



The Liber & Page



Welcome to the *Liber & Page*, the official newsletter of First Nationwide Title Agency LLC.

Summer 2016 Edition

The Summer Edition of the Liber & Page Newsletter...

First Nationwide Title Agency LLC, proudly continues our quarterly newsletter with this Summer edition of the *Liber & Page*. In this issue, we review several important developments which impact the real estate industry.

-Vincent G. Danzi, Editor

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New Foreclosure Legislation (Zombie Properties)

On June 23, 2016, Governor Andrew M. Cuomo signed legislation into law in New York State which is intended to help prevent foreclosures and to address the cause of, and the problems caused by, so-called, “zombie properties”. A “zombie property” is one which has been abandoned after the owner has received notice of the initiation of foreclosure proceedings, oftentimes under the assumption that they must immediately vacate the premises.¹

The law was passed as Chapter 73 of the Laws of New York 2016, and enacts changes to the New York Real Property

¹ “Passing the Zombie Kill Bill Is a No-Brainer”, Schneiderman, Eric T., The Huffington Post, June 4, 2014, http://www.huffingtonpost.com/eric-t-schneiderman/abandoned-property-neighborhood-relief-act_b_5440737.html

Actions and Proceedings Law.

According to Governor Cuomo’s press release, “The bill was passed as part of the 2016 Legislative Session and is a boon for the economic health and public safety of communities and homeowners who would otherwise be at risk of losing their residences. The legislation combats the blight of vacant and abandoned properties by expediting the rehabilitation, repair and improvement of these properties, and enabling the State to assist homeowners facing mortgage foreclosure.”²

There are some critics of the new law, however, who point out that some of the changes may unnecessarily delay foreclosure actions, and may increase occupant holdovers.³

The law goes into effect this year on December 20, 2016.⁴

CFPB Director Richard Cordray Indicates There Will Likely Be No Change in the Simultaneous Issue Discount Disclosure

On July 14, 2016, The Director of the Consumer Financial Protection Bureau (the “CFPB”) responded to a letter sent to him by U.S. legislators regarding the requirement found in the TILA RESPA Integrated Disclosure (“TRID”) rule that mandates that simultaneously-issued premium discounts only be reflected in the owner’s policy. In the letter, Cordray indicated that the CFPB does not see a problem with the way the TRID disclosures currently require the discount for a simultaneous issuance of a title policy to be displayed.

As Director Cordray’s letter explained:

As reflected in the “Know Before You Owe” mortgage disclosure rule, the

² “Governor Cuomo Signs Sweeping Legislation to Combat the Blight of Vacant and Abandoned Properties”; Press Release June 23, 2016, <https://www.governor.ny.gov/news/governor-cuomo-signs-sweeping-legislation-combat-blight-vacant-and-abandoned-properties>

³ Lender/Service Alert: New 90 Day Notice Requirements A Perilous Morass For Lenders; Berkman, Henoch, Peterson, Peddy & Fenchel, P.C.; Bergman, Bruce J.; July 15, 2016

⁴ “Restoring Neighborhoods: New York’s 2016 Zombie Property and Foreclosure Prevention Act”, Keefe, Kirsten, E., Empire Justice Center; <http://www.empirejustice.org/policy-advocacy/legislative-updates/restoring-neighborhoods-new.html>

Bureau believes that the application of any simultaneous issuance discount to the owner's title policy, as mandated by some states, is the most transparent method of disclosing the costs of the required lender's title policy and the optional owner's title policy. Furthermore, regardless of whether any simultaneous issuance discount is applied to the purchase of the required lender's title policy or to the purchase of the optional owner's title policy, the total cost of title insurance disclosed to the consumer for purchasing both the lender's title policy and the owner's title policy is the same.

[Letter from Director Richard Cordray, to Congressman Dennis A. Ross and Congressman Ed Perlmutter, July 14, 2016]

The TRID disclosures require title premium rates for owner's and loan title insurance policies to be disclosed in a particular way, irrespective of how state law actually governs their calculation. However, title insurance premium rates are a matter of state-level regulation. The vast majority of states either promulgate specific rates to be used, or require title insurers in the state to file their rates and formulas publicly. Generally, title providers are forbidden by law from deviating from these filed rates.

The TRID rule requires that the insurance premium cost of loan policies of title insurance be disclosed as the amount which would be charged without any simultaneous discount being applied to such loan policy, even if a discount will, in fact, be applied to the loan policy because an owner's policy is being purchased simultaneously therewith. However, insurers in New York State apply the simultaneous discount to the loan policy, not the owner's policy. The TRID rule, as Director Cordray explains, requires that the discount be reflected on the owner's policy premium. However, since the policy amounts of the two policies are almost always different, and since rates for owner's and loan policies are also different, the only way to disclose an owner's policy's cost reflective of the loan policy's discount, and also not exceed the required rate structure while being in compliance with the TRID rule is to "back into" the owner's policy premium. In other words, the title provider must take the simultaneous rate for both policies, and subtract the cost of a full loan policy. The difference is the amount to disclose as the owner's title insurance premium. This method of disclosure is designed to represent the additional cost of the owner's policy.

The American Land Title Association, and others, have pointed out the confusion that this method of disclosing premiums can cause.⁵ For example, using the TRID

method of disclosing title insurance premiums, a reduction in the insurance amount of the mortgage policy will cause the disclosed cost of the loan policy to drop, but will also cause the disclosed cost of the owner's policy to increase as well.

