

FEDERAL STANDARD ABSTRACT

TITLE NEWS

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Title News

Tenant Notification of Indoor Air Contamination

As of December 3, 2008, landlords will be required to submit to their tenants a statement of results from indoor air contamination tests performed on the premises. The landlord is also to notify the tenants of any public meetings called to discuss the test results. Closure letters are also to be forwarded. Under "test results" the new statute includes matters not readily identifiable with air, such as subslab groundwater tests and subslab soil samples test. If a property has had any qualifying tests performed, neither a new lease may be entered into, nor may a lease be renewed without providing the prospective tenant with a fact sheet issued by the Department of Health detailing the results and disclosing any ongoing remedial actions. Moreover, the lease agreement is to contain the following disclosure in 12-point bold face type:

"NOTIFICATION OF TEST RESULTS: The property has been tested for contamination of indoor air; test results and additional information are available upon request."

The new statute will appear as Sec. 27-2405 of the Environmental Conservation Law. The statute does not specify

whether test results yielded prior to December 3, 2008, will be subject to it, but a conservative reading of it leans to the affirmative. Contracts of sale do not appear to have been affected.

Title Insurance Amendments

As of November 1, 2008, the following amendments to title insurance are in effect:

- a. Co-Insurance Endorsement. The NYS Insurance Department has approved the Co-Insurance Endorsement. This endorsement is used when two title insurers (through the same or different agents) insure the same title or mortgage jointly.
- b. Mechanics' lien coverage will no longer appear on the Standard New York Endorsement, but solely on Covered Risk 11 of the Loan Policy.
- c. In the event a purchaser is acting as nominee, the principal may be listed as insured in the Owners' Policy together with the nominee, provided the words "as their interests may appear" follow their names.
- d. The Standard New York Endorsement will no longer limit survey coverage to vacant lands or lands improved by 1-4

family buildings. However, Schedule B will continue to limit this coverage to vacant lands or lands improved by 1-4 family buildings, pursuant to TIRSA Manual, Sec. 1 (L) (2).

Bankrupt Sellers

Contrary to popular belief, the fact that a seller is in bankruptcy does not necessarily undermine a real estate sale. It partly depends on what the aim of the bankruptcy is. For instance, if the bankruptcy was filed under Article 7, then the aim is to sell all assets at the best price for the creditors to collect as much as possible on their debts. Therefore, the bankruptcy trustee may very well welcome the opportunity to sell to a ready purchaser, if the contract of sale was entered into in good faith and for fair market value. It is possible that the bankruptcy trustee might ask to see the bank's appraisal and other documentation to establish fair market value. If the trustee determines that the price is right, the sale may be authorized provided the trustee retains all proceeds.

When the aim of the bankruptcy is re-organization (as under Article 11 or 13), it does not come down to the fair market value alone. In the case of commercial

property, the point is that the debtor continue to operate, if can be done at a profit. Therefore, selling the real estate may be prohibited because it might cause the debtor to close its business (and prevent future income). In the case of residential property, the point is similar: the debtor must have a place to live. The bankruptcy court may void contracts entered by the debtor prior to filing of bankruptcy, even if entered in good faith and for good consideration. In cases of reorganization, the bankruptcy court will have to be shown that the debtor can relocate and continue living or operating at an alternative and cheaper location, in addition to showing that the contract of sale was entered in good faith and is for fair market value. While in sale of assets (Article 7) cases the contract purchaser might be able to negotiate directly with the bankruptcy trustee, in re-organization cases (Articles 11 and 13) the contract purchaser will have to enlist the help of the seller. Only the seller will typically know whether alternative premises are appropriate for its business (e.g. what's a good location for a restaurant?) or even familial development (consider room count, family size, school district, transportation, religious services, etc.).

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