FEDERAL STANDARD ABSTRACT
TITLE NEWS

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Title News

New York City Issues New Construction Code

The 1968 Building Code has finally been replaced by the NYC Construction Codes, which include the Building, Fuel Gas, Mechanical and Plumbing Codes. The new code is based on the International Building Code, which is a model code prepared by the International Code Council, a US-based non-profit organization. The City will benefit from the three-year code revision cycle carried out by the ICC. Highlights of the new code include;

* Sprinkler systems will be required in more buildings, including three or more family buildings, attached two-family homes, and one- and two-family homes that are over three stories high.
* A new system of classifying building violations, which is expected to facilitate inspections and result in higher fines.
* Greater construction safeguard requirements, structural safety and more compliance inspections.

SCRIE Program Increased Eligibility and to Be Managed by Department of Finance

Established by the City in 1970, the Senior Citizen Rent Increase Exemption Program (SCRIE) is a subsidy that freezes rents for eligible senior residents. Landlords are compensated with tax credits in lieu of cash for any lost rent. Until now the program was managed by the Department for the Aging, but will now be managed by the Department of Finance in an effort to make income records readily accessible to SCRIE officials. The household income eligibility limit of $28,000 has been raised to $29,000. Other requirements include: head of household must be age 62 or older, rent must be at least one-third of net monthly income, and, for rent-stabilized apartments, tenants must have a valid one or two-year lease.

NYC Registration Statement

The City has amended its rules regarding the Registration Statement to be recorded with conveyances. The Registration Statement will now be required even in conveyances of one- and two-family dwellings, if "neither the owner not any family member occupies the dwelling." A family member is defined as the owner's "spouse, domestic partner, parent, parent-in-law, child, sibling, sibling-in-law, grandparent or grandchild." The affidavit in lieu of registration has also been revised. The current form can be found at *http://www.titlelaw-newyork.com/Forms/Affidavit_In_Lieu_of_Registration.pdf.*

Condominium Liens

The Appellate Division, Second Department, held that a condominium board of managers could not collect unpaid common charges because it had failed to file its notice of lien. The court pointed out that the filing is a requirement under Real Property Law §339-aa. Until now, attorneys representing condominiums were divided as to whether filing a notice of lien was necessary at all, because the condominium declaration typically states that all common charges shall be a lien on the property from the time the charge is billed. Therefore, there wasn't much need to supplement the lien with a notice with the county clerk. From now on, however, attorneys will be well-advised to file notices of condo liens as a matter of course. The decision in question is *MERS v. Levin,* 2009 WL 1696090, decided June 16, 2009.

The Hidden Guaranty

The importance of guaranty law is often overlooked. Even in standard residential

transactions, guaranty law can become very relevant. In any creditor-debtor relationship, a guaranty occurs whenever a third party promises to the creditor to pay the debtor's obligation. There is no need for a "Guaranty Agreement" or any special document. The transaction, by its mere facts, becomes a guaranty and this body of law applies. For example, husband and wife are on title, but only the husband is on the loan. The bank therefore has the couple sign the mortgage, but only the husband signs the note. Under these facts, the wife would be deemed a guarantor. She pledged her interest in the real estate for a loan that is not hers. She is a third-party guarantying a debt. The wife, therefore, would be entitled to guaranty protection.

Another example is the case of the co-signor. Son applies for a purchase mortgage but is rejected by the bank. Son re-applies with his father joining-in and the bank accepts. In this case, both father and son will be in title and on the note. However, the bank knows that father has his own residence, and will not otherwise enjoy the loan. The bank knows that the loan is for the son and that the father only joined in the application to obtain the bank's approval. Therefore, the father is merely a guarantor, even though he may have signed the note and is referred to in every document as a "Borrower." The father is entitled to guaranty protection.

Yet another possible example is that of two people borrowing to buy a two-family home with the understanding that each one will use one of the units. Here, again, both will appear in the note and mortgage. However, each one of them could be considered a borrower only as to the value attributed to her unit and as a guarantor as to the value attributed to the other unit. Each one would be a guarantor and a borrower as to portions of the debt, and therefore they would be entitled to guaranty protection.

Creditors owe a high duty of good faith to guarantors. The law will not tolerate any actions by the creditor that will result in increasing the guarantor's risk. For example, if a borrower defaults in a home equity line, the creditor cannot continue to allow draws and then attempt to collect from the guarantor. If the creditor misrepresented the terms of the loan, the guarantor may be excused. If the creditor agrees to <u>any</u> modification of the loan without procuring the guarantor's consent, the guaranty may be voided, even if the new terms are more favorable to the debtor. If the debtor defaults, but the creditor fails to take prompt action to enforce its remedies, the guaranty may be voided. Lenders who put-off enforcement and instead choose to impose default rates and junk fees should be aware that those actions can hamper their ability to collect in court.

There is no list of scenarios that create guaranty arrangements and there is no list of things a creditor might do to breach its duty to the guarantor. But attorneys are encouraged to develop an eye to spot hidden guaranties, especially in our present day of mass foreclosures. Spotting a guaranty could save a client's dwelling from foreclosure.

What is Condo Unit Policy Insured under the Title Insurance?

The language of the policy to define what interest is and is not insured under a policy of title insurance is what we generally look. Thus, as a general rule, there is no coverage if the title issue involves property that is outside of the scope of the description contained in Schedule A of the policy. There are, however, exceptions. In a recent case, Burke v. Ramblewood Manor Homes Ass'n, [1] the court found that a title insurance policy for a condo unit did not assure title to a carport that had originally been assigned to the unit, but which was reassigned to another unit before the insured bought.

Plaintiff Harry Burke purchased a condominium ("Unit 48"), located in the Ramblewood Manor Homes condominium project, from the Gertrude Brainin Trust in October 2003. In the master deed, a carport was depicted as being assigned to Burke's unit. However, an amendment and reassignment of the carport was recorded during the initial development of the condominium units prior to Plaintiff's purchase. The policy issued to Burke by Transnation Title simply described his unit as depicted on the consolidated master deed. When Burke discovered that he could not have access to the carport, he sued Transnation Title, along with the condominium association and the owner of the carport. The trial court ruled that Burke did not own the carport and that the reference in his deed to the master deed did not undo the later reassignment. The court also ruled that Transnation Title did not implicitly insure Burke

[1] No. 277808, 2008 WL2220587 (Mich. Court of Appeals, May 29, 2008), per curiam.

as having title to the carport because his policy excepted the rights of co-owners in the common elements. Burke appealed, and the court affirmed and found that the title insurer was not liable for his damages.

Here are the two exceptions at Schedule B in the title insurance policy issued to Burke by Transnation Title regarding Unit 48 that court was relying on:
that the policy "does not insure against loss or damage and the Company will not pay costs, attorneys' fees or expenses which arise by reason of " :
6. Rights of co-owners of RAMBLEWOOD MANOR HOMES in common elements as set forth in Master

Deed …as amended… and all terms and conditions, regulations, restrictions, easements and other matters set forth in the above described Master Deed and statutes.

7. Covenants, conditions, restrictions, easements, and right-of-ways, if any affecting the common elements.

Court further stated that this matter arose out of plaintiff's claim of ownership of a common element contrary to any other co-owner's right to that same common element. Therefore, Transnation owed no coverage to plaintiff as the policy at issue specifically states that it would not insure against loss or damages arising by reason of co-owner's rights in common elements. Although the above exceptions in Burke were found adequate to except the dispute, the insurer should also consider the adoption of a more comprehensive exception which clearly states to exclude any disputes about the interpretation of the documents as well.

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