

# The Title Examiner



An Informational Newsletter Provided Courtesy of Ticor Title Insurance Company

## From the Editor

**W**ell we are officially at the end of our summer. Although it was a relatively wet summer across our region I hope you have made the most of it, knowing that you have mowed the lawn more but watered it much less.

In this issue Elissa Fagelman and Gil Hoffman, underwriters in our Syracuse office, have provided an article about residential survey coverage in the "new" ALTA 2006 loan policy. This coverage saves the consumer expense on updating residential surveys and the prior need for survey endorsements, while still providing protection to the insured lender.

Kelly Bradley and her tax deferred exchange operation located in our Syracuse office has provided an update on her IPX 1031 exchange services, including the opportunity for free continuing legal education credits. Take her up on the offer, as it will increase your knowledge in this area and help you strengthen client relationships. Nothing does that better than saving them tax dollars!

Susan Hindmarsh, our Foreclosure and Default Services Manager, has given us an article about the current mortgage foreclosure process, in light of the New York State Foreclosure Prevention Act which went into effect September 1, 2008. You should keep Susan's contact information handy, whether you are representing a lender, or a homeowner in financial distress.

As good legal professionals we should all be vigilant and guard against identity theft and mortgage fraud. Nationally there has been a 42% increase in reported theft and fraud in the first quarter of 2008 over the same period in 2007. Your office operations and your clients' financial integrity deserve the highest attention by you and your staff. We urge all of our customers to contact any of our managers or underwriters if you suspect fraudulent activity involving real estate transactions.

As the days get shorter and the nights cooler it's time to enjoy our home, neighborhoods, and environment. Safeguard all of them. Walks in the park with children and grandchildren are a great way to of clearing the mind from everyday work stress. We are all experiencing unusually difficult economic times, but continued hard work and optimism will make the struggle easier. Stay healthy, and say a prayer for those who are not as fortunate.

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## New Survey Coverage Replaces Survey Endorsement

by Elissa Fagelman, Esq. and Gilbert Hoffman, Esq.

**T**he ALTA 2006 Loan Policy includes new survey coverage under Covered Risk 2(c).<sup>1</sup> This section provides coverage against "Any encroachment, encumbrance, violation, variation, or adverse circumstance affecting the Title that would be disclosed by an accurate and complete land survey of the Land."

This default coverage renders the Survey Endorsement obsolete because coverage that previously cost 10 percent of the full loan rate is now automatically included in the policy unless negated, limited or deleted.

The new coverage can be negated by raising in Schedule B: "Subject to any state of facts an accurate survey would show," or limited, by incorporating a survey reading in Schedule B. The new coverage is automatically deleted by the Standard New York Endorsement if the Land is improved by other than a 1-4 family dwelling or if it is vacant land.

This new survey coverage has been a source of much confusion. Note, however, that the underwriting guidelines are the same as when the Survey Endorsement was available for purchase. The glaring difference is that now, if the criteria are met, the coverage is *gratis*.

Following are a few questions to aid in the determination as to whether a policy can be issued without a survey exception in Schedule B.

- 1. Is this a loan policy?**
  - a) If no, then raise a survey exception in Schedule B;
  - b) If yes, then proceed to the next question.
- 2. Is the Land vacant?**
  - a) If yes, then raise a survey exception

- b) If no, then proceed to the next question.

**3. Is the Land residential or commercial?**

- a) If commercial, then raise a survey exception in Schedule B;
- b) If residential, then proceed to the next question.

**4. Is the Land improved by a 1-4 family dwelling?**

- a) If no, then raise a survey exception in Schedule B;
- b) If yes, then the policy can be issued without a survey exception in Schedule B.

Of course, there's still no substitute for an attorney's own good underwriting judgment. If dealing with brand new construction, large acreage, a vague or ancient legal description, known boundary disputes or known survey issues it is better to raise a survey exception, or, at least, discuss the issue with a Company underwriter before agreeing to accept a risk that could place the Company in peril.

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<sup>1</sup> The ALTA 2006 Owner's Policy also appears to include the new survey coverage, but the coverage is always (and automatically) deleted by the Standard New York Endorsement (Owner's Policy).

## Is Foreclosure Relief In Sight?

By Susan Hindmarsh

**W**ith all that is astir in the banking and real estate industry, the most startling is the amount of foreclosures that continue to rise throughout The United States.

Homes in foreclosure can be seen in almost every neighborhood. They are not hard to spot. The abandonment and neglect can be seen from afar. Nationally one out of every 33 homes is expected to be in foreclosure within the next two years. So there appears to be no relief in sight..... or is there?

The New York Foreclosure Prevention Act of 2008 became effective as of September 1, 2008. The purpose of this law is to stem the rising tide of foreclosures related to sub-prime lending.

Though most of the financial assistance is temporary, it will provide some extra time for mortgagors facing foreclosures, in hopes of being able to direct them out of the foreclosure. Time will tell if this will be successful, but it is safe to say that New York State is taking steps to relieve some stress and to help keep the State stable through such turbulent times. Other states are also stepping up and implementing plans to try to provide some foreclosure relief.

This law may cause delays of three to six months in the commencement of mortgage foreclosure actions. The upside to this is if some homes can be saved from going into foreclosure, this will help to stabilize the housing market and bring some lost value back into to our neighborhoods, which in turn will help to boost the housing market.

