



Case ^{by} Case

A PERIODIC NEWSLETTER

Fall 2002

To Lock or Not To Lock: The Refinance Dilemma

by Sherwood R. Spelke

For millions of Americans who are considering refinancing their mortgages, the question at this writing is how to keep that great rate you just got. To protect themselves while their mortgages are being processed, many borrowers choose to “lock in” the interest rate, traditionally for 30 days. If rates go up, the customer is still guaranteed the lock-in rate at closing.

However, with so many loans being processed now, 30 days may not be enough. Not closing on time generally is not a problem if rates remain low. However, rates are already edging up, which could put many people at risk of having their locks “busted.” One answer may be to lock in your rate for 60 days instead of the traditional 30 days. The downside is that this is more costly, adding in some cases one quarter point to the price of the loan. Some lenders, however, may be willing to negotiate and you can always try to get the 60 day lock for the cost of a 30 day.

The main reason for the delays in mortgage refinancing is simply the sheer volume of applications. Lenders traditionally do not increase their service personnel during peak times to accommodate the flood of applications. A domino effect results, with everything from appraisals to title searches being delayed. At this point, it is important that you provide the lender with all personal information and documentation it requests



as quickly as possible. Refinances require a three day right to rescind period after the closing and before funding can occur. Some lenders require that the funding as well as the closing occur within the rate lock time. This further reduces the time you have to keep your great rate.

Finally, lenders give priority for loans to buy homes rather than refinancing because if these loans are delayed the chance to sell the loan could fall through.

You can keep that great rate you just got by:

- 1 Locking in for 60 days rather than 30 days;
- 2 Responding quickly to your lender's request for documentation;
- 3 Picking a closing date earlier in the month since most loans close toward the end of the month; and
- 4 Finding out in advance your Lender's policy on loans that do not close on time. ☺

HIT LIST:

What to Do After an Auto Accident

by Laura A. McGeachy

Sooner or later, most drivers will be involved in an automobile accident. Even a minor “fender bender” raises the stress and anxiety levels of all the individuals involved. More serious accidents will have a traumatic effect on the parties to the accident, including witnesses. After an accident, it is important to think clearly and take certain steps to minimize the consequences. The following are some important steps to remember:

- 1 Do not move your automobile or let the other driver do so (if possible) until the police arrive, unless the location of the vehicles would risk injury.
- 2 Evaluate your need for medical attention. If you can safely remain in your vehicle, do not get out if you are in pain.
- 3 Contact the police or ask someone nearby to call the police to the accident scene.
- 4 If you are mobile, ask the other driver for his/her name, address, insurance company and policy number. Be guarded when talking to the other driver. You should not admit responsibility or apologize for the accident even if you were at fault. There are sometimes multiple causes to an accident. The police will apportion fault.
- 5 Identify any witnesses and ask what they saw. Ask if they would give the police a statement. If they cannot wait, ask for their names and addresses.
- 6 Replay how the accident occurred and take mental note of your surroundings. You might ask yourself, who had the right of way? where is the closest intersection? etc.
- 7 Keep your statement to the police concise and accurate. Be cautious of the answers you give; do not speculate if you do not know. For instance, the police might question how fast you were driving. You should not estimate the speed you were traveling unless you are confident of the answer. Driving within the posted speed limit does not necessarily mean you won't be found at fault. All drivers have a duty to keep the vehicle they are operating under control at all times, especially in inclement weather conditions.
- 8 Have your driver's license, registration and insurance card ready to hand to the responding police officer. It is common sense that you keep these documents current and in your motor vehicle at all times. If they are not, the police could issue you a citation.
- 9 Make sure you get the police report incident number from the officer and ask when the report will be available. It generally takes longer to obtain police reports from the state police than the local police.
- 10 Be forthright with emergency medical personnel regarding the severity of your injuries. If you are not certain about your condition, be cautious and seek medical attention.
- 11 Take photographs of your injuries as soon as possible after the accident and take photographs of the damage to your motor vehicle before you repair it.
- 12 Report the accident to your insurance company within 24 hours. In theory, your insurance premium rates should not increase as a result of your accident until after you have been determined at fault and the insurance company has paid out on a claim. Nevertheless, underwriting practices vary from carrier to carrier and are dependent upon many variables. If a person makes a claim against you and you did not report the accident, your carrier could disclaim coverage. If you take it upon yourself to pay for the other vehicle's auto repair and settle the property damage claim independently from your insurance company, your insurer could deny you coverage for any personal injury claim brought against you later. If you do not report the accident, you could jeopardize your insurance coverage. You pay insurance premiums to avoid such exposure.
- 13 Even if the accident was clearly the other driver's fault, you are still obligated under your insurance contract to notify your carrier of any potential coverage risks. For instance, the other driver might be uninsured or underinsured and not have money to fix your vehicle or pay your medical bills. If you have uninsured (UM) or underinsured (UIM) motorist coverage as part of your insurance policy, your carrier will protect you in that situation. Your carrier will provide you affirmative bodily injury coverage even though the other party would have been responsible to pay your damages, but cannot since he/she did not have adequate insurance. Many people are under the misconception that if they have an accident which was not their fault, they are automatically covered by their own insurance policy.
- 14 If you intend to file a claim or are potentially at fault for the accident, consider whether you should speak to the claims representative for the other driver's insurance company. Often, a claims representative will offer you a nominal amount of money to settle all of your claims shortly after the accident before you realize the full extent of your injuries or before you complete medical treatment. In addition, the claims adjuster usually requests that you give a recorded telephone statement, which could be used against you at a later date. You might want to consult an attorney first regarding the viability of your claim.
- 15 Keep in mind that if you intend to bring a lawsuit against the other driver in Connecticut, you must do so within two years of the date of the accident. ☞

