

LAW OFFICES OF ROSEANN E. WEISBLATT

Professional Services for Clients and Law Firms

LEGAL NEWS AFFECTING YOU

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You May Have Paid Too Much for Title Insurance

Title Insurance protects a person's financial interest in real property against any losses due to title defects, liens, or other issues. If you presently own a home, you purchased title insurance to protect against the possibility that someone else has a claim on the property that you were about to buy. You paid for a title search on the property to establish two things: 1) does the seller have a saleable interest in the property; and 2) do any liens exist on the property which need to be paid off at closing (such as back taxes, mortgages, mechanics liens, utility bills and other assessments. If for some reason a lien or other encumbrance on the property comes up later after the search is completed, title insurance will provide you or your lender protection on those outstanding liens that were not found during the title search. Most mortgage companies will not approve you for a mortgage or refinance your existing mortgage without having a title search

conducted prior to closing on the property and title insurance in place.

While this is standard operating procedure when you purchase a property, in Pennsylvania and many other states, title insurance companies are heavily regulated. In Pennsylvania, the Title Insurance Act, 40 P.S. 910-1 *et. seq.* governs title insurance issuers. Within that statute's framework are specific regulations setting forth the rate structure for premiums to be charged to consumers for these policies. According to the regulations, certain discounted rates are to apply in two main situations that typically apply to home buyers.

First, in the situation where you are buying a home that has had a title insurance policy issued on it within the past 10 years of your closing date, you get the benefit of a discounted "re-issue" rate. This discount is 90% of the basic rate (the basic rate is defined as a rate other than a discounted rate, and is really the higher rate that is charged for the initial extensive title search performed at the placement of the

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original policy on the property.) Generally, the charge for title insurance premium is directly related to the value of the property or the loan amount in a refinancing situation. The regulations contain a rate schedule that sets forth the amount of premium dollars to be charged for a specified value range on the property.

The second discounted rate which may apply is where a homeowner refinanced his mortgage or substituted his loan within 3 years of the date of closing on the same property. This rate is even less—80% of the Reissue Rate. The logic behind these discounted rates is simply that the risk insured against is almost precisely the same as that involved in the previous transaction. Moreover, less work in terms of title searching, etc., is performed by the title companies in these two situations. They merely rely on the title report resulting from the search previously conducted when the policy was originally issued years before.

Unfortunately, reports on the title insurance industry indicate that since the mid-1990s insurers failed to provide consumers the benefit of these discounted rates. Most if not all of the insurers failed to inform consumers purchasing property that they were entitled to such a discount, and many of them overcharged consumers for policies which were mandated by the state to be placed at cheaper premium rates. Indeed, the title search typically reveals existing mortgages and refinances, thus giving the title insurance company actual knowledge that a consumer is entitled to a discounted rate.

The simplest way to determine whether you were overcharged for title insurance when you purchased or refinanced your property is to check your settlement documents. On The HUD-1 Settlement Sheet, line 1108 entitled “Title Insurance” will indicate the amount you paid for your policy. My firm is providing free

assessment as to whether the premium you paid was the full basic rate or whether you were overcharged and possibly entitle to a refund. Contact the firm to discuss this further. This is a free consultation.

Firm Settles “Failure to Disclose” Case

The firm recently settled a real estate dispute pending in Bucks County Common Pleas Court on behalf of a home buyer who discovered water leaking into the basement one month after moving in. Under Pennsylvania’s Real Estate Disclosure Law, we were able to successfully prove that the seller not only knew about the basement water leak, but actively concealed the damage, and then intentionally failed to disclose it prior to or at the closing. The defendant offered to settle the matter prior to trial, after our firm filed a reply brief in opposition to the defendant’s motion for summary judgment.

Firm Sues Merrill Lynch for Securities Fraud

The firm has been retained to represent an individual investor who lost over \$100,000 due to his broker’s failure to adhere to his stated investment objectives. The suit is pending before the Financial Industry Regulatory Authority, FINRA (formerly the NASD). If you believe you have been the victim of securities fraud through the improper handling of your account, please contact our firm.

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Quote for the Day:

“A woman is like a tea bag-you never know how strong she is until she gets in hot water”

-Eleanor Roosevelt

Teaming Up With Philadelphia VIP Program

As part of our effort to reach out and help the community, the firm takes on several pro bono cases each year, representing individuals who otherwise would not be able to afford an attorney. Through Philadelphia Volunteers for the Indigent Program, Ms. Weisblatt has represented several clients free of charge in such matters as actions to quiet title, probate issues, and commercial real estate disputes. It is rewarding to be involved with the dedicated attorneys at VIP and our firm looks forward to continuing its affiliation with this great organization and supporting its mission.

