



The Monarch News Carrier*

"For the Serious Real Estate Professional"

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Defects in Foreclosures Stall Sales, Frustrate Brokers, Buyers and Banks

The recent suspension of foreclosure sales by a number of national banks (J.P. Morgan, GMAC, Bank of America and Ally-formerly GMAC) tells the tale of yet another layer of frustration and downward pressure exerted on the real estate industry (and economy) by the "Great Recession." As many of us know, this latest chapter in the country's financial crisis is caused by alleged defects in the foreclosure procedures of many REO properties. As a result, title insurance carriers have stepped up their requirements for proving the bank/lender has title ownership of the foreclosed property—in those instances where the documentation is deemed insufficient, the title company may not issue any title policy for either the buyer or the buyer's lender.

Currently the Attorney Roundtable Committee at the Northern Virginia Association of REALTORS® is developing a set of suggested guidelines for its REALTOR® members to use when working with buyers who are seeking out foreclosures and REO's. These guidelines should be issued in the near future. For now, it is at least a general suggestion that given the increased risk for defective title (which obviously can prevent the sale of said properties), agents may want to help their buyers determine the status of the title early on. This can be accomplished either by obtaining the necessary documentation from the listing agent/seller bank or by having a title company run a period-of-ownership search. This search should include a review of the foreclosure file and perhaps even a PACER search to determine whether the prior owner was in bankruptcy. If you are not certain what documentation will be needed, consult your favorite title insurance attorney or settlement company.

Regardless of the means by which the title documents are obtained, it is suggested that the agent and buyer then have a title insurance attorney review the documents to determine insurability. To the extent possible, it's probably a good idea to conclude the title review prior to making an offer so that the buyer is not at risk under a ratified contract—moreover, you'll at least have a better idea of whether and at what price to make the offer. If, however, an offer must be made before the agent and buyer can get the title information, it is again suggested that the agent might add as a contingency to the contract that the title must be marketable and insurable (most banks will not use the Regional Sales Contract, so Paragraph 19 which provides the title protections would not be available). Additionally, a contingency giving the buyer the right of terminating the contract, if the bank fails to produce the necessary title documents by a certain date after ratification, might also help protect the buyer. There are other considerations such as the type of deed the bank seller will convey, the fact that the buyer has very little, if any, negotiating power and needs to be prepared to pay for repairs (banks generally will not) and other outstanding costs, fees and assessments normally picked up by a seller. But in these times, the primary issue to be addressed preferably before the buyer is too far into the transaction, is the status of the property's title.

**If you have any further questions about foreclosures or REO properties, feel free to call
Ann Johnston at 703.852.1764.**

MORTGAGE INTEREST DEDUCTION NOT ON THE CUTTING BLOCK (YET)

News from NAR (November 15, 2010):

- Media reports that suggest that the Deficit Reduction Commission has recommended reducing or eliminating the mortgage interest deduction are FALSE.
- The Deficit Reduction Commission has not yet released its plan - the commission will submit its report on December 1, at the earliest.
- What the media is currently reporting on is an early DRAFT of the report that could change many times before the report is actually released. And 14 of the commission's 18 members must agree on the recommendations before they can be released.
- NAR is actively engaged on behalf of REALTORS® and the nation's home owners to ensure that the current MID is not changed - the tax deductibility of interest paid on mortgages is both a powerful incentive for home ownership and one of the simplest provisions in the tax code.
- NAR opposes any tax reform plan that does not retain the deductibility of mortgage interest. NAR also opposes any effort to convert the MID from a deduction to a tax credit.

SUPREME COURT OF VIRGINIA UPHOLDS NVTA PROPERTY TAX CLASSIFICATIONS

News from VAR (November 11, 2010):

The Virginia Supreme Court recently ruled (Few Enterprises v. Fairfax County, etal, November 4, 2010) against commercial property owners here in Northern Virginia--essentially approving the Northern Virginia Transportation Authority's power to impose a special tax only on commercial property but not on residential owners. The NVTA levied this tax on some property owners to finance needed and expensive transportation improvements (e.g. Metro to Dulles). The controversy over this tax however arises from its application being limited only to commercial properties and not residential. Not surprisingly, the commercial property owners, saying that the tax is not fair as all citizens of NVTA use the transportation facilities, reacted against this tax by bringing suit challenging the NVTA's authority to levy it.

Nevertheless, the Virginia Supreme Court did not agree letting the special tax stand. Whether such signals the General Assembly that it may authorize regional authorities to exempt certain classes of property owners from the taxes or goes the other way and encourages the General Assembly to find a way to change the effect of the Court's opinion, is yet to be seen. VAR has indicated that it is not in agreement with the Supreme Court's ruling because, in VAR's view, it unfairly burdens commercial property owners.

REALTOR® PRACTICE TIP:

BEFORE TAKING SOME LISTINGS, YOU MIGHT WANT TO COMMISSION A TITLE SEARCH

As many of us realize, in this day of financial crisis, many homeowners who contact you to list and sell their home, may be under considerable financial distress. This includes not only 2 or more mortgages (which may be in arrears) but also tax liens, judgments and liens for past due assessments among other equity reducing title issues. Before you take on a listing, it might be wise to have a period-of-ownership search performed for the property so you know what you are getting into. Sometimes homeowners--"would be" sellers, either don't recall judgments, liens, additional mortgages or the like—or they suffer from "selective memory."

So before you expend a considerable amount of time, money and work on a listing, you want to be sure you can get paid; thus where you have some questions or doubts about a prospective listing client, you might to call your favorite title attorney or settlement company to request a period- of-ownership search (it should include a PACER search to be sure your seller/owner is not in bankruptcy!) Just consider the small fee (generally \$90-\$125) charged by the title abstractor for that information to be a form of "insurance" for you.

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at Monarch Title via ann@monarchtitle.net.

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