

From the Editor

By my personal calendar, we are more than half way through winter- have you noticed that the sun is setting later every day, and we have enjoyed many winter days with at least some sun? I'm happy that winter sports enthusiasts have finally gotten the cold and snow they waited for, but I'm counting the days until the flags go in on the golf courses.

In this issue Howard Kleiman, an attorney in our New York claims department, has provided an article showing three examples of how claims can arise under title insurance policies. In western and central New York we are fortunate that claims are relatively few and minor. I believe that this is due to the quality of real property recording systems and the careful title examination and closing procedures used by our local attorneys. Keep up the good work!

You will also see that we have recently rolled out a full time Foreclosure and Default Services department headed by Susan Hindmarsh who is located in our Rochester office. Susan brings a wealth of experience in this area. Fortunately the subprime mortgage crisis has not had nearly as much of an impact on our real estate markets as in other areas of the country, but many of our customers are looking for quicker and more accurate products to assist their practice. The "title clearance" product includes obtaining mortgage discharges for previously-paid loans, even when lenders are out of existence or just hard to contact- get rid of this problem efficiently! Susan is the person who can really help you.

I again would like to invite any of our readers to submit an article for a future issue of The Title Examiner. Your practice is unique, and how you handle vexacious title issues or service your clients is more interesting than you may think. Please contact me if you might be interested in publishing an article.

I hope that you and your families had a relaxing holiday season and are enjoying a healthy 2008. Be resolute to watch what and how you eat, see your physician and dentist for a checkup, and get fresh air and exercise every day. Try to get out of the office a bit earlier each day, take your staff to lunch, and spend the weekends with your children and grandchildren. Monday will come soon enough, and Spring is just around the corner.

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Claims Center Update

by

Howard Kleiman, Esq.

Over seven thousand new claims were opened in the Northeast Regional Claims Center in 2007. The issues were varied ranging from simple clearance matters to complex issues dealing with coverage and damages. The purpose of this update is to give you a snapshot of some of the more interesting issues we dealt with in the past year.

Case #1—Most of the tax claims we handle are relatively straightforward; simply pay the tax and the title is established as insured. Tax claims, coupled with the failure to record the deed and mortgage, can very quickly escalate into a serious and costly claim.

In June 2002 Mr. Agent closed a deal in Poughkeepsie (Dutchess County), an area that he was not familiar with. The lien date for the city tax was in January however, the taxpayer had the option of paying the tax in quarterly installments without interest or penalty. Taxes through the closing date were either paid or collected. Unfortunately, the deed and mortgage were not recorded until January 2003. The last installment was due in October and the bill never made its way to the new owner or lender.

The City of Poughkeepsie takes no prisoners and sold the property at a tax sale in December 2002 for the sum of \$636.15. Fast forward two years representing the redemption period. In October 2004 the owner received a notice from the City advising that the taxes sold in 2002 had to be paid immediately or a deed would be delivered to the lucky bidder. The homeowner sent the bill to his lender with instructions to

pay the tax from escrow. As you already have surmised, the lender did nothing and Mr. Lucky recorded his deed on December 11, 2004.

Fast forward another three years to March 2007 when Mr. Lucky conveyed the property back to our insured owner in exchange for a check in the sum of \$285,000.00. Not a bad return on a \$636.15 investment. The Company contributed \$50,000.00 to the settlement with the lender and agent splitting the difference.

Case # 2—Mr. & Mrs. Newlywed were out on a Sunday drive looking for their dream

house. They saw a partially constructed home on a scenic lot and fell in love. They called the builder, entered into a contract and closed - without a survey. In this jurisdiction there was no contractual

obligation on the part of the seller to provide one and the Newlyweds did not want to incur this additional expense.

An accurate survey would have shown that the builder mistakenly built their dream house on land he did not own. Thankfully, the Newlyweds did not pinch pennies when it came time to buy title insurance. Not only did they purchase an owners policy but they purchased an enhanced policy insuring against encroachment of existing structures onto neighboring lands. Our Newlyweds were even more thankful when they learned that Schedule B was devoid of the standard survey exception. The Company purchased the scenic lot for our newlyweds for the sum of \$82,000.00. The loss was recouped when the Company acquired the vacant lot valued at \$35,000 together with payment

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by the builder (to the Company) of the difference.

Case #3—In January 2005 Mr. Jones sold a vacant lot to Sandwest Homes, Inc. for the sum of \$40,000.00. About nine months later in September 2005 Sandwest sold the property to Ms. Smith for the sum of \$360,000.00 in a cash deal. One month later Ms. Smith sold the property to Ms. Brown for the sum of \$365,000.00 and a purchase money mortgage went on record.

