

# The Closing Word

A Sutton Alliance Publication




## What does title insurance have to do with divorce?

The answer in many cases is nothing; however, if there is real property that is not being sold, title insurance must be considered. Cases where jointly held property is to be retained by one spouse or where one spouse will be transferring a wholly owned property to the other are the cases where title insurance should be contemplated. Since in these cases, the ultimate owner is often already an owner, the deed is usually given without a title search or the purchase of title insurance.

BIG mistake. This can create significant problems for the spouse retaining title. Continuation of full insurance coverage for the property is questionable. A transfer in contemplation of divorce would not constitute a gift and may not be considered a mere transfer between family members. Therefore, such a transfer would not fall into a category covered by "Continuation of Insurance" under TIRSA guidelines.

Another problem arises if the former spouse has judgments, as they are, and remain liens against the property following the transfer regardless of indemnity language included in the divorce settlement. It is advisable to include the amount of consideration or that the conveyance is pursuant to a divorce into the deed to prevent future title problems associated with "no consideration" deeds, including future judgments against the former spouse. If you find yourself in a situation involving a divorce where your client intends to retain title to real property, you should consult your title agent or underwriter for guidance.

### Legal Update

Contact Ellen Petrillo at **516.837.6285** 

## News from Sutton Land Title Agency

### C & R means "Construe and Review" *What Every Attorney Should Know about Covenants and Restrictions.*

We totally understand... You really wanted "Nothing Found" shown in the "Covenants, Restrictions, Easements and Agreements" page of your client's title commitment. After all, as an experienced real estate attorney, you realize profoundly "what is, is"; these items, unless terminated, are always "excepted" and become part of Schedule B in the eventual title policy.

While the scope of these various agreements is vast and cannot be analyzed in a brief space, there are certain tasks an attorney can do to best represent his client.

**INITIAL TIP** - A typical, well-drafted Contract of Sale rider's first paragraph subjects the sale to "... covenants, restrictions, easements, agreements and reservations, if any, of record, not violated by the existing structures or present use thereof." Therefore, it is prudent to have either the seller list existing "c and r's" in the contract, produce a prior policy, or to order a preliminary title report. Your intended use may not coincide precisely with the current use, and title insurance won't help you.

Once the title report comes in, a few key aspects come to mind:

**READ** (the darn thing!) - Covenants and restrictions found in a search

should be attached as an exhibit to the title commitment and carefully read. If further explanation is necessary, or if they are indecipherable, handwritten in 1844 and now available only on dark microfilmed shiny paper, feel free to contact Sutton Alliance where counsel often sit for hours with magnifying glasses poring over the near-illegible writing. Our legal team is always happy to assist you in explaining the pertinent paragraphs.

Covenants, restrictions, easements and agreements can range from the broad ancient restrictions of "slaughterhouses, foundries, blacksmith shops..." to the very specific easement or boundary line agreements affecting a ½ inch of the premises. Interestingly, the old "usual nuisance" clauses may have modern day impact. Case law has applied restrictions originally written for stables to garages ("garages are barns for motor cars") and a "private residence" restriction has prevented development of a two-family home.

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*“Why not help each other?...  
Call me... I love matchmaking.”*



**Howard J. Kopel, Esq.**  
Founding Member &  
Chief Executive Officer  
Sutton Alliance

Dear Clients and Friends,

Recently in this space I opined that the slowdown in real estate was not going to be as bad as many feared. Obviously, I was wrong. Nevertheless, I still maintain that there is great opportunity in the market. Those of us that remember the properties unloaded by the Resolution Trust Corporation (RTC) in the early 90's that were soon refinanced for far more than the purchase price can attest to that.

But it will take awhile until we're all busy again. Until then, why not help each other out? Having trouble getting a home loan for your client? Try calling David Steinberg, an old friend and mortgage pro whose article appears on Page 3 of this issue. Dave will always give you the straight scoop.

Need a loan for a commercial project? The banks are in turmoil, but we at Sutton know lots of industry players, and not all of them have subprime mortgage trouble. There are insurance companies, brokerage firms and others, even including some banks, with money for good projects. You won't get 90% financing, but good projects will get done. Call me at 516.837.6103. I love matchmaking.

