

FEDERAL STANDARD ABSTRACT

TITLE NEWS

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Title News

CURRENT TRENDS

The Real Estate news is dominated these days by the downturn in the market and the increase in foreclosures. Besides the New York Times on the web, other good sources of information as to what's going on in Real Estate can be found at www.realtytimes.com and www.realtytrac.com. If one does a little digging, however, one finds that general trends are not in force everywhere and that there are actions one can take to prevent foreclosure in the current situation.

For example, although housing sales are "depressed" overall, sales are up from a year ago in Westchester County, reports the New York Times. And although prices there are down for houses, condo prices are up 9% from last year. Further, while foreclosures are generally up everywhere, they are down from a year ago in Westchester County.

Prices are also up from a year ago in Manhattan, where luxury properties (priced in the millions) sell almost as fast as they are put on the market. It seems downturns are local in nature and do not apply everywhere across the board.

Further confusing the situation is the news reported on www.realtytimes.com that foreclosures rose 62% for April in the past year, but that foreclosures actually fell 1% from March to April 2007. Again, the lesson here is that one must know the property and area specifically, even with regard to foreclosures, because foreclosure

trends will be local in nature, in spite of the compiling of vast national figures.

In terms of foreclosures, the news is still grim, and people in the industry are beginning to talk about "mortgage fraud" as seen in "liar loans" where borrowers lie about their incomes to lenders. Borrowers are not the only responsible parties, however, because oftentimes industry insiders are involved in collusion, conspiracy and, yes, even racketeering. The apparatus used to further mortgage fraud usually is a "no-doc" mortgage where a borrower provides no documentation of income to the lender. The lender more or less "looks the other way." Further undermining the system are relaxed underwriting standards. Florida and California currently have the greatest instances of mortgage fraud in the country, but New York is among the top ten states.

If one is going into foreclosure, however, and one has not committed mortgage fraud, there are certain actions one can take to stave off foreclosure. First, the borrower should approach the bank about the situation. The bank might create a "workout" by modifying the existing loan or allowing the borrower to refinance. Banks will also recommend counseling to borrowers, but borrowers should beware of counselors who are inexperienced. To be safe, borrowers should consult counselors approved by government agencies, such as the National Foundation for Credit Counseling.

Other options open to borrowers facing foreclosure are selling the property and, finally, bankruptcy, in which case, a bankruptcy attorney should be contacted. A borrower facing foreclosure should beware of predatory buyers who prejudicially slant and structure purchase agreements against homeowners. If a homeowner facing foreclosure sells to a predatory buyer, the cure may be worse than the disease.

CURATIVE ACTIONS

These are actions under RPAPL Article 15 and are tantamount to actions for a declaratory judgment, except that these actions concern real property. For example, when a defect in title to property cannot be cured by a settlement between the parties, one or the other party may sue under Article 15 of RPAPL, and the Court will declare which party's claim as to title is good. The Court will then enter an order which grants title to the winning party.

Equitable remedies are generally not granted in an action under Article 15. A plaintiff's only remedies are in accordance with the statute, except where the plaintiff claims special circumstances under which the usual remedies are not adequate.

To start a suit under Article 15, a plaintiff must allege an estate or interest in real property. An executor or administrator of a decedent's estate may file suit. A mortgage or contract vendee, or their successors, may file as well.

However, a property owner may also file under Article 15 if the statute of limitations for a mortgage or other lien has expired and the owner wants to cancel and discharge the encumbrance on the property. It is irrelevant whether the mortgage, note or other debt was ever paid or satisfied. Once the statute of limitations has run, the lien may be removed by an action under Article 15, even if the lien is a purchase money mortgage.

But if the mortgagee or other lienor is already in possession of the property, the property owner may not file suit under RPAPL Article 15.

An Article 15 action may be filed against any person who claims an interest in a piece of property, whether that claim is in the public record or otherwise. A legal minor or incompetent person may be sued as a defendant under the statute.

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