

Pennsylvania Adopts New Procedures For Satisfaction of Mortgages

Earlier this year, the Commonwealth of Pennsylvania enacted a new law relating to satisfaction of mortgages. The statute, known as the Mortgage Satisfaction Act (the "Act"), changes the law with respect to mortgage satisfactions in certain respects. This Article summarizes several of the more significant provisions of the Act.

Under the terms of the Act, the normal procedure for satisfying a mortgage remains the filing of a satisfaction piece by the mortgagee. Upon payment of the mortgage debt in full, the mortgagee is obligated to present an executed satisfaction piece for recording in the office where the mortgage is recorded. The Act mandates a form of satisfaction piece which must now be used in all jurisdictions in the Commonwealth of Pennsylvania. The satisfaction piece may be executed by the current holder of the mortgage (even if the holder is not of record), a mortgage servicer, or a nominee of the mortgagee. The mortgagee is no longer required to present the original mortgage with the satisfaction piece; however, the recorder may elect to adopt a validation procedure requiring that the mortgagee present the original mortgage or a legible copy of the first page of the mortgage, or pay a validation fee established by the recorder.

After a mortgage is paid in full, the mortgagor may send a notice to the mortgagee demanding that it satisfy the mortgage. If the mortgagee fails to satisfy the mortgage within sixty days after payment of the mortgage and receipt of the notice to satisfy, the mortgagee is obligated to pay the mortgagor a penalty in an amount not exceeding the original loan amount.

The Act also empowers a settlement officer who pays off a residential mortgage at closing to satisfy the mortgage if the mortgagee fails to do so. If the mortgagee fails to satisfy the mortgage within ninety days after it has received payment in full, the settlement officer may send a written notice to the mortgagee. This notice advises the mortgagee that the settlement officer intends to satisfy the mortgage if the mortgagee fails to satisfy it within sixty days after receipt of the notice. The settlement officer may file what is referred to as a settlement officer satisfaction if the mortgage remains unsatisfied after the expiration of the sixty-day period. Both the form of the notice and the settlement officer satisfaction are specified in the Act. At any time within six years after the date of recording a settlement officer satisfaction, the mortgagee may present for recording a written objection to the satisfaction. If an objection is filed, the settlement officer satisfaction is void and the mortgage is considered unsatisfied; however, the objection is not effective as against bona fide purchasers, mortgagees or judgment creditors whose deed, mortgage or judgment was recorded prior to the time the objection was recorded.

In summary, although the Act does not make profound changes in existing law, it does effect day-to-day procedures and practices with respect to satisfaction of mortgages. It stipulates the specific form which the satisfaction piece must take, but at the same time relaxes certain requirements with respect to execution and recording of the form.

Inside:

- ***Superior Court Confirms Buyer's Right to Rely on Tenant Estoppel Certificate***

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When a buyer purchases a tenant-occupied property, one of the key components of its due diligence process is obtaining as much information as possible about the terms and conditions of existing leases. This is accomplished in a variety of ways. Representations and warranties by the seller regarding the existing leases are frequently included in the agreement of sale. The buyer will also conduct its own review of the seller's lease files, especially with respect to larger leases. Another means of acquiring relevant information is the use of the tenant estoppel certificate. A tenant estoppel certificate is a document in which the tenant confirms the basic economic terms and conditions of its lease and acknowledges certain matters regarding the status of its lease. For example, the tenant may be asked to certify to the buyer that the lease is in full force and effect, that it has not been amended except as set forth in the certificate, that the landlord has satisfactorily completed all construction work required by the lease, that the landlord is not in default under this Lease, that the tenant has no defense, offset or counterclaim against the landlord, and that rent has not been paid more than one month in advance.

The purpose of the tenant estoppel certificate is to assure the buyer of the factual accuracy of the information contained in the certificate and to preclude the tenant from asserting a claim or taking a position which is contrary to the information contained in the estoppel certificate. In the recent decision of Liberty Property Trust v. Day-Timers, Inc., (Pa Super., Jan. 8, 2003) the Pennsylvania Superior Court has addressed the matter of a buyer's right to rely upon the information contained in a tenant estoppel certificate. In connection with the purchase of a tenant-occupied property by Liberty Property Trust, one of the tenants, Day-Timers, Inc. delivered an estoppel certificate which specifically listed the lease documents, and expressly stated that the lease had not been modified by any other

agreements, oral or written. In fact, there was a proposed amendment to lease which had never been executed by the prior owner/landlord or Day-Timers, and which had not been listed in the estoppel. The proposed amendment changed the manner in which consumer price index rent increases were calculated, resulting in a lower CPI rent increase for the tenant. Although the amendment had never been executed, the prior owner/landlord calculated the CPI rent increases in accordance with the unexecuted amendment.

Day-Timers contended that even though it did not disclose the modification in the estoppel certificate, Liberty was on notice of the amendment because the rent amount set forth in the certificate was in accordance with the revised CPI formula. The court disagreed. It determined that Liberty was not obligated to look behind the rent calculation and could rely upon Day-Timers' statement that there were no oral or written modifications of the lease documents, other than those expressly indicated in the estoppel. According to the court, Day-Timers was "...equitably estopped from asserting an oral modification of the lease where it clearly denied the existence of any such modification in the Estoppel Certificate; where Liberty had insufficient notice of the existence of such modification; and where Liberty relied on Day-Timers' representations."

Liberty Property Trust v. Day-Timers affirms the right of a purchaser to rely upon the representations contained in a tenant estoppel certificate, where the purchaser does not have information different from that contained in the estoppel. A contrary holding would eviscerate the usefulness of estoppel certificates in the sale of tenant-occupied real estate. This decision highlights the importance for both tenants and prospective purchasers of a careful and complete review of the contents of a proposed estoppel certificate.

The statements contained in this Update are intended for general information and do not constitute legal advice. For additional information, please contact one of the following Saul Ewing Real Estate attorneys:

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