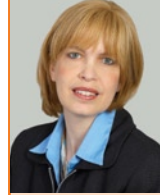
Do you have a service or specialty that can benefit others in our Sutton community? Consider writing a piece for our newsletter. I can guarantee that it will get some good circulation. Maybe you can do some business.

No one can guarantee the future. We are in a big political year, and it is unlikely that the politicians can help doing things to heat up the market again, whether or not they should. We don't need prices to recover to where they were; we just need them to stop falling, and people will go bargain hunting. We've seen it before. We all need to batten down the hatches, but with a little luck, and some help from our friends, we'll all come out the other end of this tumultuous market in good shape.

*Howard Kopel*

Chief Executive Officer  
Sutton Alliance

## Meet The Team



**Marjorie Glatt, Esq.**  
Counsel, Sutton Alliance

*For a title attorney, knowing real estate law is one thing; knowing how the client feels is quite another. Fortunately, Marjorie Glatt, counsel for Sutton Alliance, knows both.*

An experienced transactional attorney, Marjorie came to Sutton Alliance in 1998, after nearly 15 years in a successful private practice, bringing a true affinity for clients with her.

“Having handled virtually hundreds of closings, I feel for the client. I'm always looking for ways to help ensure that the entire transaction runs smoothly,” Marjorie explains. A key member of our legal team, Marjorie analyzes abstracts of title, clears outstanding issues and drafts closing documents.

But Marjorie is also often praised by purchasers' attorneys for her keen eye and ability to pick up all those “little things” on a survey or certificate of occupancy that could derail a closing – before the buyers and sellers get to the table. In fact, Sutton Alliance has two members of its legal staff review and proofread each item ensuring the highest level of excellence.

Marjorie, who finds the camaraderie and in-house knowledge at Sutton “inspiring”, also is inspired to “give back” and share her problem-solving skills with others. To that end, she serves as a certified Hearing Officer with the Small Claims Assessment Review Commission in Nassau County, periodically presiding over tax assessment grievances. She is also very involved in charitable and community organizations on Long Island.

“I really consider myself an ‘everyman’s attorney,” she explains. “I get great satisfaction from identifying potential issues – and solving problems – for people, whether at a closing or in the courtroom.” Marjorie also enjoys poring over old legal documents, texts, and covenants dating back to the 1800s. “I'm fascinated by the law and real estate – and I love to discover more about both.” It's a fascination that truly benefits Sutton Alliance clients, too. Marjorie can be reached at **516.837.6124**. ▾



# What's the Point? Managing Your Credit Score.

*Remember the SATs? When we were in high school, we were led to believe that how we did on our SATs would determine our entire future. Well, credit scores are very much like what we thought SATs were. Your credit score has wide-ranging impact on your future. And like SATs, with a bit of effort, you can get a result that will make you happy.*

## How do credit scores work?

Each of the three major credit bureaus (Experian, TransUnion and Equifax) maintains a historical record of your credit activities. That record is fed by an array of credit issuers including banks, mortgage companies, credit card issuers, and other lenders. In theory, every company you owe money to reports monthly on your borrowing and payment activity to all three bureaus. They report the type of debt; your balance; required monthly payment; and whether you paid on time, or if late, how late.

The bureaus apply a mathematical model originally pioneered by the Fair Isaacs Company (hence the term FICO) to present a score which ranges from 350 to 850. The median credit score is about 710.

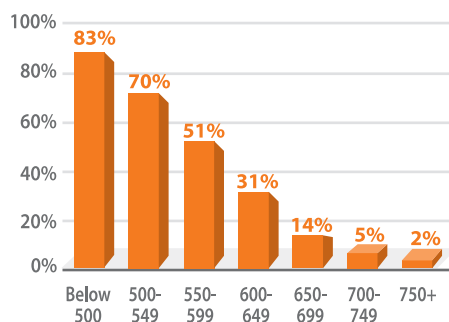
CREDIT SCORE	RATING
750+	Excellent
700-749	Very Good
680-699	Good
650-679	Fair
600-649	Poor – Generally Workable
560-599	We've Got Trouble
Below 560	High Anxiety

## What do the scores mean?

Just like SAT scores were supposed to predict how well you would do in college, credit scores predict how likely you are to pay your bills. Let's imagine you have a client, Bob, with a 649 Credit Score. As noted in the bar chart (above right), Bob has a 31% chance of defaulting on at least one debt in the coming twenty four months.

