

COOPERATIVE TITLE INSURANCE - WHY PURCHASE IT?

While much has been written about title insurance coverage, one subject that has been virtually ignored in the literature is title insurance for cooperative apartments. Little has been written because, in the past, demand for leasehold or cooperative policies has not been too high. When one purchases a cooperative, he is not buying an apartment, but rather shares in a corporation that owns the building and receives a proprietary lease for the apartment that is directly related to his shares.

Title insurance has been available in co-op transactions for many years. The prices for cooperative apartments in the New York metropolitan area are skyrocketing and as a result title insurance should be seriously considered by co-op purchasers and their lenders.

There are basically three products available to assist purchasers' and lenders' counsel in performance of due diligence to protect their clients, i.e., the co-op lien search, the limited liability co-op lien search, and the title insurance policy (cooperative leasehold policy).

The co-op lien and the limited liability co-op lien searches have their limitations. First of all, they both provide raw data obtained from the County Clerk or City Register records. The attorneys must analyze the data which can be a time consuming process and also subject to error. Secondly, the scope of both searches is limited. The practice with respect to these searches is to limit them to the present owner(s) of the apartment and the cooperative corporation. This means that UCC-1 Financing Statements, judgments, or federal tax liens filed against a prior owner of the apartment will not be searched and any loss resulting therefrom will be limited to the amount stated in the search. Third is the issue of liability. In the case of the co-op search, liability is limited to negligence. In the limited liability search, damages are set at the stated amount, generally \$50,000.00 without regard to the amount of the purchase price or the loan. **This search purportedly covers "damage" but does not define what is meant by "damage".**

The cooperative leasehold policy insures the purchaser's right of possession for the term of the proprietary lease. Of course, the purchaser must pay the maintenance charges and comply with the other terms of the lease. The policy contains a formula for computing the value of the leasehold in the event of a loss.

Furthermore, the policy affords insurance that the cooperative corporation is duly formed and holds title to the land and building of which the apartment is a part. It also insures against any liens including any outstanding maintenance charges and assessments, and any right of first refusal to purchase the apartment. Other protections include insurance against the consequences of either an encroachment of the building or a violation of restrictive covenants.

The policy would also cover and insure against such items as:

- a. Fraud, lack of capacity, and forgery;**
- b. Misindexing of UCC's by the County Clerk;**
- c. Improperly prepared UCC's;**
- d. Improper transfers by an estate or distributees;**
- e. Improper transfers out of bankruptcies;**
- f. Irregularities in a foreclosure of a lender's security interest;**
- g. Failure to detect a federal tax lien filed in another jurisdiction against the owner of the cooperative shares; and,**
- h. Failure to raise substantial judgments that are being levied against by the Sheriff's office.**

Other items covered include the rent or damages the purchaser might have to pay to a person with a title paramount to the cooperative corporation's and rent which the purchaser may be obligated to pay even after eviction. It also covers, for example, the cost of relocating personal property along with the reasonable cost or repairing any personal property damage in the relocation.

Often the most important feature of a title insurance policy is the duty to defend. Title insurance companies spend approximately the same amount of money on defense costs as they do on payment of claims.

Significantly, although title insurance policies (including cooperative leasehold policies) limit the amount of damages paid to a policy holder according to the amount of coverage purchased, there is no corresponding limit on defense costs. If the purchaser of a cooperative does not purchase title insurance, he would have to bear defense costs on his own.

It is plain to see that a title insurance policy is much more comprehensive in protecting purchases of cooperative apartments and should be a purchaser's product of choice when deciding how best to protect his/her investment.