



The Real Estate Transaction Specialists.

## MEMORANDUM – LEGAL SERVICES UPDATE

**To: Sutton Land Title Agency Clients**  
**From: Howard J. Kopel**  
**Date: February 12, 2007**  
**Subject: Home Equity Theft Prevention Act**

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New York State recently enacted (as of February 1, 2007) legislation, known as the Home Equity Theft Prevention Act, that will impact on your practice to the extent it relates to the purchase, sale and finance of 1-4 family residential properties in the state. While space will not allow a full exposition of the Act in this article, it is important you are aware of its application and some of its high points.

The statute is intended to prevent unsavory schemes by purported “rescuers” of persons in financial difficulty. The scam has the “rescuer” purchase the property at little or no stated cost, with the seller retaining the right (unrecorded, of course) to repurchase the property from the “rescuer” within some stated period. During this interim and unbeknownst to the original seller, the “rescuer” in fact resells or mortgages the property free of the original seller’s unrecorded repurchase right. The act addresses this by entitling the original, financially distressed seller to rescind his/her sale to the “rescuer” for up to two years following the original sale.

The act does not apply to certain transactions, such as those between certain close relatives, sales pursuant to judgments of foreclosure and bona fide third-party transfers for value. Some important “trigger” events for the application of the requirements and remedies set forth in the Act are mortgage foreclosures or the filing of tax liens within the prior two years. Finally, the act requires certain specified notices to be provided by a mortgagee together with any summons for foreclosure.

Looking to avoid disruptions in closings arising from problems in complying with the Act, we plan to include affidavits in the Commitment packages for both buyers and sellers for all files in which we suspect that the Act might be implicated. We encourage you to deal with these issues immediately upon receipt of a Commitment.

The foregoing represents just the tip of this iceberg for a new, untested law. We will all be feeling our way for a while. We at Sutton Alliance welcome any and all comment, discussion and questions concerning the application of the Act or, for that matter, any other matter of concern.