsibility.

Last month, First American CREDCO introduced an alternative credit rating tool, called Anthem, design to meet the needs of immigrants. After analyzing all information available under traditional credit rating –the FICO score, developed by Fair Isaac Corp.- Anthem reaches out to sources otherwise ignored, such as regular child-care payments, telephone, electricity and other utilities, current and former rent payments, and personal credit data from business that do not report to the bureaus –e.g. small local retailers that extend credit, payday lenders, and rent-to-own companies.

Anthem is not the first alternative credit available. The company that developed FICO also offers an alternative rating

known as the Expansion score, which is more beneficial to immigrants with no credit history. It is important to remember that having little credit history does not necessarily prevent an immigrant from obtaining a prime loan. Applicants and the attorneys representing them should remember to ask lenders to consider alternative credit ratings such as Anthem and Expansion when little credit history is available.

Party Walls, Shared Driveways and Affirmative Insurance

Bank attorneys regularly request their policies to affirmatively insure “against diminution of value by reason of said party wall”, “against loss of value, validity or priority to the insured mortgage caused by said driveway easement”, or similar coverage. Title insurers figure that no additional risk results from it and oblige. The reader might ask ‘why doesn’t the language result in additional coverage?’ But that begs the question. The real question that should be posed is: what risk is that language meant to cover against?

Party walls and shared driveways are reciprocal easements that are a burden and a benefit to the owner. The burden is two-fold: (1) the owner must suffer the neighbor’s use, such as allowing other drivers to use a strip of her land, or

suffering the neighbor's building to rest on her wall; and (2) the owner must contribute to the cost of maintaining the shared area or party wall. Which one of these burdens is the target of the affirmative language?

The cost of maintaining could become a loss because if the neighbor repairs the easement area, then the owner may be liable for contribution. However, such a claim would not accrue as of the day of the repairs. The neighbor would have to prove his claim in court and have a judgment entered against the owner in order to collect contribution. Since judgments are always insured against, there is no additional loss from the maintenance-burden.

Suffering the neighbor's use does not result in a title loss either. First, bear in mind that damages that may result from the neighbor's reckless use is a future risk and not a loss of title. Title insurance covers entitlement to land, not property casualty. Second, the appraisal reviewed by the

lender already factors-in the use-burden of the easement is the appraised value. Since the cost is already considered and the loan amount adjusted accordingly, how can the easement result in an unexpected loss to the lender?

What lenders should really be concerned with is not the burden of easements, but their benefit. A shared driveway adds value to the property. If it weren't for it, the owner would not be able to access her garage at rear. Wouldn't it be a clear loss to discover that she cannot use the driveway because the adjoining owner is not subject to the easement? In other words, what if the neighbor is allowed to block the easement with a fence or build in the area? This would be a real title loss. Lenders make it a habit to request coverage against losses that may be caused by easements. Perhaps they should be more concerned with the existence and validity of the easements and request the corresponding coverage.

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