The Office of the City Register of New York Advises that UCC Recording Fees Now Cover Just One Filing and Are Non-Refundable

"Beginning August 1, 2016, fees paid to the New York City Department of Finance, Office of the City Register [(the 'NYC Register')], for filing Uniform Commercial Code Documents will cover only one filing. If a document is rejected or is not recorded, the fee cannot be applied to a future recording, and the fee will not be refunded. Re-submission of a rejected UCC document will require repayment of the filing fee."⁶

The NYC Register cites Executive Law §96-a entitled, "Fees for services rendered pursuant to the uniform commercial code," as justification for deeming such fees non-refundable. In particular, Executive Law §96-a(2) provides that, "The secretary of state shall determine the type and amount of all fees to be collected by the department of state and other filing offices for services rendered by said department or office pursuant to the provisions of the uniform commercial code and article ten-A of the lien law. Such fees, referred to as processing fees, shall be non-refundable fees paid to the department of state or office at the time that documents are presented to the department of state or office for filing, and will be paid whether or not the documents are accepted for filing."

CFPB Proposes Amendment to TRID Rule

On July 28, 2016, the Consumer Financial Protection Bureau issued proposed amendments to the mortgage disclosure rules found in Regulation Z. Several of the amendments made to Regulation Z directly impact the TRID rule and its integrated disclosures, which also reside in Regulation Z.

Among other things, the proposed amendments would implement the following changes: (i) add tolerance thresholds for the "total of payments" disclosure in harmony with the thresholds for other charges related to the finance charge, such as the APR; (ii) adjust a partial exemption that mainly affects housing finance agencies and nonprofits; (iii) expand the applicability

⁶ Excerpt from Email from New York State Land Title Association, July 25, 2016, forwarding an ACRIS communication.

of the TRID disclosures to cooperative apartment units, whether or not such units are regarded as real property under state law; and (iv) provide guidance on sharing of the TRID disclosures with sellers, real estate agents, and others involved in the transaction.⁷

Comments to the proposed amendments must be received on or before October 18, 2016.

FinCEN Expands Geographic Targeting Order

On July 27, 2016, the Financial Crimes Enforcement Network ("FinCEN") announced that a new set of expanded Geographic Targeting Orders ("Expanded GTOs") will be issued that will take effect the day after the expiration of the current set of GTOs ("Initial GTOs") which were issued earlier this year in February. Those Initial GTOs cover certain "all cash" transactions facilitated with specific title insurance underwriters and their agents on real property in New York County, New York State, and Miami-Dade County, Florida, where such transactions are closed between March 1, 2016, and August 27, 2016.

The Expanded GTOs were issued on July 22, 2016, and will cover the period beginning August 28, 2016, and ending on February 23, 2017. In addition to covering a greater number of geographies, the Expanded GTOs have been issued to additional title insurance underwriters not subject to the Initial GTOs.

Apparently the first set of GTOs has already elicited information which indicates that, "a significant portion of covered transactions have indicated possible criminal activity associated with the individuals reported to be the beneficial owners behind shell company purchasers." According to FinCEN Acting Director Jamal El-Hindi, "By expanding the GTOs to other major cities, we will learn even more about the money laundering risks in the national real estate markets, helping us determine our future regulatory course."⁸

While most of the details of the Expanded GTOs have simply been carried over from the Initial GTOs, the Expanded GTOs specify a new series of geographies and price thresholds over which level the geographic targeting orders govern. Transactions which otherwise meet the criteria of the geographic targeting orders will be subject to the Expanded GTOs if the real property is: (i) located within Bexar County, Texas, and for a purchase price of \$500,000, or more; (ii) located with-

in one of the following Florida counties: Miami-Dade, Broward, or Palm Beach, and for a purchase price of \$1,000,000, or more; (iii) located within one of the following New York State counties: Kings, Queens, Bronx, or Richmond, and for a purchase price of \$1,500,000, or more; (iv) located within one of the following California counties: San Diego, Los Angeles, San Francisco, San Mateo, or Santa Clara, and for a purchase price of \$2,000,000, or more; or (v) located within New York County, New York State, and for a purchase price of \$3,000,000, or more.

New York State Department of Financial Services Approves New Policy Authentication Endorsement

Responding to the increasingly common practice of delivering title insurance policies electronically, the New York State Department of Financial Services has approved a new endorsement form intended to assure the insured that the lack of signatures on policy documents will not impair their effectiveness. In relevant part, the endorsement states, "When the policy is issued by the Company with a policy number and Date of Policy, the Company will not deny liability under the policy or any endorsements issued with the policy solely on the grounds that the policy or endorsements were issued electronically or lack signatures in accordance with the Conditions."⁹

This endorsement is now available and need not be countersigned to be effective. There is also no charge for the Policy Authentication Endorsement.

⁷ Bureau Of Consumer Financial Protection; Amendments to Federal Mortgage Disclosure Requirements under the Truth in Lending Act (Regulation Z); 12 CFR Part 1026; Docket No. [CFPB-2016-0038], page 3.

⁸ FinCEN Expands Reach of Real Estate "Geographic Targeting Orders" Beyond Manhattan and Miami (07/27/2016); https://www.fincen.gov/news_room/nr/pdf/20160727.pdf

⁹ TIRSA Policy Authentication Endorsement (6/24/2016)