FEDERAL STANDARD ABSTRACT
TITLE NEWS

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Approval to Sell All Assets of Not-for Profit Corp.

Not-for profit corporations require court approval in order to dispose of all of their assets. The application is subject to approval of the Office of the Attorney General. The relevant factors include (a) whether the terms of sale of the assets are commercially reasonable (to make sure that this is not a giveaway of not-for profit assets); and (b) whether the disposition of assets is, in light of the circumstances, a reasonable course of action to further the corporation's mission.

In a recently decided case, two not-for profit corps organized to own real estate and provide low-income housing sought court approvals to sell their buildings. The Appellate Division, First Department, observed, among other things, that while the terms of sale were commercially reasonable, the corporate purpose would not be furthered by approving the sale. "[T]he purposes of the corporations are clearly served better by disapproval. Both the proposed sales will be to the same for-profit landlord. By contrast, with no sale, the properties will be transferred to qualified third-party, low-income landlords." *51-53 West 129th St. HDFC v. Attorney General*, 2012 WL 1836373 (N.Y.A.D. 1 Dept., 5/22/2012).

Loss of Coverage for Failure to Cooperate with Insurer

There are two duties that fall on every insured who wishes protection under a policy of title insurance (or under any form of insurance, for that matter): First, the insured must give the insurer prompt notice of any claims under the policy. Delay in providing notice can jeopardize the opportunity of the insurer to defend against the claim, thus resulting in a loss of coverage. Second, whether the insurer decides to defend against the claim or merely investigate it, the insured must reasonably cooperate with the insurer or, again, the insurer's opportunity to defend the claim may be jeopardize, thus resulting in a loss of coverage.

In a recent case, an owner of real property gave prompt notice of a claim to his title insurer. However, less than a month after the insured gave notice, the insured started its own claim to quiet title to the premises, naming also the title insurer as a defendant. "While the mere act of commencing suit against one's insurer does not, standing alone, constitute noncooperation sufficient to relieve the insurer of its obligations under the policy, here the plaintiff's noncooperation was established by the fact that it also precipitously brought its own action on the claim, instead of affording [the title insurer] a reasonable time within which to investigate the claim and determine how to proceed." *All State Properties LLC v. Old Republic Nat'l Title Ins. Co.,* 2012 WL 1699743 (N.Y.A.D. 2 Dept., 5/15/2012).

Mortgage Contingency Clause

A contract purchaser brought an action to recover her down payment because the contract of sale was subject to mortgage financing and she had been unable to procure a mortgage commitment. The seller-defendant alleged, among other things, that the purchaser had forfeited the contingency clause because she had not

pursued her mortgage application in good faith. It appears that the information in the application was not fully accurate. The court ruled for the plaintiff. "Any inaccuracies in her application were not made in an attempt to delay or prevent her purchase of the house, but rather, were made to facilitate her purchase." *Khanal v. Sheldon*, 2012 Wl 1699860 (N.Y. Supp., 5/15/2012).

2% Cap on STAR Exemption Savings

The School Tax Relief exemption (STAR) is a real property tax exemption generally available to all primary residences where the household income is below $500k. The Enhanced STAR exemption is a greater exemption, but the property owner must be at least 62 years of age, and the household income not exceed $62,200 (as of the time of this writing). An "exemption" means that a portion of the tax assessment is discounted prior to the application of the tax rate, which results in lower taxes.

Starting the tax year 2011/2012, the Legislature has enacted a 2% cap on the increment of STAR savings from one year to the next. For example, suppose that you own a home and currently save $100 on property taxes thanks to the STAR. If the tax rate increased and your STAR savings would accordingly increase to, say, $105, you would not get the extra $5 in savings. The difference in savings from one year to the next would be capped at 2%. So in year 1, your savings may be $100; in year 2, $102 (i.e., $100 plus 2%); in year 3, $104.04 (i.e., $102 plus 2%); and in year 4, the full $105. There are limited instances where the 2% cap does not apply. For example, if you benefit from the basic STAR one year and you get the Enhanced STAR in the following year, the 2% cap does not apply.

In a way, this is the counterpoint to the so-called transitional value assessment. If your property is re-valued and your assessment greatly increases, your taxes do not skyrocket from one year to the next. Rather, the law caps how much your assessment can increase from year to year in order to avoid "shock" taxes. It appears that the Legislature may be attempting to protect school districts from a similar shock of low tax collections.