FEDERAL STANDARD ABSTRACT
TITLE NEWS

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Seller's Concessions and Grossed-Up Purchase Price

In 2007 the NYSBA Committee on Professional Ethics issued an opinion regarding the use of seller's concessions to simulate a higher purchase price in order for the borrower-purchaser to qualify for a higher mortgage amount. In the view of the Committee, that was deceptive to lenders and investors. Lawyers are advised not to participate in any such transactions, unless the "transaction documents" largely spell out that the purchase price has been increased by an amount equal to the seller's concessions. *See* N.Y State 817 (2007).

Since then, there has been much uncertainty regarding the extent of the disclosure and what documents were the "transaction documents" where the fact of the grossed-up sales price should be disclosed. On October 14, 2011, the Committee issued a new opinion on the matter. The new opinion reaffirms that use of a grossed-up sales price is deceptive to third parties who may relying on the closing documents; not just lenders and investors, but also appraisers and tax assessors. The opinion clarifies that the "transaction documents" that would have to contain the disclosure are: the contract of sale, the HUD-1 Settlement Statement, the closing statements, the mortgage, the note, the lender's title policy, the deed, and the RP-5217 (equalization form). *See* N.Y. State 882 (2011).

Perhaps for the first time in the history of the Committee, the opinion contained a dissent. In the view of the minority, there is no deception in the use of a seller's concessions. The fact that there are federal guidelines limiting their use implies that the real estate industry is very familiar with their use. Moreover, no evidence was presented to the Committee showing that lenders, investors, appraisers, and tax assessors are indeed misled by seller's concessions and grossed-up purchase prices.

ACRIS Update

On October 24, 2011, the NYC Department of Finance announced two minor updates to ACRIS. First, parties' foreign addresses may now be listed on the cover pages. Second, attachment pages will now me provided to allow every grantor and grantee to sign the tax forms. The announcement also disclosed that, as to the RP-5217 (equalization form), only one grantor and one grantee are required to sign, notwithstanding the new additional signature spots provided.

LLC Authority to Sell

An LLC entered into a contract to sell real property. One of its members sued claiming that the officer who had signed the contract of sale did not have the authority to close on the sale of the property on behalf of the LLC. The

supreme court ruled that the officer did have the authority. However, since the member appealed the decision, the title company refused to close and issue a title policy before the appeal was resolved. As a result, the down payment was returned to the purchaser and the contract was rendered void. It appears that the notice of appeal may have been interpreted to render title uninsurable. The Appellate Division, noting that the contract had been voided, considered the matter moot and did not rule on the officer's authority to sell the real property. *Yemini v. Golberg*, 930 N.Y.S.2d 236 (2nd Dep't., 10/04/2011). What is troubling about the decision, of course, is that it would appear that a recalcitrant LLC member may effectively prevent the sale of LLC real property. A pending action and notices of appeal are sufficient to prevent the closing. It would be a rare purchaser who wait patiently until all appeals are exhausted before closing. Purchasers are more likely to call "time is of the essence" and void the contract, thus allowing the member to frustrate the sale.

Access for Repairs

The common law grants a property owner a little-known easement or license to enter the property of an adjoining owner if it is necessary for building repairs. This right is codified in RPAPL §881.

In an action for a license to access the defendant's roof to cause repairs on the plaintiff's building, the supreme court granted the license, but the Appellate Division reversed, finding that there was no evidence that access was necessary for the repairs. *Lincoln Spencer Apts., Inc. v. Zeckendorf-68th St. Assoc.*, 2011 N.Y. Slip Op 07512 (NYAD, 1st Dept., 10/25/2011).