

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.

Mortgage Foreclosure – The Appellate Division, Second Department has held that including a half-acre parcel previously released from the mortgage in the advertised notice for the sale of 3.1 acre parcel is not grounds to set aside the sale where the judgment of sale referenced in the notice was correct and no potential bidder would therefore have been misled. *Stein v. Cula Capital Corporation*, NYLJ April 23, 1999.

Mortgage Recording Tax – Tax Law Section 253-b (2) provides that a “credit line mortgage”, securing advances and re-advances without imposition of mortgage recording tax beyond the maximum principal amount secured, does not include a mortgage made pursuant to a building loan contract as defined under Section 2 of the Lien Law. An Advisory Opinion (Petition No. M981215A) of the New York State Department of Taxation and Finance issued April 7, 1999 takes the position that a mortgage executed to secure the repayment of advances and re-advances made either to fund or to reimburse the borrower for the making of improvements upon real property will not qualify as a credit line mortgage, regardless of whether a formal building loan agreement is filed. It holds that the limiting conditions of the mortgage or the other loan documents relating to the use of the funds constitutes an “express promise” of the borrower to make improvements to real property. The mortgage will therefore be deemed to have been made pursuant to a building loan contract.

New York City Tax Lien Sales – The Department of Finance has advised that it intends to hold another tax lien sale of over 9,000 parcels the week of May 24. Notice of the sale is being mailed to those having filed Owner's Registration or In Rem notice cards with the Department of Finance or a statement of interest with the City Collector in accordance with applicable Local Laws.

New York City Water Charges – The Department of Environmental Protection has advised that it intends to implement a procedure whereby credit balances of water and sewer charges will only be refunded to the seller of real property and new accounts are to be established for the purchaser. Consideration was given to changing the existing account to the purchaser and have the seller and purchaser make their own arrangements on credit balances.

Tenancy by the Entireties – The Appellate Division, Second Department, reversing the decision of the lower court, has held that a mortgage executed only by the wife to secure the payment of legal fees, after she had commenced an action for divorce, was not impaired by the subsequent divorce decree awarding title to the property to the husband. The dissenting opinion takes the position that the mortgagee's interest was terminated by the divorce decree's disposition of the wife's interest. *Goldman v. Goldman*, NYLJ April 23, 1999.

Transfer Tax – As previously reported in Current Developments, the Peconic Bay Region Transfer Tax of 2% of consideration payable by the transferee went into effect on March 1, 1999 in the Town of Southold and on April 1, 1999 in the towns of East Hampton, Riverhead, Shelter Island and Southampton. A "Peconic Bay Region Community Preservation Fund" transfer tax form and certified funds in payment of the tax must be submitted with the instrument of conveyance to the Suffolk County Clerk. The Town Attorney must execute the form when certain exemptions from the tax are claimed.

Assembly Bill No. A05875 has been introduced in the State Legislature to authorize the Town of Brookhaven to establish a Brookhaven Community Preservation Fund and extend the 2% grantee's tax to conveyances of real property and real property interests in that Town.

Transfer Tax – An Advisory Opinion of the Technical Services Bureau of the New York State Department of Taxation and Finance issued March 1, 1999 (TSB-A-99(1)R) on the Real Estate Transfer Tax under Article 31 of the Tax Law concludes that an “interim” lease term, during which the lessee is conducting due diligence investigations of the property and is not paying rent or otherwise in occupancy, is not considered part of the term of the lease in computing whether the term is 49 years or more and a taxable transfer.

Internet News - The First American Title Insurance of New York has a WEB page at the address <http://www.faticony.com>. This site provides internet addresses for contacts at First American, links to escrow and other value added services, and enables the ordering of title reports on line.

Internet News - The text of the New York City Zoning Resolution and zoning maps can be accessed without charge on the Internet site of the Department of City Planning at <http://www.ci.nyc.ny.us/html/dcp/html/zone.html>.

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