



Title Topics



June

2009

How Big is that Policy?

In 1975 & 1976 I was employed by Chicago Title Insurance Company in its Manhattan Branch office at 233 Broadway. One of my responsibilities was to oversee the title work on a project called "Olympic Tower."

Olympic Tower is a mixed-use commercial & residential condominium located across the street from St. Patrick's Cathedral in Manhattan. The building is built on fee simple title, ground leases and air-rights over adjoining property.

One of my tasks in the early days of construction was to visit the site and count the number of floors that had been added since the last loan draw-down. So there I stood in spring, summer and fall leaning back and with one eye closed pointing at each floor with a pencil as I counted the floors aloud to no-one but myself.

What was truly striking about the transaction was its amount—\$96,000,000. Not that \$ 96,000,000 is not a lot of money but in 1976 it was *really* a lot of money. While now surpassed in dollar size, it was quite a transaction when it was put together.

I came to think of that transaction when I received a bulletin from one of our underwriters outlining the new self-imposed risk retention limits for its family of companies.

All insurance companies are concerned about risk limits and sets retention limits on the liability it will accept. If a company is asked to issue a policy in an amount greater than the retention limit in a particular transaction, it will minimize its risk by ceding reinsurance to

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More on Bulk Sales What is a Sale in the Ordinary Course of Business?

The Answer is Not Pleasant Another Detail to Worry Over

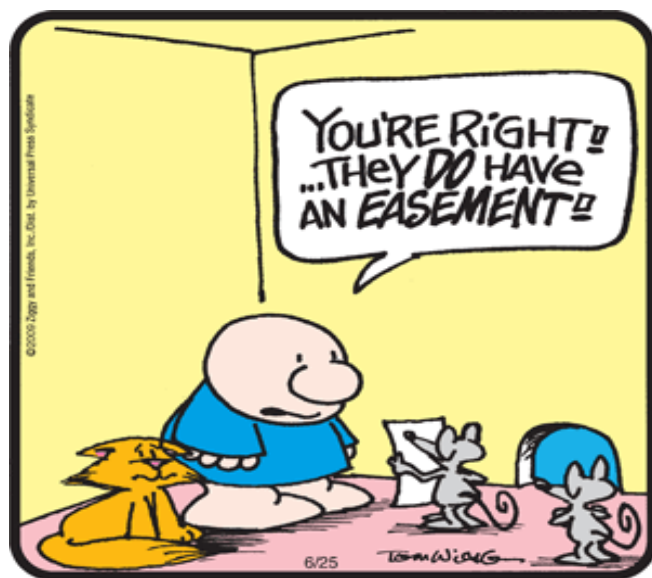
Our Title Topics of March 2009 introduced and discussed the new bulk sale reporting requirement in connection with a sale of real estate. We noted that the bulk sale notice provisions would not apply when the real estate is sold in the "ordinary course of business."

Just what that phrase means is apparently open to interpretation. As a result of our newsletter, we began to get calls from clients and the public. One person now living in Florida said he was selling his last piece of investment property in New Jersey and wanted to know if the purchaser was required to give the bulk sale notice to the state. [It turns out that the buyer's attorney told him he was doing just that and the call to our office was to verify the purchaser's attorney's position.]

Another caller related that the tax people imposed an escrow on the sale of a two-family home inherited by the owner.

Finally, a client represents a husband and wife team whose business is buying, rehabilitating, and selling residential property. They do this several times a year and make

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**Vested Title Inc. 648 Newark Avenue Jersey City NJ 07306
201-656-9220 800-637-0251 in NJ 201-656-4506 Fax**

Bulk Sales*(Continued from page 1)*

a nice income from it.

With my curiosity piqued by the last caller, I wrote to the Division of Taxation and asked, "what constitutes a sale in the ordinary course of business?"

The answer? If you are not Toll Brothers or K. Hovnanian, your sale is not in the ordinary course of business and the purchaser must give the bulk sale notice to the state. Besides the big builders, just about everything but the sale of an owner occupied single family residence requires the notice.

This led me to ask myself, do taxpayers cheat that frequently on the sale of real estate that they do not report the gain on their state income tax returns? In view of the 1099 reporting requirement and the sharing of information between Federal and State tax departments, that just doesn't seem to be the right answer.

Maybe the worsening New Jersey budget crisis provides an answer. Could it be that the state is so hungry for cash that it is worth its while to add staff to handle bulk sales of real estate and collect what is essentially an advance payment of the seller's tax liability?

Whatever the state's rationale, it looks as though the filing of the bulk sale notice looks will be routine.

When in doubt as to whether the bulk sale notice must be given, call the Bulk Sale Section at 609-292-6604.

Retention*(Continued from page 1)*

another insurer. That was certainly the case with the Olympic Tower project.

The underwriter hopes that reinsurance will be ceded to other companies within the corporate family, if possible. Thus, you can view the total of individual company retention limits when placing title insurance.

For instance, Chicago Title and Fidelity National are now part of Fidelity Financial. These two companies can combine to write a policy for \$648,000,000. Add the other Fidelity companies and the number jumps to \$1,279,000,000. Old Republic National, with not as many subsidiaries as Fidelity, will write up to \$500,000,000 before ceding reinsurance to a third party.

OK, OK, so our clients don't bring us \$500,000,000 transactions, but we do give the smallest purchase the same attention to detail we give to the \$30,000,000 acquisition and financing. We think it's what sets us apart from other agents who don't seem to have the time to dedicate to their smaller clients. In a service industry, that's what Vested Title offers— service!

Changes to Settlement Procedures- Statutory enactments regarding real estate closings and Truth-in-Lending disclosures and the settlement statement will soon take effect. We'll address these changes in the next Title Topics.

Bankruptcy Tip- Do you have a client contemplating the purchase of real estate from a Chapter 7 Bankruptcy Estate? When the title order is placed with us we do the usual but pay special attention to judgments, mortgages and other liens affecting the property. The bankruptcy trustee files a motion asking for permission to sell the property, generally free from liens and with other liens (typically money judgments) discharged as such in the public record. Frequently, a problem arises when the name of the debtor ever so slightly varies between the bankruptcy filing and the state filing. In such cases, the Clerk of Superior Court will not file the bankruptcy court order discharging the judgment. The Clerk's office insists that the name in the bankruptcy order precisely match the name in the judgment record.

Here's the tip from bankruptcy attorney Daniel M. Stolz: Order a judgment search against the bankrupt before you finalize the contract. If that is done, it will make it easier to join creditors in the sale approval proceedings and will ensure that they are joined in the correct name. It will certainly avoid the delay encountered when the Bankruptcy Court must be asked for an amended order. And we all just hate delays, don't we?

For 28 years, Vested Title has stood behind its clients. When it comes to resolving title problems with tax collectors, assessors, county clerks and registers, call upon us and we will do all we can to help you get that title closed.

Vested Title Inc. — Our 28th Year

How to Contact Us:

**Vested Title Inc.
648 Newark Avenue
P.O. Box 6453
Jersey City, NJ 07306**

**201-656-9220 201-656-4506 Fax
800-637-0251 in New Jersey
On the Web at www.vestedtitle.com
vti@vested.com vestedtitle.blogspot.com**

**Susan L. Kruger, President
Stephen M. Flatow, Vice Pres. & Counsel
Paul D. Kruger, Vice President & Manager
Diane R. Menard, Vice President-Sales
Vincent Bellucci, Vice President-Sales
Jackie Bergman, Sales
Monica Battagliola, Sales
Christina Cavadas, Sales
Paula Tamburo, Title Officer
Karen Miller, Policy Dept. Supervisor**