By comparison, if you have a 750 score, the probability of default drops to 2%. Given the fact that Bob is 15 times more likely to 'go bad' than you are, it is easy to see why lenders charge higher rates to borrowers like Bob with low credit scores, and why seventy percent of all credit decisions are driven by credit scores.

## Probability of Default in the Next 24 Months



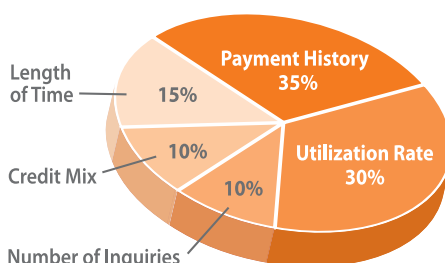
It is not just lenders. A broad range of businesses use credit scores to make critical decisions about whether you can get insurance, rent an apartment or possibly even get a job.

## What can you do about it?

Imagine Bob comes to you with his tale of woe. Is there anything you can do to help him? The good news is that in most cases, we can boost credit – permanently by 100 points or more in six months to a year.

It helps to understand the grading system. Bob's credit score is the mathematical result of a calculation that combines five factors (Payment History, Utilization Rate, Length of Time, Credit Mix, and Number of Inquiries) to generate a score.

## The Five Factors of Credit Grading



Getting back to Bob, our starting point is an actual credit report. The first step is to analyze his report thoroughly for incomplete, incorrect or even fraudulent information. By making sure the information is correct, we can often get a quick boost. We also look for items that can be disputed or appealed. We look at how he uses his credit. For example, if his balances (utilization rate) are high on a couple of cards and low on others, we can help him boost his scores just by reallocating the balances across the various cards.

Of course, it will help if we can get Bob on a program to pay his bills on time.

Does this really work? I am currently working with a CPA whose client I was helping. The CPA's client had a 569 credit score which was costing him a fortune because of higher credit card interest and car insurance rates. In two weeks, we already identified strategies to improve his score by forty five points, using \$10,000 to rebalance his credit and strategically pay off collection accounts. Our plan will help him raise his score to 660 by Labor Day and to 700+ a year from now. Imagine how much he'll save in the next decade. ▽

*David Steinberg is President of Summit Funding, a leading NY mortgage brokerage firm based in Flushing, New York. Mr. Steinberg has more than 20 years' in-depth experience in the real estate industry, serving as a trusted advisor and provider of personalized mortgage solutions for clients throughout the Northeast. He holds a BA from the Wharton School of the University of Pennsylvania and a BA from Columbia College. Contact David Steinberg at 718.575.1166 or dave@summitfunding.com*

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## C & R means “Construe and Review” *continued from cover*

Naturally, setback restrictions, rights of way or even utility easements can have obvious serious effects upon development of the property. Others, like \$1.00 condemnation are often included perfunctorily in deeds from municipalities and may have little consequence.

**REQUEST** - When a client is already paying for a new survey, request that any easements or setbacks be plotted onto that survey to discover violations or easement areas. In suburban or rural counties, the rights of way may be extraordinarily complex; even in a typical reciprocal driveway easement, have the surveyor plot part of your neighbor’s property, too, to show the entire easement area.

The other “request” is affirmative insurance that is usually requested by lender’s counsel. A purchaser’s attorney can assist the lender in acquiring this additional insurance, free of charge. Often, with a clear understanding of the restriction or agreement, the mortgage policy can include favorable language that a violation would “not result in a forfeiture or reversion of title,” that “no improvement lies in the easement area,” or that “restrictions have not been violated as of the date hereof.”

**REVIEW** with your client - Once the “c and r’s” are read, analyzed with title company assistance, and plotted onto the survey, it is incumbent to discuss the ramifications with your client. For

example, knowledgeable attorneys can reassure an anxious client that Section 2001 of the RPAPL in New York limits any action to enforce such agreements, or to recover damages from a breach thereof, to two years from completion of the structure.

You or your client certainly didn’t create these “c and r’s.” You most emphatically didn’t wish them to be present in a title report. When raised, however, “read, request, review” become the fundamental “three R’s” to bear in mind.

Contact Marjorie Glatt at  
516.837.6124 