

September 24, 2007

Industry Bulletin No. 03-2007

Home Equity Theft Prevention Act

SECTION 1303 OF THE REAL PROPERTY ACTIONS AND PROCEEDINGS LAW (RPAPL) was added by Chapter 308 of 2006, and became effective for foreclosure actions commenced on or after February 1, 2007. Section 1303 of the RPAPL has now been amended by Chapter 154 of the Laws of 2007. The amendment became effective on July 3, 2007.

Section 1303 as originally enacted requires the foreclosing party in a mortgage foreclosure action to provide a notice to the mortgagor with regard to information assistance about the foreclosure process. The amendment by Chapter 154 of the Laws of 2007, limits the notice to mortgage foreclosure actions “**which involves residential real property consisting of owner-occupied one-to-four-family dwellings.**” For our underwriting practices, we will give the Chapter 154 amendment retroactive effect to February 1, 2007. For our underwriting practices, we require this notice be given in **ALL** foreclosure actions involving a 1-4 family dwelling owned by one or more natural persons (including trustees of a trust), as we have no way of determining if the property was occupied, in whole or in part, by the owner. The notice must be delivered with the summons and complaint, shall be in bold, 14 point type, and shall be printed on colored paper that is other than the color of the summons and complaint. A copy of the required notice was attached to our Underwriting Bulletin 2007-03.

Therefore, an additional exception must be raised in all title reports where title to a 1-4 family dwelling owned by one or more natural persons at the time of the commencement of the foreclosure action is to be conveyed by a referee **in a mortgage foreclosure action commenced on or after February 1, 2007.** That exception is:

Proof is required that the Notice required by Section 1303 of the Real Property Actions and Proceedings Law was given to all mortgagors and owners of the property at the time that the summons and complaint was served on them, and that the Notice was printed on colored paper that is other than the color of the summons and complaint.

If the affidavit of service does not have that statement attached, then the proof is to be provided by an attorney at the law firm representing the plaintiff.

If you have any questions please, contact us at 631-424-6100.