DO YOU WISH TO LEARN MORE ABOUT THE COST OF LONG TERM CARE?

Our firm is considering sponsoring a free in-house program for clients and friends about the cost of long-term care. It would be led by Dick Fisher, a partner in the firm who has done such programs for the Alzheimer's Association, Greenwich Adult Education, Stamford Senior Center and other groups. The program would include assisted living, long-term care insurance, Medicare and Medicaid. If you are interested please call (203) 327-2000 and give either Cindy or Eva your name and address, or email us at CLM@lawcts.com.



HOT TOPIC:

Toxic Mold Litigation

By Jessica Huhn-Kenzik

Mold claims arising out of water damage to property have significantly increased in the last year. Toxic mold has attracted the attention of the public and media as more individuals have started claiming that their illnesses can be linked to their exposure to certain molds in their homes or at work. With these individuals now seeking legal remedies for property damage and for personal injuries, some attorneys believe that mold litigation will soon rival the recent lead paint or asbestos litigation.

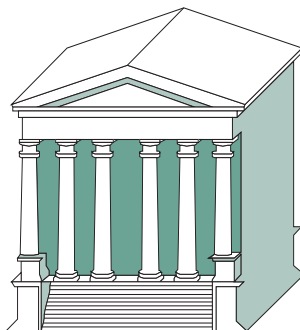
Mold is all around us all the time. It is in the air, in the walls, below the flooring, and in the ceiling. Problems begin to arise when moisture is trapped and the mold has an opportunity to multiply. While many varieties of molds are harmless, a few varieties emit poisonous mycotoxins that may cause a range of health problems when a person is exposed to them in high concentrations. The most publicized of the toxic molds is *stachybotrys chartarum*, which is a black-colored mold that often is found inside walls. Significant research remains to be performed on several molds to determine their toxicity and their causal link to the ailments individuals are claiming they cause.

Contractors, subcontractors, construction managers, architects, engineers, designers, building material manufacturers, distributors, suppliers, real estate brokers, building owners, landlords, property managers, homeowner associations and their officers and directors, home inspectors, remediators, business owner and employers, all have potential liability for toxic mold claims. Potential claims range from personal injury torts, property damages and remediation costs to breaches of implied warranties, breach of contract and constructive eviction. All of these parties should take precautions to protect themselves from liability.

Educational Support Orders in Connecticut Family Proceedings

by David Coviello

As of October 1, 2002, Connecticut courts have the authority to enter a post-majority educational support order at the time of entry of a decree of dissolution, legal separation or annulment. Prior to this law, with limited exception, Connecticut courts did not have the authority on their own to order post-majority child support orders. The following article provides an overview of this new law.



Educational Support Orders may require parents to provide support for a child to attend for up to a total of four full academic years an institution of higher education or a private occupational school. The order may include support for tuition as well as other expenses such as room, board, and books. Such expenses, however, may not exceed the amount charged by the University of Connecticut. The order shall terminate not later than the date on which the child attains twenty-three years of age.

Upon the filing of a motion by a parent, Educational Support Orders may be entered by a court at the time of entry of the divorce, legal separation or annulment with respect to any child who has not attained twenty-three years of age. It is important to note, however, that no Educational Support Order may be entered thereafter unless the decree expressly provides that a motion for such support may be filed at a subsequent date. In the event that such order is not entered at the time of entry of the divorce, and the parties have not included a provision for a future order, the right to seek post-secondary education support is waived.

