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CURRENT DEVELOPMENTS

This is another in a series of bulletins issued to clients of First American on cases and legislation of interest. A copy of any item noted can be requested by email to Michael J. Berey, Senior Underwriting Counsel at MB@TheOffice.net or by contacting your account representative at 212-922-9700. Issues of "Current Developments" are available on the Internet at www.titlelaw-newyork.com.

Mortgage Recording Tax - The City of Yonkers has extended its local portion of the mortgage recording tax to August 31, 1999. The combined rate of \$1.50 for each \$100 of principal indebtedness secured will continue to be imposed on mortgages effecting real property in Yonkers.

Executory Clause - The 1986 lease at 315 Park Avenue South ("315 PAS") in New York County for the State University of New York's College of Optometry contained an "Executory Clause" (Section 41 of the State Finance Law) under which the lease was to be binding only for so long as the State appropriated funds therefor. In order to facilitate the College's planned move to the Dormitory Authority of New York's renovated B. Altman Building, the state legislature, at SUNY's request, enacted Chapter 312 (4) of the Laws of 1995 eliminating all appropriations for payment of its 315 PAS rental obligations when the College relocated. The United States District Court for the Northern District of New York held this provision of Chapter 312 void under the Contract Clause of the United States Constitution, and the individual defendants were enjoined from ending the lease payments. The Court found that the decision to withhold monies did not have its source in a determination that funds were not "available"; funds were to be received by SUNY for substantially the same substantive purpose at a different location. *TM Park Avenue Associates v. Pataki*, 1997 U.S. Dist. Lexis 16507.

FIRREA - A tax deed delivered after commencement of a FDIC receivership for a pre - receivership real estate tax lien was held void against the Beal Bank, to which the FDIC's assigned a mortgage on the subject premises after the tax deed, under Section 1825 (b)(2) of the Financial Institutions Reform, Recovery and Enforcement Act, which provides that property of the FDIC is not subject to sale without its consent. The FDIC's assignee was held to have succeeded to the rights and obligations of the FDIC, including liability for the amount of the tax lien under 12 U.S.C. Sec. 1825(b)(1). Beal Bank, FSB, as Assignee of the Federal Deposit Insurance Company as Receiver of Dollar Dry Dock Bank v. Nassau County, 973 F. Supp. 130 (EDNY, August 5, 1997)

Foreclosures - The Civil Court, Housing Part, Kings County has held that a foreclosure proceeding does not involve the rent stabilized or rent control status of a tenants, and such tenants retain the protection of the applicable rent regulation statutes. GCM Corp. v. Johnson was reported in the New York Law Journal on November 5, 1997

Foreign Terrorist Organizations ("FTO") - Section 302 of the Antiterrorism and Effective Death Penalty Act of 1996 requires a financial institution (defined to include banks, insurance companies, and "persons engaged in real estate closings or settlements") to block all funds in which a FTO or its agent has an interest. The Office of Foreign Assets Control ("OFAC") must be notified within ten days of the blocking of funds. Failure to comply may result in imposition of a civil penalty of the greater of \$50,000 or twice the amount that should have been blocked. A list of FTOs subject to these requirements is available on the Internet at <http://www.ustreas.gov/treasury/services/fac/fac.html> or by faxback at 202-622-0077.

Mechanics Liens - A mechanics lien was ordered vacated by the Supreme Court, Suffolk County for the failure to serve pursuant to Lien Law, Section 11 a copy of the lien within thirty days of its filing on

all of the owners of the property. *Rainbow Equities, Inc. v. Rosenfeld* was reported in the *New York Law Journal* on September 22, 1997.

In addition, the Second Department has held that a mechanics lien filed by a lessee's broker is required to be discharged by court order. Lien Law Section 2(4) was held to restrict the filing of a mechanics lien for brokerage services to contracts between a broker and an owner/lessor. *Matter of Robert Plan Corporation v. Greiner-Maltz Company, Inc.*, 655 NYS 2d 648.

Merger - The Fourth Department has held that provisions in a separation agreement not included in a conveyance to the grantor's sons requiring the sons written consent to their father's use of reserved mineral rights merged into the deed. The court found that the sons had not "acted upon" the provision in the separation agreement when they accepted the deed. *Boser v. Boser*, 654 N.Y.S. 2d 509.

Rent Stabilization - The Court of Appeals, reversing the Appellate Division, upheld the determination of the New York State Division of Housing and Community Renewal, in applying 9 NYCRR Sec. 2526.1 (f)(2), that an owner which is the successor to the purchaser at a judicial sale who did not have the pre-sale rental records does not have "carryover liability" for rent overcharges by predecessor landlords. *Matter of Germaine Gaines v. NYS DHCR*, 1997 N.Y. LEXIS 3208, decided October 16, 1997.

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