

BLACK, MANN & GRAHAM, L.L.P.
ATTORNEYS AT LAW

THOMAS E. BLACK, JR., P. C.*
CALVIN C. MANN, JR., P. C.
GREGORY S. GRAHAM, P. C.
DAVID F. DULOCK
DIANE GLEASON
BENJAMIN R. IDZIAK*
SHAWN P. BLACK*
SUZANNE C. COLLIE
THOMAS L. KAPIOLTAS
MARGARET A. NOLES
ROBERT BREWER
*ALSO LICENSED IN NEW YORK

June 14, 2005

To: Clients and Friends
From: Mitzi Noles
Subject: High Pressure Gas and Petroleum Pipeline Easements

Although oil is no longer the main driving force behind the Texas economy, an intricate web of high-pressure gas and petroleum pipeline easements still criss-cross the state. The major institutional investors, FNMA, FHLMC, FHA and VA, usually impose various requirements when pipeline easements are present on real property serving as security for mortgage loan transactions. Each of these investors has its own set of underwriting guidelines; therefore, it is not always clear how to treat the presence of pipeline easements in a particular transaction. This memorandum attempts to summarize each of these investors' guidelines concerning the treatment of pipeline easements in a residential real property transaction.

1. FEDERAL NATIONAL MORTGAGE ASSOCIATION (FNMA)

FNMA's Selling Guide ("the Selling Guide") does not specifically address the treatment of high-pressure gas and petroleum pipeline easements. According to Part V, Chapter 2, Section 204 of the Selling Guide, FNMA will not purchase or securitize a mortgage that has an unacceptable title impediment. Section 204.02 of the Selling Guide contains a list of title impediments that are expressly acceptable to FNMA. Pipeline easements are not included in this list. If the lender warrants that the pipeline easements do not materially affect the marketability of the property and agrees to indemnify FNMA if FNMA incurs a loss directly attributable to the pipeline easements, Section 204 of the Selling Guide provides that FNMA may accept the presence of pipeline easements in a particular transaction. The lender's lead FNMA regional office may also waive the presence of pipeline easements on a loan-by-loan basis if the lender submits a written request providing appropriate justification for the waiver.

2. FEDERAL HOME LOAN MORTGAGE CORPORATION (Freddie Mac)

The FHLMC Seller/Servicer Guide (“the Guide”) does not specifically address the treatment of high-pressure gas and petroleum pipeline easements. Volume I, Chapter 39.4 of the Guide contains a list of title exceptions that are expressly acceptable to FHLMC. Pipeline easements are not included in this list. If the lender warrants the pipeline easements are acceptable under Section 39.4(m) of the Guide, FHLMC may accept the presence of pipeline easements in a particular transaction. To be acceptable under Section 39.4(m), the lender must warrant that the pipeline easements (1) do not interfere with the use and enjoyment of the property; (2) do not affect the marketability of the property; (3) have no or minimal effect on the value of the property; (4) are acceptable to the private mortgage insurance company; and (5) are commonly acceptable to private institutional mortgage investors in the area where the property is located. FHLMC will not issue any letters addressing the acceptability of pipeline easements nor will they waive the requirements of Section 39.4(m).

3. THE DEPARTMENT OF VETERANS AFFAIRS (VA)

VA Handbook, Chapter 12, Section 12.07 provides that no part of the residential structure may be located within a high-pressure gas or liquid petroleum pipeline easement. Additionally, any detached improvements situated even partially in a pipeline easement will not receive value for VA purposes. If a proposed residential structure will be located outside the pipeline easement, but within an area that extends 220 yards on either side of the centerline of the pipeline itself, the VA notice of value will be conditioned for the following, as applicable:

High Pressure Gas Pipelines - A statement from an authorized official of the pipeline company certifying compliance with 49 CFR 192.067, 192.609, 192.611 and 192.613.

Liquid Petroleum Pipelines – A statement from an authorized official of the pipeline company certifying compliance with 49 CFR 195 and amendments thereto.

4. FEDERAL HOUSING ADMINISTRATION (FHA)

Handbook, 4150.2, CHG-1, Chapter 2, Section 2-2(I) and Appendix D, Section D-2 provide that in order to be eligible for FHA insurance, a dwelling or related property improvement near pipelines transporting high-pressure gas, liquid petroleum or other volatile and explosive products must be located more than 10 feet from the outer boundary of the easement. If proposed construction will be located outside a pipeline easement, but within an area that extends 220 yards on either side of the centerline of the pipeline itself, FHA Handbook, 4150.1, Chapter 4, Section 2-27, incorporated by reference in FHA Handbook, 4150.2, CHG-1, requires the developer to provide HUD with a statement from an authorized official of the pipeline company certifying compliance with the following: (1) High Pressure Gas Pipelines – 49 CFR 192.067, 192.609, 192.611 and 192.613 and (2) Liquid Petroleum Pipelines – 49 CFR 195 and all amendments thereto.

5. MISCELLANEOUS

When our firm receives a title commitment for review that reflects the presence of pipeline easements, we routinely condition the loan as follows:

SHOW PIPELINE EASEMENT SIZE, TYPE AND LOCATION ON SURVEY. VERIFY PIPELINE EASEMENT DOES NOT CROSS IMPROVEMENTS OR ROADWAY. BORROWER(S) TO EXECUTE HOLD HARMLESS & INDEMNITY. LENDER TO OBTAIN PRIOR APPROVAL FROM INVESTOR AND ANY PMI COMPANY AND RECONFIRM VALUE WITH APPRAISER. TITLE COMPANY TO ISSUE THE T-19 ENDORSEMENT WITHOUT DELETIONS.

When a pipeline easement is blanket in nature, meaning placement of the pipeline itself is not limited to a specific location within the pipeline easement's boundaries, the investor may require the survey to show the location of the pipeline or note that the pipeline is not physically located on the property. If the surveyor cannot or will not show this information on the survey, the pipeline's location can be obtained directly from the pipeline operator. The pipeline operator should be able to verify the actual location of the pipeline in relation to the property securing a particular real property transaction. Additionally, the operator can confirm whether the pipeline easement has been abandoned. Contact information for pipeline operators can be found on signs near the pipeline right of way and/or from the following websites:

Texas Railroad Commission

www.rrc.state.tx.us

Click the "Choose a Topic" drop down menu, then click "Crude Oil & Natural Gas" or "Natural Gas Transportation" and look for links to pipeline operator directories or operator and facility directories.

U.S. Department of Transportation – Office of Pipeline Safety

<http://ops.dot.gov>

Click "Online Library," then click "OPS List of Operator Names & Identification Numbers."

Other Useful Links

Association of Oil Pipelines - www.aopl.org

Interstate Natural Gas Association of America - www.ingaa.org

If upon review of this memorandum you have additional questions, please feel free to contact one of the Firm's attorneys.

This Memorandum is provided for the general information of the clients and friends of our firm only and is not intended as specific legal advice. You should not place reliance on this general information alone but should consult the applicable investor guidelines regarding the application of the subject matter discussed in this Memorandum to your specific case or circumstances.