

FEDERAL STANDARD ABSTRACT

TITLE NEWS

Issue #41

March 2008

Title News

WHAT EXACTLY IS A “CRAM-DOWN”?

If you still are unaware of the spike in foreclosures nationwide, you have not been paying attention to Real Estate news. Nevertheless, here is one piece of news that might have escaped your notice. In December of 2007, according to the New York Times, the U.S. House of Representatives' Judiciary Committee passed the *Emergency Home Ownership Mortgage Equity Protection Act*. If this legislation passes the entire House, passes the Senate and is signed by President Bush into legislation during the balance of his lame-duck presidency, it would empower bankruptcy judges to re-write the terms of mortgage loans by allowing defaulting borrowers, *inter alia*, to repay less than the face amounts of the loans.

Why does this matter to those borrowers who will not even come close to declaring bankruptcy? Because, say the mortgage bankers, if the U.S. Government gives this power to bankruptcy judges (known as a “cram-down”), those mortgage bankers will charge an extra 1.5% more in interest on all their loans to offset the risk of a cram-down ordered by any prospective bankruptcy judge. According to the

Mortgage Bankers Association, borrowers buying a middle-class home in New York State would pay an average of \$250.00 more *per month* in interest as a result of the widespread use of cram-downs.

Currently, bankruptcy laws allow cram-downs only on vacation homes and investment properties, not on principal residences. For that reason, interest rates on such properties are on average of three-eighths of a percentage point higher than interest rates on comparable principal residences. Bankruptcy lawyers dispute the M.B.A.'s predictions as to the effects of this new legislation, however. They believe cram-downs do not increase the risk to mortgage bankers appreciably, as only a small percentage of the borrowing population generally declares bankruptcy.

Cram-downs could be an important factor in the future of the Real Estate industry, furthermore, since the Fed keeps lowering interest rates in order to stimulate the economy. If bankruptcy judges are empowered to use cram-downs under the legislation, and if they exercise that power widely enough, we might see banks raising loan rates even as the Fed cuts the prime rate to an all time low. In other words, cram-downs would perhaps have the effect of

making banks unwillingly offset the actions of the Fed, causing the economy and the Real Estate market to languish for a longer period of time, for in spite of the fact that the Fed would be cutting rates, banks would be raising their interest rates at the same time. Technical terms for such a scenario are “stalemate” and “gridlock.”

THE VALUE OF EXPERIENCE

Much of the contents of this newsletter is either inspired by what is considered the title-bible, *Real Estate Titles*, edited by James M. Pedowitz. Say, “Pedowitz,” and everybody knows whom you mean. Nevertheless, while we heartily recommend every practitioner purchase a copy of this tome, we know that the book is to be used as a general reference guide and is no replacement for experience in the field of titles.

Case in point: in Chapter 9, the book lists Environmental Control Board liens as specific liens applying to only a particular property address. There is a single sentence in the section stating that ECBs apply in a fashion similar to money judgments, but as the section on ECBs is headed by the title “Specific Liens,” the reader could justifiably assume that ECBs apply only to a specific address. Yet such a reader would be wrong.

The fact is that ECBs are considered money judgments for the purposes of clearing title. That means the ECB is a lien against the property owner and against all of that owner’s property located anywhere in New York State.

Such an ECB is not to be confused with a violation that has not yet become a lien

against the record owner, however. If not yet a lien, the ECB is not a judgment and need not be cleared for the owner to convey clean title to the buyer. One must therefore distinguish between ECBs listed in the Schedule B of the Title Report and ECBs merely shown in a given municipal search, which is usually placed right after the Mortgage Schedule in our Title Report. The ECBs listed in Schedule B are judgments and must be cleared before closing. The ECBs found in a municipal search are not yet a lien and may never ever become a lien. Therefore the ECBs merely found in a municipal search need not necessarily be cleared before closing. Such a matter, as is the case with all municipals, is an issue between the buyer and the seller, but is not the title company’s responsibility to clear.

In conclusion, the discussion of ECBs in Mr. Pedowitz’s book illustrates that while his book may be a general guide to the field of Real Estate Titles, it cannot replace experience in the day-to-day drafting of title reports and clearing of title exceptions. Forms of documentation and proof, the interpretation of documents in the public record (some of them over a hundred years old), and the ins and outs of both government and private bureaucracies – all require more than merely book knowledge. The good news is that your title company is a resource for knowledge extending far beyond any text, even *Real Estate Titles*. Ask your title company for the answer to any questions inspired by Mr. Pedowitz’s book. If they do not have the answer based on their experiences, they will know someone who does.

These materials have been prepared by Federal Standard Abstract for informational purposes only and should not be considered professional or legal advice. Readers should not act upon this information without seeking independent professional or legal counsel.

The information provided in this newsletter is obtained from sources which Federal Standard Abstract believes to be reliable. However, Federal Standard Abstract has not independently verified or otherwise investigated all such information. Federal Standard Abstract does not guarantee the accuracy or completeness of any such information and is not responsible for any errors or omissions in this newsletter.

While we try to update our readers on the news contained in this newsletter, we do not intend any information in this newsletter to be treated or considered as the most current expression of the law on any given point, and certain legal positions expressed in this newsletter may be, by passage of time or otherwise, superseded or incorrect.

Furthermore, Federal Standard Abstract does not warrant the accuracy or completeness of any references to any third party information nor does such reference constitute an endorsement or recommendation of such third party's products, services or informational content.

If you have any questions or comments, contact us at fsa@federalstandardabstract.com