

Title Insurance - Part 1

We have found a reoccurring theme when exercising the bank's cumulative rights and remedies during the present recession. We have discovered a number of title issues which the bank was unaware of when the loan was booked. Presumably, this occurred by not seeing a title policy until after the closing, or not reviewing the Schedule B encumbrances prior to closing and not having appropriate endorsements for added protection.

Schedule B1 to the title insurance policy specifies liens and encumbrances which prime the bank's mortgage. The standard exceptions are generally removed; however, this must be specifically stated on the title policy. Thereafter, any other lien on the title which is of record prior to the bank's mortgage must be reviewed to determine whether it should be deleted, moved to Schedule B2 (which provides that it is of record, but it is subordinate to the bank's mortgage) or whether affirmative coverage exists to insure against specified loss on account of the encumbrance.

In the next succeeding news article I forward to you next month, I will address title insurance endorsements. In this article, I wish to mention some of the issues which have spotted recently.

1. Orders of Conditions. These are orders placed by the local Conservation Commissions related to wetlands. There should be a Certificate of Compliance recorded once the work is completed. It might be post-closing; however, you should at least understand the conditions which exist ahead of you in case you are required to foreclose. Often times, borrowers forget to go back to the Conservation Commission for a Certificate of Compliance.
2. Easements. There are many easements placed on real estate. You will still need to be careful to confirm that an easement does not run under the building which is being constructed on the land. Or if it does, you understand the circumstances surrounding it.
3. Reciprocal Easement Agreements. These agreements relate to the use of a driveway or parking or other area by abutting properties. You need to review these to determine whether there are any financial or maintenance obligations, which the parcel mortgaged to the bank is subject and which you may be subject if you foreclose.
4. Encroachments Referenced on an Old Recorded Plan. If you do not review the plan, you will never know whether your property is encroaching on that of another or whether an abutter's property is encroaching on the property you have financed.

The list can go on from here; however, I wanted to bring your attention to the fact that you must understand the documents referenced on Schedule B1 prior to your closing so that you understand the risk that foreclosure may pose. I also want to make sure that you are aware of the exact nature and status of the title which serves as your collateral.

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As always, should you have any questions or comments concerning this or other matters, please feel free to contact us.

Sincerely,

A handwritten signature in black ink, appearing to be 'P. Shrair', with a long horizontal line extending to the right.

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