The lenders appraisal showed the property to be worth every bit of the purchase price with granite countertops, hardwood floors, 3 ½ baths and a master suite to die for. Ms. Brown didn't make any payments, largely because she didn't know that she had purchased the property. Her identity was stolen by a clever ring of thieves. Sandwest Homes, Inc. was a nonexistent entity and Ms. Smith was a fictitious character.

The appraiser was in on the scam as no home was ever built and the land remains vacant, still worth about \$40,000.00. Had the approved attorney checked the corporate existence of Sandwest Homes, Inc. he would have found no such entity. A second opportunity to avoid this loss would have been to investigate the conveyance to Ms. Smith for a substantial consideration with no corresponding mortgage.

Lastly, the attorney should have been on high alert when the Smith to Brown conveyance went on record a month later. The lender purchased another one of those dreaded enhanced policies, this time insuring that the property was improved by a single family home. The policy limits were paid and the Company owns another vacant lot, this one with a very cloudy title.

Fortunately none of the foregoing claims occurred or was caused by anyone within this reading audience. If you have any claims related questions I invite you to contact us and we will assist you in anyway we can.

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A New Ticor Title Service: Foreclosure & Default Services

The Northern New York Ticor Title Insurance offices would like to announce the opening of its New York



Susan Hindmarsh

State Foreclosure & Default Services Department. This department is managed by Susan Hindmarsh in the Ticor Title Rochester Office. Susan has many years of Title and Foreclosure experience which includes starting up and managing a Foreclosure & Default Services Department for an abstract and title company. She also managed a satellite office for a Long Island foreclosure and bankruptcy law firm.

Susan brings vast knowledge & experience that will allow Ticor to provide services in all 62 Counties of New York State. We will provide an array of services to assist in all your New York State searches, title insurance and REO needs. Some of the services include but are not limited to:

- Foreclosure Searches & Foreclosure Certificates
- Tax Searches
- Judgment & Lien Searches
- NY Municipal Searches
- Full Title (40 year search)
- Co-op Search
- UCC Search
- Document Recordings
- Title Clearances
- Title Insurance

All within a 24-48 hour turn time!

We also provide Title Clearance through this department. Examples of title clearance are obtaining mortgage discharges on previously paid mortgages, obtaining title affidavits from prior owners, etc.

The Ticor Title Foreclosure & Default

Services Department is your one stop for your New York State foreclosure, search & title insurance needs.

Attached is an order form that can be sent by fax or email to Susan. She is also available to answer any questions, concerns or requests you may have. Please join us in giving Susan a warm welcome to the Ticor Title family.

Susan looks forward to hearing from you!

Please contact Susan at :

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Map Cover Notations, and Their Effect on Title

Peter J. Battaglia, Esq.

Recently the New York State Court of Appeals affirmed the lower court in holding that notations on filed map covers or plats regarding restrictions on land use are just as binding upon purchasers as restrictive covenants and restrictions recorded in county clerk deed records (O'Mara v. Town of Wappinger, 485 F.3rd, 2nd Cir. NY, Nov 15, 2007). It is not unusual for towns and other municipalities to impose certain restrictions on the use of lands when a developer takes title to a large tract of land and intends to subdivide it with the municipalities required approval. Typical restrictions are building setbacks and sideline requirements, conservation and easement areas, and, in this case, "open space" requirements.

In this case a plat of this subdivision was filed in the Dutchess County Clerk's Office in 1963, on which two of the parcels were marked "open space." In 2000 O'Mara purchased the "open space" parcels in question and obtained a title insurance policy. An ordinary title search, or abstract of title, would not have shown the specific conditions noted on a filed subdivision plat. In this case, the title insurance policy neglected to show the restrictive notation. When O'Mara's proposed construction on these parcels was halted in 2002 by a party who benefited by these filed restrictions, the action was commenced against the town that required the "open space" notation as a pre-condition of its issuing subdivision approval. The Court of Ap-

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peals held that "an open space restriction placed on a final plat pursuant to Town Law section 276, when filed in the office of the county clerk pursuant to Real Property Law section 334, is enforceable against a subsequent purchaser."

Most title insurance underwriters look beyond the recorded results set forth in the title search or abstract. We make every effort to examine filed map covers or plats of which the insured premises are a part, and disclose on a title commitment those conditions and restrictions shown on the filed map which may affect the proposed purchasers intended use of the premises. This is one of the most important reasons for purchasers to obtain owners title insurance and not solely rely upon the title abstract. In this case the O'Mara's will probably look to the title insurance company for any appropriate compensation. But what would you and your attorney do without the benefit of a title insurance policy? Probably suffer from more sleepless nights.

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The Title Examiner is a periodic newsletter of Ticor Title Insurance. Please let us know if you would like to see a particular topic addressed in a future issue or if you have any questions regarding an article.