



**First American Title Insurance Company of New York
CURRENT DEVELOPMENTS
SPECIAL EDITION**

This Special Edition of Current Developments updates the section captioned "Powers of Attorney/Tax Matters" in the Bulletin issued September 1, 2009. The updated information has been obtained in further, informal conversations by this reporter with New York State's Department of Taxation and Finance and New York City's Finance Department.

The New York State Department of Taxation and Finance has issued new forms of power of attorney that comply with the requirements of Chapter 644 of the Laws of 2008. The forms may be used in connection with tax matters before the Department and the New York City Department of Finance. POA-1 ("Power of Attorney"), POA-1-IND ("Power of Attorney for Individuals"), and instructions, and the Department's Notice (N-09-17) as to the new forms are posted at:

http://www.tax.state.ny.us/pdf/notices/n09_17.pdf

http://www.tax.state.ny.us/pdf/current_forms/misc/poa1.pdf

http://www.tax.state.ny.us/pdf/current_forms/misc/poa1_ind.pdf

The State will accept a Combined Real Estate Transfer Tax Return, Credit Line Mortgage Certificate, and Certification of Exemption from the Payment of Estimated Personal Income Tax ("TP-584"), a Nonresident Real Property Estimated Income Tax Payment Form ("IT-2663"), and a Nonresident Cooperative Unit Estimated Income Tax Payment Form ("IT-2664") (collectively herein "State Tax Forms") executed pursuant to a power of attorney which is either (i) the applicable form of power of attorney just issued by the State Department of Taxation and Finance, (ii) the prior form of statutory short form of power of attorney if executed on or before August 31, 2009, (iii) the new statutory short form if executed on or after September 1, 2009, or (iv) a non-statutory power which meets the following requirements, as set forth in Notice N-09-17:

- Be signed and dated by an individual taxpayer and the taxpayer's signature must be acknowledged before a notary public;**

- **Be signed and dated by the representative and representative's signature must be acknowledged before a notary public even if the representative is licensed to practice in New York State or is a New York State resident who is an enrolled agent with the IRS;**
- **Be legible or of clear type of no less than 12 point in size; and**
- **Include the exact wording of the Caution to the Principal and Important Information for the Agent found in General Obligations Law section 5-1513.**

New York City will accept a Real Property Transfer Tax Return (NYC-RPT") executed pursuant to a power of attorney which is either (i) the applicable form of power of attorney issued by the State Department of Taxation and Finance, (ii) the prior form of statutory short form of power of attorney if executed on or before August 31, 2009, (iii) the new statutory short form if executed on or after September 1, 2009, or (iv) a non-statutory power executed as required by Chapter 644 of the Laws of 2008 on or after September 1, 2009, presumably meeting the requirements set forth in the bullet points set forth above.

In addition, the question has been raised as to how many originals of a power of attorney need to be executed to enable a proper submission of State Tax Forms and the NYC-RPT. The State and the City have informally advised as follows:

1. If State Tax Forms signed by a power of attorney for a document to be recorded are filed directly with the State before the document is submitted for recording, outside the recording process, both the State and the local recorder will require an original power of attorney.

2. If State Tax Forms, and the NYC-RPT when the property in question is in New York City, signed by a power of attorney, are being filed outside the recording process with no document to be recorded, such as is the case with a cooperative interest, often with a leasehold assignment, or with a contract assignment, the State and the City will require an original power of attorney.

3. If a power of attorney used to sign State Tax Forms, and the NYC-RPT when the property in question is in New York City, must be recorded to record a document a copy of the power of attorney is to accompany each of the State and City forms. The power of attorney needs to be submitted with the document being recorded pursuant to the power of attorney.

4. If, with documents being submitted for recording, State Tax Forms and, when the property in question is in New York City the NYC-RPT, are signed pursuant to new forms POA-1 ("Power of Attorney") or POA-1-IND ("Power of Attorney for Individuals"), the original power of attorney is to accompany one of the State or

City forms with a copy of the power accompanying the other form. If the property is outside of New York City, the original power of attorney is to accompany the State Tax Forms.

**Michael J. Berey
General Counsel
No. 115. September 3, 2009
mberey@firstam.com**