

Multiboard Residential Real Estate Contract 3.0

15. THE DEED: Seller shall convey or cause to be conveyed to Buyer . . . good and merchantable title to the Real Estate by recordable Warranty Deed Title when conveyed will be good and merchantable, subject only to: . . . covenants, conditions and restrictions of record and building lines and easements, if any, so long as they do not interfere with the current use and enjoyment of the Real Estate.

Lohmeyer v. Bower

- 1949 – Lohmeyer contracts to buy from Bowers
 - “certified to date showing good merchantable title . . . guaranteeing said title . . . free and clear of all encumbrances”
 - “subject, however, to all restrictions and easements of record applying to this property”
 - “shall have sufficient time to . . . correct any imperfections”
- Subject to restrictive covenant – requires any house erected be two stories or higher
- Zoning ordinance – 3 foot setback on sides and rear

Marketable Title

- General Standard
 - Existence of Private Restrictions?
 - Existence of Public Restrictions?
- Role of sales contract language here

Equitable Conversion

- Equity – buyer is owner from date of sales contract
 - Seller has
 - (a) legal title and
 - (b) lien
- *Risk of Loss* before transfer of possession

Stambovsky v. Ackley

- Stambovsky (not a local) contracts to purchase 1 LaVeta Place, Nyack, NY
- Ackley told Reader's Digest and local press house has poltergists
 - House part of haunted walking tours
- Duty to Disclose?
 - **Caveat Emptor**
 - Nondisclosure v. Affirmative Misrepresentation
 - "as is" clauses
 - Statutory Modifications
 - Waivable?

Mortgages

- *Mortgagor* – grantor of security interest in the land (house buyer)
- *Mortgagee* – this is the one lending the money (bank)
- *Equity* – difference between value of land and security interest granted
 - also called *equity of redemption*

Foreclosure

- *Strict Foreclosure* – notice, hearing, and court decree – title goes to Mortgagee (not used much)
- *Foreclosure Sale* – notice and hearing and then judicially ordered sale (auction)
- *Deed of Trust* – notice and wait time and then Mortgagee conducts sale (a little faster)
- All of this to cut off *equity of redemption*

Murphy v. Fin. Dev. Corp.

- 1980 – appraised at \$46,000
 - Sept. 1981 – Murphy 7 months behind
- Oct. 1981 – Lender gives notice of intent to foreclose
- Dec. 15, 1981 – date, after postponement, set for sale
 - Snows night before
 - Only Murphys, Lender Rep., and Substitute Attorney show up
 - One bid – from lender – for \$27K
 - Amount due on mortgage is \$27K
 - Later that day, Substitute Attorney meets other client, says interested
 - Offers \$27K, Lender counters \$40K, agree on \$38K

- Is foreclosure necessary?
- Transfer by the Mortgagor
- Purchaser takes **subject to the mortgage**
- Purchaser takes **assuming the mortgage**
 - Original mortgage may have a no assumption clause

M&T Mortgage v. Foy

- Interest rate of 9.5%
- ? if 3% points above comparable Treasury security
 - Here it was ~6% during relevant period
 - If so, reverse burden on discrimination claim
- Reverse redlining
- Remedy?

Commonwealth v. Fremont Investment & Loan

- Adjustable Rate Mortgage (ARM)
 - typical is a 30-year fixed rate
 - ARM has fixed rate for 2-3 years
 - then adjust to higher, variable rate for rest of term
- Debt-to-Income Ratio
 - typically 28-36% gross income
 - here approached 50%
 - and calculate on fixed rate portion of ARM
- Loan-to-Value Ratio
 - typically 80-20
 - approached 100 (no downpayment, equity)
- Remedy?

U.S. Bank v. Ibanez

- Dec. '05 -- Ibanez Mortgage (*M*) – 103K with Rose Mortgage (*M'ee*)
- June '06 -- Rose Assigns *M* to Option One
- Allegedly assigned from Option One to Lehman, then Lehman Holdings, then Structured Asset, then U.S. Bank
 - All in '06
 - “will be” assigned
 - part of mortgage-backed security
- July '07 – U.S. Bank forecloses on Ibanez
- Sept. '08 – Am. Home Mortgage (successor to Option One) assigns *M* to U.S. Bank

Bean v. Walker

- Contract (rent to own)
 - 15K, 5% rate over 15 years
- At time of default, paid \$12,099.24, \$7114.75 to principal
- ? if the interest in the property is “of such a nature that it must be extinguished before the vendor may resume possession”