FEDERAL STANDARD ABSTRACT
TITLE NEWS

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Title News

The Gowanus Canal in Brooklyn Declared a Superfund Site

The Environmental Protection Agency announced on March 2, 2010 that it declared the Gowanus Canal in Brooklyn a Superfund site, which means that the canal has been placed in a high-priority list for the clean up of contamination. The EPA estimates that the clean up work may last up to 12 years and cost $500 million. What concerns us here are the risks posed for purchasers of land adjoining the canal.

The Gowanus Canal was reportedly contaminated by commercial uses along its banks; e.g. oil refineries, chemical plants, tanneries, and manufactured gas plants. Today, probably none of these uses survives. However, environmental liability is different from other forms of liability: it not only attaches to the party who caused the contamination, but it generally also attaches to anyone taking title to the property from where the contamination was caused. Hence the first concern about buying land along the canal is the possibility that pollution may have been caused by a prior owner or tenant. The fact that the EPA will commence work makes it more likely that liability may attach. The $500 million cleanup cost is expected to be assessed to the adjoining owners to the extent and proportion that it can be proven that pollution emanated from their lands. It should be remembered that title insurance does not protect against environmental liens filed after the date of the policy, even if they relate to cleanup work performed prior to the date of policy.

The second area of concern is the fact that the EPA personnel will need constant access to the canal to perform work. Access to the canal can only be had through the adjoining lands. Hence, there is the risk that an owner's use of the property may be disrupted at times for the purpose of providing access to the canal to EPA personnel. Since the cleanup is expected to last up to 12 years, the EPA will very likely require space to build temporary structures and store heavy equipment, which could have the effect of preventing the owner from enjoying the profits of the land.

Lastly, and as a result of the above risks, lenders are very reluctant to lend on environmentally-suspect real property. In sum, the owner may find himself with land subject to large environmental liens, without the ability to profit from the land, and unable to sell it or refinance it.

Sewer Connection Fees in Meadowmere and Warnerville, Queens County

The NYC Dept. of Environmental Protection announced on February 17, 2010 that city sewers had finally reached

the communities of Meadowmere and Warnerville in southeast Queens. Although it is a positive development for the communities and could even increase the value of real estate, homeowners will be required to connect to the sewers at their own expense. Connection fees of up to $10,000 have been reported. Parties interested in purchasing real estate in these communities are advised to inquire about sewer connections, or to negotiate the connection fees into the purchase price.

Paper Streets

A homeowner brought an action against neighbors and the local municipality to determine ownership of a "paper street"; i.e. to determine ownership of a strip of land that was mapped as a street in county records, but was never opened or used as street. The Supreme Court, Nassau County, determined the following facts: the strip of land had been mapped as a street in 1911; the plots of land adjoining the street had been sold by the developer between 1920 and 1923; and the developer quitclaimed the strip of land to the municipality in 1948. The parties agreed that by operation of Highway Law §205(1) the strip of land would have ceased to be a public road after six years of nonuse, or in 1917. There being no other conveyance describing the strip of land, the municipality claimed title under the 1948 deed from the developer. The Appellate Division, Second Department, disagreed and ruled that the 1948 deed transferred no title whatsoever. According to an ancient common law rule, a public road is only a public easement. Fee title to the land used as a public road belongs to the adjoining homeowners, each one up to the centerline of the street. Hence, when all the adjoining parcels were sold between 1920 and 1923, the fee title to the paper street was also conveyed. When the developer attempted to convey the land in 1948, the developer had no title left to convey. *Margolin v. Gatto*, 2010 N.Y. Slip.Op. 01626 (2nd Dep't, Feb. 23, 2010).
