



Title Topics



October

2008

Buying into an Age-Restricted Community? New Recording Requirement Created

Governor Corzine has signed what is now known as P.L. 2008, c.71 which impacts so-called "retirement communities" by requiring that a deed for property in an age-restricted development be accompanied by a signed and acknowledged certification attesting that the grantees are eligible owners pursuant to the "housing for older persons" exception to the Fair Housing Amendments Act of 1988.

The bill was pushed by the New Jersey Chapter of Community Associations Institute (CAI-NJ). According to a press release, "The intent of this legislation is laudable," said Kenneth R. Sauter, Esq., chair of the CAI-NJ Legislative Action Committee and a partner at Berman, Sauter, Record & Jardim, P.C. "It simply seeks to preserve the integrity of age-restricted communities through better oversight."

Because the legislative record is scant, we can only surmise that age-restricted communities were worried about compliance with Federal law that requires 55+ communities to have at least 80 percent of residents (and one per each household) to be aged 55 or older. 62+ communities must have 100% of the occupants aged 62 or older.

Governor Corzine signed the new law on September 6, 2008. The Department of Community Affairs has now published and posted the Certification Form and a brief summary of the law. A copy of the Certification Form is on page 3.

At this time we have no information as to how this requirement is to be implemented and enforced by the county clerks and registers. It is not known

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Short Sales Rear Their Ugly Head

We previously wrote about "Short Sales" in February of this year. Sadly, "short sales" and distressed sales in general, have become more common. Title insurers are called upon, of course, to insure title out of short sales, but we do so with great care. A few points:

What is a Short Sale? A sale in which the pay-off lender agrees to discharge the mortgage for less than the unpaid principal balance (and costs).

Why Would the Pay-Off Lender Agree to a Short Sale? The lender is unlikely to consider a short sale unless the loan is in default and would not agree to a short sale lightly. But if the lender determines that it is unlikely to receive more in a foreclosure sale, it may be smart to accept such an arrangement. As someone said to me many years ago, "your first loss is your best loss."

What Will the Pay-Off Lender Require? First and foremost, the seller will need to prove an inability to repay the loan. The lender typically requires a great deal of documentation, including, but not limited to:

- Financial statements, tax returns and other financial data.
- Contract of sale
- Full disclosure of all closing costs and adjustments, including real estate commissions, property taxes, legal fees, realty transfer fees.
- HUD-1 Settlement Statement.

The Lender's Pay-Off Letter. The lender (or its foreclosure counsel) will set forth special requirements before agreeing to discharge the mortgage. The lender often, but not always, will release the property owner of his obligation under the promissory note upon the borrower fulfilling all of the lender's conditions to the short sale.

The Title Company's Concerns. Bogus transactions may arise. Here are a couple of examples:

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Age-Restricted Communities (Continued from page 1)

whether the State or the counties will maintain a list of developments to which this new law applies. The only thing we are sure of now is that the purchase of a dwelling in one of the many age-restricted communities requires that the certification be attached to the deed. The new law does not apply to first time sales.

Presumably, your client is the first stop for information on any age restrictions that may exist in their new community. We will do our best to point out to you that the chain of title includes a master deed, declaration of covenants and restrictions or other governing instrument that identifies the community as age-restricted.

If additional information is received regarding application of the law, it will be sent on as soon as it is received. Conversely, if you have any experiences as to the new law's application, particularly from county recording offices, we'd like to hear about it. Please write to sflatow@vested.com.

Links for copying into your browser are as follows:
The Certification-

www.nj.gov/dca/codes/newhome_warranty/pdf/age_cert_form.pdf

DCA Summary -

www.nj.gov/dca/codes/newhome_warranty/pdf/age_cert.pdf

The Statute-

www.njleg.state.nj.us/2008/Bills/PL08/71_.PDF

Short Sales (Continued from page 1)

- Property owner negotiates a short sale with lender. Property owner sells to straw man after payment of short sale. Straw man sells to buyer for a price much higher than the short sale (property owner and straw man may split the profit).
- Property owner negotiates short sale with lender. Under an undisclosed side agreement, buyer purchases for price higher than short sale. Property owner pockets the profit.

General Requirements for Short Sales and Distressed

Sales. We must be assured that both the pay-off lender and the buyer's lender are fully apprised of and have agreed to the transaction. The title company will require:

- The pay-off lender's pay-off letter that states the amount the lender is willing to accept and the conditions of the transaction. The pay-off letter must be followed exactly with no variations.
- A HUD-1 Settlement Statement must be signed by buyer and seller and, assuming the pay-off lender requires same, approved by the pay-off lender.
- Assuming seller is to receive no proceeds, copies of all checks and an affidavit from the settlement agent, or buyer, if there is no settlement agent, to the effect that seller has received no proceeds.
- All junior liens and mortgages are to be satisfied. If not, the lien shall remain an exception to title.
- If foreclosure has been filed, a letter from the foreclosing attorney to the effect that upon payment as required in the pay-off letter, the attorney will discontinue the action, cancel the *Lis Pendens* and provide a satisfaction of mortgage.

For 27 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 27th Year

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CERTIFICATION OF PURCHASER
OF COMPLIANCE WITH THE AGE RESTRICTION REQUIREMENTS OF THE HOUSING FOR
OLDER PERSONS EXCEPTION FROM THE FEDERAL FAIR HOUSING AMENDMENTS ACT OF
1988
Pursuant to P.L. 2008, c.71

I (we) by signing as grantees below hereby certify that the property known as _____ commonly described as _____ in the community known as _____ will be occupied by a person of an age to ensure compliance with the "housing for older persons" exception from the Fair Housing Amendments Act of 1988", Pub.L. 100-430 (42 U.S.C. ss.3601 et seq.) as set forth in section 100.301 of Title 24, Code of Federal Regulations.

I (we) hereby certify that this addendum will be recorded in the County of _____ as part of the deed for the property described above.

The property as described in this addendum is a resale or a transfer by operation of law. A "resale" is defined for the purposes of this certification as the sale of a dwelling unit within an age restricted community, other than the initial sale of the unit made by the developer.

By:

All grantees must sign and be acknowledged)

STATE OF NEW JERSEY:

COUNTY OF _____ :

BE IT REMEMBERED that on the _____ day of _____ before me, the subscriber, the undersigned authority personally appeared the persons named above as grantees who, being by me duly sworn on his oath certifies and makes proof to my satisfaction that he/she/they are the purchaser of the property described above; that the execution as well as the making of this Certification has been duly authorized.

By notary or attorney at law _____ Grantees: _____

For County Clerk Use Only

Date Filed _____

Date Recorded _____

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