

Outline for LLA “In The Know” Presentation – April 2016

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TRID

Truth in lending/RESPA Integrated Disclosure

“The Reason I Drink”

Closing Disclosure Required rather than HUD.

comparison so far with Initial Disclosure generally shows less cash to close

Delays in closings due to need for Borrower to receive 3 days in advance – but not as bad as anticipated

Documents still coming at last minute

Increased Regulation – CFPB

<http://www.consumerfinance.gov/guidance/>

Seller Financing Trap – see attached

ALTA Best Practices

<https://www.alta.org/bestpractices/>

Have these things caused there to be fewer real estate lawyers? Higher degree of specialization and higher level of technology needed.

Private Roads

Yes, you can be landlocked!

O’Reilly, 607 Pa. 280, 5 A.3d 246 (2010). On remand 100 A.3d 689 (Pa. Cmwlth.. Ct. 2014)

Creation of a road to access property is not a “public use.”

Practice Tip

Tell the clients what the title search shows *before closing*.

Send them a sketch

Tell them they need immediately available funds

Tell them about gas rights

Knotty Title Problems

Mechanics' Liens:

49 P.S. § 1101 et seq. (should we change the name?)

Stipulations Against Liens only effective for residential properties valued at less than \$1 Million.

BUT, Mechanics' Liens are subordinate to certain open-end mortgages.

MUST be filed before commencement of construction.

photographic evidence is recommended

Identify as "open-end" mortgage

At least 60% of the proceeds must be used for costs of construction

"Springing Lien" – refinance trap:

Judgment against one spouse becomes lien upon death of other spouse. Relates back to date of judgment.

Life Estates:

Inheritance Tax Lien – 20 yrs. + 9 months from date of death

Maybe no statute of limitations if no return filed

Inheritance Tax Generally:

Maybe no statute of limitations if no return filed.

Federal Liens:

Disregard of tenants by the entireties, at least for tax liens. U.S. v. Craft, 535 U.S. 274, 233 F.3d 358 (2002).

Other “secret” liens:

Child or spousal support

Medicaid – possible post-mortem lien

Real Estate Brokers

Unpaid corporate taxes

Realty Transfer Tax Issues

72. P.S. § 8102-C.3

Conveyances from individuals to association 61 Pa. Code § 91.154

Basically, always subject to tax

Associations include partnerships

Conveyances between associations

Basically, always subject to tax.

Conveyances from Association to owners

Exempt IF same proportion and ownership for 2 + years by owners

Mineral Deeds – taxable for RTT purposes

Need consideration as basis or appraisal

Any way get away with “zero value?”

Conveyance from Estate to beneficiaries

Exempt if no consideration

Excerpt from *2013 Loan Originator Rule*, published by Consumer Financial Protection Bureau

Under the second special exclusion, if you are a seller financier (regardless of whether you are a natural person, estate, or trust), you are not a loan originator if:

- ♣ You provide seller financing for three or fewer properties in any 12-month period.
- ♣ You owned the properties securing the financings.
- ♣ You did not construct, or act as a contractor for the construction of, a residence on the property in your ordinary course of business.
- ♣ The financing meets the requirements below. The financing must:
 - ♣ Be fully amortizing.
 - ♣ Have a fixed rate or an adjustable rate that resets after five or more years. These rate adjustments may be subject to reasonable annual and lifetime limits. Further, you must determine in good faith that the consumer has a reasonable ability to repay the loan. If the financing agreement has an adjustable rate, you must determine the rate by adding a margin to an index rate. The index you use must be widely available, such as the U.S. Treasury securities indices or LIBOR.

N.B. I cut and pasted this on St. Patrick's Day. I'm not sure if that accounts for why the "bullets" are shaped like Shamrocks, or whether CFPB uses them all the time. FAH