THE RECORDER
GREENFIELD, MASS. ESTABLISHED 1792. • N.E. NEWSPAPER OF THE YEAR 2012.

Pipeline put on your property may be mortgage violation

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Tuesday, June 17, 2014
(Published in print: Wednesday, June 18, 2014)

It may or may not be an unlikely scenario, but allowing a gas pipeline to be sited on your property could put you at risk of technically violating your mortgage agreement, say local experts who are investigating the legal ramifications of the Tennessee Gas Pipeline proposal for its Northeast Expansion project.

A provision in the Fannie Mae and Freddie Mac mortgage agreements include sections that prohibit properties from storage or release of “hazardous substances” on the property in question, or to transfer part of a property “or a beneficial interest” without prior permission of the lender.

Many residential mortgages are sold to Fannie Mae or Freddie Mac on the secondary market, so their terms apply, said Mark Burton, a Conway banker who has worked at Fannie Mae for more than a decade and a half. Burton also owns property that he said would be affected by the planned route of TGP’s 179-mile route that would cross nine Franklin County towns on its way from Wright, N.Y., to Dracut, north of Lowell. Affected locally would be Ashfield, Conway, Shelburne, Deerfield, Montague, Erving, Northfield, Warwick and Orange, according to the tentative route for the project, which has yet to be formally filed with federal officials.

Specifically, the Fannie Mae covenant says, “If all or any part of the Property or any Interest in the property is sold or transferred (or without lender’s prior written consent), lender may require immediate payment in full of all sums secured by this security instrument.”

The requirement may call for the loan to be paid within 30 days.

Another section, pertaining to hazardous materials that include flammable petroleum products, says the “borrower shall not cause or permit the presence, use, disposal, storage, or release of any hazardous substances, or threaten to release any hazardous substances, on or in the property. Borrower shall not do, nor allow anyone else to do, anything affecting the property ... which creates an Environmental Condition, or ... which, due to the presence, use, or release of a Hazardous Substance, creates a condition that adversely affects the value of the property.”

“If you read the covenant, there’s a very technical issue there, said Burton. “It’s all standard, boiler-plate documentation, and because it’s standard, boiler-plate documentation, nobody ever reads it.”

Burton said that Kinder Morgan, which owns TGP is under no obligation to fully disclose to property owners liabilities that accompany permission agreements they would be asking property owners to sign for to allow a pipeline to be built on private property.

Greg May, vice-president for residential mortgage lending at Tompkins Trust Co. in western New York, has done presentations on this subject and said that he knows of no cases where Fannie Mae or Freddie Mac have pointed to these sections as cause for their contracts to be in default, but said that regardless, anyone who has transferred interest to a natural gas company without prior approval, or has stored or allowed leakage of fuel on the property has technically defaulted on their mortgage.

“It’s a technical default,” May told a gathering last summer in Berkshire, N.Y., that is recorded on YouTube. “Now, I will be the first to admit that no bank is going to want to exercise on that default, foreclose, kick you out of that property because you did that, but I will tell you that it’s not always the bank’s full final say ... If that’s now owned by Fannie Mae or Freddie Mac, they may very well make that decision and say it’s in default ... I don’t think that’s going to happen, but the potential certainly is there.”

Northampton attorney Thomas Lesser, who also lives in Conway, said that he and other lawyers are looking into the ways in which agreeing to have a pipeline on private property could be interpreted as defaulting on mortgage agreements.

“On its surface, if part of the land is taken or transferred, without the lender’s prior or written permission, the holder of the mortgage could call the whole mortgage due and payable,” said Lesser, who said only that “individuals and groups” had asked him to study the issue.

The concern, he said, is that in the event of a leak or an explosion, the property could become “significantly less valuable. The land could be worth less than the mortgage.”

Even mortgages that aren’t sold to Fannie Mae and Freddie Mac typically include similar language in their contracts. Greenfield Savings Bank, which sells some of its mortgages to Freddie Mac, includes a stipulation about hazardous materials because of safety concerns, said Lori Grover, senior vice president for residential mortgages.

But she added, “We’ve never had a pipeline issue.”

A spokesman for Fannie Mae did not respond to inquiries for this article.

But even in the San Francisco suburb of San Bruno, Calif., where a September 2010 natural gas pipeline explosion killed eight people and injured 58, Jay Davidson of Davidson Insurance Co. said he’s not aware of any exclusion in any homeowners policy or any mortgage difficulties where the pipeline is located.

“If there’s a natural gas explosion, the insurance companies determine who’s at fault, and the claim subrogates back to the responsible party,” he said, which in the San Bruno case was Pacific Gas and Electric Co. “It doesn’t affect the mortgage picture. It does not affect anything like that at all.”

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