

*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.

Easements – The Appellate Division, Second Department has held that an easement of right of way established by an express grant, necessary for access when created, is not extinguished when a different means of access arises over a new public road. Abandonment, conveyance, condemnation or adverse possession only can extinguish an easement appurtenant. *Selvaggi v. Skvorecz*, decided December 7, 1998, is reported at 681 NYS 2d 352.

Navigable Waters – In *The Adirondack League Club, Inc. v. Sierra Club*, decided December 17, 1998, the Court of Appeals has held that the common law analysis of whether a river bounded by privately owned land is navigable in fact and therefore subject to a public easement will no longer be limited to an examination of its commercial use but will also consider the river's capacity for recreational use. The case is reported at 1998 WL 885065 (N.Y.) and can be located on the Internet at http://www.law.cornell.edu/ny/ctap/I98_0162.htm.

Title Policy Endorsement for IDA Transactions - At the request of the Title Insurance Rate Service Association ("TIRSA"), the New York State Insurance Department has accepted for filing effective January 28, 1999 a new Owner's policy endorsement titled "Industrial Development Agency Transfer to Insured Beneficial Owner" and identified as the TIRSA IDA Endorsement. It is intended to be attached to the IDA's Owner's title policy to afford the benefits of that policy as

of its original date to the IDA's grantee. For the endorsement to issue, the grantee must be either the grantor of the deed that conveyed title to the IDA, or that grantor's nominee.

The person or entity that conveys to an IDA often takes back a leasehold estate that is insured by a title policy. The TIRSA IDA Endorsement may obviate the need to obtain a new Owner's Policy when the lessee-beneficial owner takes a reconveyance of the fee title from the IDA. The charge for this Endorsement is \$25.00.

The TIRSA IDA Endorsement reads as follows:

“It having been represented to the Company that _____, being the grantor or the nominee of the grantor of the premises described in Schedule A of this Policy in a deed to the _____ Industrial Development Agency (“IDA”), is the grantee of a deed from the IDA, the Company hereby extends to _____, the benefits of the above-referenced Policy, subject to the conditions and stipulations of the said Policy, exclusions from coverage and exceptions to title as of the Policy's original date, without liability to the Company as to the validity, form, sufficiency and method of transfer of title of the premises from the IDA.

“This endorsement is made a part of the Policy and is subject to all of the terms and provisions thereof and of any other endorsements thereto. Except to the extent expressly stated, it neither modifies any of the terms and provisions of the Policy and any other endorsements, nor does it extend the effective date of the Policy and any other endorsements, nor does it increase the face amount thereof”.

Title Policy Continuation of Liability – “Continuation of Insurance” provisions for the TIRSA Rate Manual has been accepted for filing by the New York State Insurance Department. New Section 32 of the Manual will apply only to Owner's policies of title insurance issued on and after January 28, 1999.

The ATLA 1990 and 1992 Owner's policy forms, adopted in New York, define "Insured" to include those who succeed to the interest of the named insured by operation of law as distinguished from purchase. Heirs, distributes, devisees, personal representatives, next of kin, survivors and corporate or fiduciary successors to the named Insured are identified as being amongst those who would succeed to the interest of the Insured under the policy by operation of law.

Under Section 32, policy liability continues as of its original date without endorsement of the policy for the following types of transfers of title by the named Insured:

- 1. The transfer of title for no consideration from or to a corporation, partnership or limited liability company when there is not change in beneficial ownership. Consideration for purposes of this endorsement does not encompass prior liens or encumbrances that remain after the insured's transfer of title.**
- 2. The transfer of title to a member of the named insured's immediate family as a gift for no consideration. Immediate family is limited for purposes of the endorsement to the insured's spouse, "issue" (as defined in the Estates, Powers and Trust Law), parents, and brothers and sisters. The issue of brothers and sisters of the named Insured do not receive the benefit of the endorsement.**
- 3. The transfer of title to a trust created by the named Insured in which all beneficiaries are either the insured or members of his or her immediate family, as defined above.**

The validity, form or legal sufficiency of the instrument(s) effecting the transfer to the named insured's grantee is not insured.

Internet News – The URL for the Institutional History of Banks that were or are state chartered and of many federally chartered institutions operating in the state of New York has been changed to <http://www.banking.state.ny.us/history.htm> This site is maintained by the New York State Banking Department.

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