Are Your Kids Downloading Music Without Paying For It?

Many Internet web sites exist which permit the download of copyrighted songs for free. Mostly, teenagers and college students take advantage of this opportunity created by such web sites as Gnutella(US)Lime Wire. While there is typically a warning prior to completing the download of a copyrighted music file, most people ignore this warning, hoping they will not get caught.

The latest waive of litigation concerning downloading of digital music files from the web

using P2P software, involves record companies claiming ownership rights in these digital files, suing students and/or their parents for downloading and/or sharing the music without paying for it. According to the Electronic Frontier Foundation (EFF), “since September 8, 2003, the recording industry sued 261 American music fans for sharing songs on peer-to-peer (P2P) file sharing networks, kicking off an unprecedented legal campaign against its own customers. The recording industry has now filed, settled, or threatened, legal actions against well over 20,000 individuals, and there is no end in sight.

While the strategy of forcing ordinary music fans to pay thousands of dollars that they do not have to settle RIAA-member lawsuits is itself troubling, many innocent individuals are also being caught in the crossfire.” See, www.eff.org/riaa-v-people. You might ask, how do the companies know that it is my kid who is downloading the music? Well, they don’t know for sure. They only know which computer was used in the downloading/file sharing process. If the computer’s IP address is the one which was assigned to your son or daughter by the university or college they attend, then they will be the person who the record companies go after for copyright infringement, whether it was a friend or roommate who did the actual downloading. The record companies get this information by serving a subpoena on the college, seeking the name of the student to whom the IP address was assigned. Most universities and colleges simply comply with the subpoena– no questions asked. Then, your son or daughter gets a draft complaint and cover letter mailed to him at school, informing him or her that a lawsuit will be filed against them unless they cease the downloading and pay damages for the infringement. Parents of a college sophomore came to me with a draft complaint mailed to their son at college, seeking \$4,350.00 in damages for allegedly downloading 6 copyrighted songs from LimeWire. The record

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company claimed to know of over 800 files that were downloaded at this computer, but were only seeking damages for six of them.

Those who do not settle before a complaint is filed against them in court are defending these lawsuits on constitutional and other grounds. This litigation is fairly new. One woman successfully defended a suit by the record companies that accused her of file-sharing copyrighted music when it was her daughter who did the actual infringing. When the record companies learned this, they still continued to litigate against her anyway, after obtaining a default judgment against her daughter. The mother prevailed in this lawsuit and collected attorneys' fees from the record company. Other innocent people have been named in such lawsuits. One case involved the naming of a deceased person. Still others were named in lawsuits when they did not even own a computer. Most recently, in *UMG v. Lindor*, a 3-year-old Brooklyn case against a home health aide who has never used a computer, the RIAA (Recording Industry of America) is now making a motion to voluntarily dismiss the case without prejudice.

Some view this conduct by the record companies as extortionate and worthy of a fight regardless of whether one downloaded or shared copyrighted material. For example, the EFF thinks there is a better way to get artists paid for their music without alienating the consumer music fan.

For now, the best bet is to tell your kids to stay away from sites such as Lime Wire, and not to download music for free from the Internet. However, if you are sued by the record industry and you know that you or your children did not download music without paying for it, please contact my firm to discuss fighting such a frivolous lawsuit. Under the Copyright Act, 17 U.S. C. § 505, a party who is successful in a copyright lawsuit gets to have their attorney fees paid by the losing side.

For more news items and information about the firm, or to view this publication online, please visit www.roseweisblatt.com.

If you have a question about the articles appearing here or any other legal issue, please call (267-241-2475), or email us for a free consultation. Email: rose@roseweisblatt.com.

About Ms. Weisblatt:

Roseann E. Weisblatt earned her law degree at the Temple University School of Law in 1994. Ms. Weisblatt is admitted to the state bars of PA, NJ, the Eastern District of PA and the Third Circuit Court of Appeals. She has been admitted *pro hac vice* in the state and federal courts of CA, FL, MI, and NY. She is a member of the Philadelphia Bar Association, and has served as adjunct faculty in the Paralegal Studies Program at Manor Junior College teaching Tort Law and Legal Research.

Ms. Weisblatt has practiced for the past thirteen years as a litigator, participating in a number of successful class actions and individual lawsuits. She has also successfully litigated a number of medical malpractice cases on behalf of injured patients. Additionally, she is well versed in intellectual property matters involving trademarks and copyrights, particularly in the music industry. In addition to this experience, Ms. Weisblatt offers her clients representation in real estate and other general practice matters. She also works with various law firms throughout the region in mass tort and class action litigation as an independent contractor.

