

First American Title Insurance Company of New York
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CURRENT DEVELOPMENTS

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

Business Entities - Prior to 1997, domestic and/or foreign corporations, in accordance with the Business Corporation Law ("BCL"), were only permitted to merge or consolidate into other domestic or foreign corporations. Likewise, domestic and/or foreign limited partnerships, in accordance with the New York Partnership Law, were only permitted to merge or consolidate into domestic and/or foreign limited partnerships. Prior to 1997, neither corporations nor limited partnerships could merge or consolidate into other business entities.

Sections 901, 902 and 907 of the BCL were amended and Section 904-a added effective February 22, 1998 by Chapters 449, 470 and 494 of the Laws of 1997 to provide for the merger or consolidation of domestic and/or foreign corporations with domestic or foreign limited liability companies. The authority in Chapter 449 for a domestic corporation to merge or consolidate with either a limited partnership or a joint stock association was repealed in Chapter 494.

On July 14, 1998, the BCL was further amended by Chapter 374 of the Laws of 1998 effective September 12, 1998 to expand Sections 901, 902 and 904-a to permit the merger or consolidation of a corporation with an "other business entity". Likewise, Sections 121-101 and 121-1106 of the Partnership Law were amended to permit the merger or consolidation of domestic and/or foreign limited partnerships into an "other business entity".

Advice received in recent conversations with counsel in the Department

of State is that the intention of these statutory changes is to allow the merger or consolidation of corporations, limited liability companies and limited partnerships. The entity in each instance can be foreign or domestic.

While there appears to be no statutory authority for a general partnership to merge or consolidate into a limited liability company, the Department of State is allowing such a merger or consolidation based on the existing conversion provisions in the Limited Liability Company Law. A general partnership cannot, however, merge or consolidate with a corporation or a limited partnership.

It is suggested that the Department of State be consulted to see if they will accept the intended merger of entities not specifically noted above.

Contact Stephen Farber at 212-922-9700 for further information.

Easements – The Court of Appeals in the case Lewis v. Young, decided October 27, 1998, has held that a landowner whose property is subject to a general easement of right of way not specifically located in the easement grant may relocate the right of way provided that the easement holder's right of ingress and egress is not impaired.

Not-For-Profit Corporations – The Supreme Court, Kings County vacated a foreclosure judgment on the grounds that an entity formed under the New York Not-For-Profit Corporation Law but acting as a religious corporation must obtain leave of court to mortgage as required by the Religious Corporation Law. Lincoln Equities Credit Corp. v. Everlasting Pentecostal Holiness, reported in the New York Law Journal on October 7, 1998.

New York City Building Façade Inspections – Local Law 11 of 1998 amended Section 27-129 of the Administrative Code to expand the requirements of Local Law 10 of 1980 for the periodic inspection of exterior walls. All exterior walls, other than a wall less than twelve inches from the exterior walls of an adjacent building, will be subject to inspection if only a single wall of the building is higher than six stories. Walls of buildings not previously required to be inspected must be inspected by March 1, 2000. Local Law 11 is available on the Internet

at <http://leah.council.nyc.ny.us/law98/int0097a.htm>.

New York City Tax Warrants – The Department of Finance and the New York City Department of Investigations is in the process of formalizing procedures for City Marshals to enforce City tax warrants. Chapter 455 of the Laws of 1997 effective August 26, 1997 amended Section 1609(1) of the New York City Civil Court Act and added subdivision a-1 to Section 105 of the CPLR to authorize Marshals to exercise the same functions as Sheriffs with respect to the execution of money judgments of any Supreme or Family Court in the City of New York. This expanded authority will expire on June 30, 1999 unless extended. Contact Michael Alfieri at 212-922-9700 for further information.

New York City Landmarks – Local Law 1 of 1998, the Landmarks Protection Bill, effective July 5, 1998, sets forth alternative procedures by which the Landmarks Preservation Commission can enforce the Landmarks Law (Title 25, Chapter 3 of the City's Administrative Code). It may now issue "stop work" orders, and warning letters identifying violations and providing an opportunity to cure, and seek civil and administrative fines before the Environmental Control Board. While notices of the issuance of warning letters have not been posted to the Department of Buildings computer system, the Commission has indicated in a letter issued October 28 that it intends to commence entering notices of violations in the records of the Building Department.

Suffolk County/Peconic Bay Region Transfer Tax – As reported in the June 24, 1998 issue of Current Developments, Chapter 114 of the Laws of 1998 authorized each town in the Peconic Bay Region (East Hampton, Riverhead, Shelter Island, Southampton, and Southold) to establish by local law a transfer tax of 2% of consideration on the conveyance of real property or an interest therein where the consideration exceeds \$500. All revenue from this tax will be deposited in the applicable Town's Community Preservation Fund. Application of the additional transfer tax was approved in each town in referendums on the November 3 election ballot. The tax will be effective April 1, 1999, except in the Town of Southold where the tax will be effective March 1, 1999. Note should be made of the following:

1. The tax applies to conveyances recorded after the effective date. However, the tax does not apply to conveyances made after the effective date of the applicable Local Law pursuant to a binding written contract entered into prior to the effective date.
2. The tax is payable by the grantee. If, however, the grantee does not pay the tax or is exempt from payment, the grantor must pay the tax. The grantor and the grantee are jointly and severally liable for payment.
3. In the Towns of Shelter Island, East Hampton and Southampton, the first \$250,000 of consideration for improved land is exempt. For unimproved land the first \$100,000 of consideration is exempt.
4. In the Towns of Riverhead and Southold the first \$150,000 of consideration for improved land is exempt. For unimproved land the first \$75,000 of consideration is exempt.
5. The additional transfer tax must be paid to the Suffolk County Clerk at the same time that the State's Real Estate Transfer Tax is paid. A form to accompany payment will be issued by the County Treasurer.
6. The transfer tax will be in effect until December 31, 2010.

Contact Ralph Vitolo at 516-727-5700 for further information.

Yonkers Transfer Tax – General Ordinance No. 3 of 1998 of the City of Yonkers has reduced the rate of its transfer tax effective January 1, 1999 from 2.75% to 1.4% of the total consideration if the consideration is in excess of \$25,000. For further information contact Jean Partridge at 914-428-3433.

Internet News - Point your browser to <http://www.banking.state.ny.us/histhome.htm> for an Institutional History of Banks that were or are state chartered and of many federally chartered institutions operating

**in the state of New York. This site is maintained by the New York State
Banking Department.**

December 1, 1998