On the federal level, on July 30, 2008, President Bush signed the Housing and Economic Recovery Act of 2008, which will provide \$62 billion in funds for such things as (a) a \$7,500.00 tax credit to qualified first time home buyers, and (b) funding for FHA-backed mortgage refinancings, hopefully at more affordable rates and terms.

Foreclosure relief? Only time will tell. And that's if gas, food prices, the stock market and unemployment begin to stabilize, but that's a whole other article.

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## What's New with IPX1031® Northern, NY

By Kelly A. Bradley, Esq.

**I**'m very eager to share with you a few of the exciting things I've been working on over the past couple of months. I hope some or all of these ideas will help get you in front of new or existing clients in a positive light. In addition to being your IRC 1031 resource, I'd like you to think of IPX1031® as a value-added service to your business.

**Customized Seminars and Office Presentations (4 Credits of Ethics-Free):** Just a reminder that I'm available to design and present customized seminars and office presentations for your staff and clients. Each attorney participant attending a seminar or office presentation scheduled through Ticor and held between now and the end of November will receive a free CLE disk, which will be worth 4 Ethics credits. Contact your local Ticor representative to schedule.

### **IPX1031 Web-site:**

**IPX Business Partner Program:** If you click the 1031 Client Resources tab on the left-hand side of our homepage at [www.ipx1031.com](http://www.ipx1031.com), you'll be directed to the IPX1031® Business Partner site. Scroll to the bottom of this site, and you'll have the ability to sign up as an IPX1031® Business Partner. This site is intended to provide a forum for §1031 exchange-related businesses to inform interested parties of their expertise or product. Categories include: Accountants, Attorneys and Real Estate Professionals. This is a free service that gives you great exposure on a national web-site.

**1031 Tax Application:** Taxpayers and/or advisors can now click this button and be directed to a web-site called Defer'Em. Defer'Em is an internet based tool that will help the taxpayer and/or advisor calculate gain and will even generate a Form 8824. There is no charge for the calculation and only a minimal charge if the customer decides to print the Form.

### **The IRC 1031 Fallback:**

IPX1031 has partnered with Brook Hollow Financial to bring clients an IRC 1031 Fallback. Essentially, the fall back scenario will allow a taxpayer to get the benefit of tax deferral via a structured sale format in the event that a 1031 exchange fails or there is taxable boot in the transaction. To learn more about this exciting new product please contact me. A Brook Hollow representative will be in Buffalo on October 21, Rochester October 22 and Syracuse October 23. We would be happy to schedule a short office presentation on this topic for your firm.

### **Customized PDFs:**

We now offer customized PDFs of our tri-fold and Brief Exchange booklets. Many advisors have already taken advantage of this free service. We'll provide you with a PDF of our materials which contains your contact information, logo and picture. You can then use the PDFs for email blasts or print them from your computer for distribution to clients.

**Trademark:** Finally, you may have noticed that IPX1031® has now been trademarked. Although our official name is Investment Property Exchange Services, Inc., we have been working on branding the IPX1031® name. You also may have noticed that my email address was recently changed to [kelly.bradley@ipx1031.com](mailto:kelly.bradley@ipx1031.com) to go along with that new branding. Please note that email change for any future inquiries.

These are just the highlights of what I've been working on. Of course I'm always happy to sit down with you and brainstorm new and creative things that we can do for you and your clients.

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## Why Does a Buyer Need Title Insurance?

By *Justine Welch*

If you thought your client didn't need an owner's title insurance policy, think again! The scenario below is becoming very common and without a policy you, your insurance carrier and your client may be at risk

Mr. and Mrs. Aeb purchased a home in 1993 and granted a Purchase Money Mortgage to KeyCorp Mortgage Inc., later assigned to MERS, for \$65,500.

In 2001, Mr. and Mrs. Aeb granted a second mortgage to Household finance for \$47,700.00.

MERS begins a foreclosure action by Lis Pendens filed November 10, 2005.

Household begins a foreclosure action by Lis Pendens filed December 8, 2005.

Household files a Notice of Appearance in the MERS action. The Notice specifies which papers must be served and which are waived and makes claim to any surplus monies.

The MERS auction is held April 6, 2006 with much interest and competitive bidding. A bonafide purchaser (BFP) purchases the property for \$56,300.00 and a Referee's Deed is delivered at closing on May 5, 2006.

The BFP, while making repairs to the property, opens the mail delivered to the property and addressed to Mr. and Mrs. Aeb. A Notice of Sale by Household with an auction date of August 11, 2006 was received at the property August 1, 2006.

Naturally, the BFP attends the auction. The Referee has no Terms of Sale and no other bidders arrive. The Referee is able to secure an adjournment of the auction with the Judge in the Household action in an effort that went far beyond a Referee's customary duties.

The attorneys for MERS, from a law firm which represents multiple lenders and handles a significant volume of foreclosure work, insists that it is in compliance with the Notice of Appearance but cannot produce proof of same. Most importantly, no proof of service of a copy of the Notice of Sale upon Household's attorneys can be produced by the MERS attorneys.

Ultimately the matter is settled for a nominal amount. Had the BFP obtained a fee policy, not only would the cost of the settlement with Household had been covered, the attorneys fees incurred in defending his position would have been paid by the title insurer and many sleepless nights would have been avoided. Worry of a \$56,300 investment plus improvements being lost could have been avoided. An Owner's policy would have put everyone's mind at ease.

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