The court may not enter a post-majority support order unless the court finds that it is more likely than not that the parents would have provided support to the child for higher education or private occupational school if the family were intact. After such

finding, the court, in determining whether to enter a post-majority support order, shall consider all relevant circumstances, including: (1) The parents' income, assets and other obligations, including obligations to other dependents; (2) the child's need for support to attend an institution of higher education or private occupational school considering the child's assets and the child's ability to earn income; (3) the availability of financial aid from other sources, including grants and loans; (4) the reasonableness of the higher education to be funded considering the child's academic record and the financial resources available; (5) the child's preparation for, aptitude for and commitment to higher education; and (6) evidence, if any, of the institution of higher education or private occupational school the child would attend.

To receive payments under a post-majority support order, the child must (1) enroll in an accredited institution of higher education or private occupational school, as defined by the general statutes, (2) actively pursue a course of study commensurate with the child's vocational goals that constitutes at least one-half the course load determined by that institution or school to constitute full-time enrollment, (3) maintain good academic standing in accordance with the rules of the institution or school, and (4) make available all academic records to both parents during the term of the order. In the event that the child fails to comply with these conditions, the order shall be suspended after any academic period during which such violation occurs.

Although the passage of this law may provide discomfort for many divorcing parents, it clearly advances the future of Connecticut, and its children. ☺

Personal Notes

Richard S. Fisher was elected to the statewide Board of Directors of the Connecticut Chapter, Alzheimer's Association. He had previously been on the Board of the Fairfield County Chapter and had served two years as president.

Sherwood R. Spelke was named Co-Chairman of the Real Estate Committee of the Stamford-Norwalk Regional Bar Association for the coming year.

Mark P. Santagata has been elected to the Board of Directors and the Executive Committee of Kids in Crisis.

Michael J. Cacace will be speaking at a zoning law seminar sponsored by the National Business Institute on December 5, and 6 in Hartford and New Haven respectively, on the topics: Adoption and Amendment of Zoning Ordinance and Map; Ethical Issues and Special Issues. Michael

will also speak on January 7, 2003, at a Loriman Seminar in Trumbull, Connecticut on the topic: Telecommunications Act: Special Permits and Site Plans. In December, Michael will be giving a seminar for the Stamford-Norwalk Regional Bar Association on the topic: Vernal Pools. Michael will also be speaking at a seminar on Special Permits at Wesleyan University for land use commission members.

Paul T. Tusch was recently elected President of the Volunteer Center of Southwestern Fairfield County. Paul was also appointed the Continuing Legal Education Chair of the Connecticut Bar Association Family Law Section. In addition, Paul acted as General Chairman of the 2002 Greater Stamford Area Tribute Award Luncheon for the Connecticut Yankee Council of the Boy Scouts of America, which raised more than \$50,000.00 for the advancement of scouting in the Stamford area.

Cacace, Tusch & Santagata was a sponsor of the 2002 Annual Harvest Rides Bike Ride Fundraiser benefiting the Make-A-Wish Foundation of Connecticut which took place on October 13, 2002. The firm also recently participated in the United Way Day of Caring by winterizing and improving trails at the Girl Scouts of America camp in Stamford.

Judith Ellenthal has joined the firm. Judith was formerly with Ellenthal and Brodie and a former partner with Rappaport and Ellenthal. She practices primarily in the areas of family law and residential real estate.

Katherine T. Blakeslee, formerly a partner with Flynn & Blakeslee, has joined the firm. Katherine practices primarily in the areas of family law, residential real estate and estate planning.

CACACE, TUSCH & SANTAGATA is a full service general practice law firm dedicated to providing its clients with quality legal work. The firm occupies the second and third floors of the office building located at 777 Summer Street, Stamford, Connecticut, and has an office at 124 West Putnam Avenue, Greenwich, Connecticut. Our attorneys' areas of practice include:

ZONING AND LAND USE PLANNING ❖ REAL ESTATE TRANSACTIONS ❖ CIVIL LITIGATION
ADMINISTRATIVE HEARINGS AND APPEALS ❖ VALUATION OF PROPERTY ❖ FAMILY LAW ❖ LANDLORD/TENANT LAW
ESTATE PLANNING AND PROBATE ❖ ELDER LAW ❖ BUSINESS AND CORPORATE LAW ❖ CRIMINAL LAW

Case by Case is intended to provide a periodic discussion of developments and issues of interest to our clients and friends. If readers have questions concerning the matters discussed herein, they should direct them to Edward F. Nemchek, the attorney responsible for the newsletter's content at: CACACE, TUSCH & SANTAGATA by telephone at (203) 327-2000 or by e-mail at ENEMCHEK@LAWCTS.COM.

N.B. The information contained in this newsletter is informational and not intended to be legal advice and may not be reproduced in any form without consent. Requests for consent should be directed to Paul T. Tusch, Esq., Cacace, Tusch & Santagata, P.O. Box 15859, 777 Summer Street, Stamford, Connecticut 06901-0859.



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