First American Title Insurance Company of New York

228 East 45th Street, New York, New York lOOl7-3303

CURRENT DEVELOPMENTS

This is another in a series of bulletins issued to clients of First American. A copy of any item 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. Current Developments is available on the Internet at www.titlelaw-newyork.com, by facsimile, and by email on request.

Acknowledgments – The uniform form of acknowledgment enacted by Chapter 179 of the Laws of 1997 for acknowledgements taken within the state of New York *must* be used to the exclusion of all other forms of acknowledgement on and after September 1, 1999. Recording clerks are not expected to accept documents acknowledged in New York which are dated or acknowledged after September 1st without the uniform form of acknowledgment. Reference should be made to Current Developments issued October 14, 1998.

Lien Law – A Bankruptcy Court, for the Southern District of New York, has held that a mechanic's knowledge of a material misstatement of the net sum available for the improvement in a Section 22 affidavit is not required for a building loan mortgage to be subordinated to its mechanic's lien. The court also held that funds to reimburse the borrower's predecessor in title for construction costs is equivalent to an expense for land acquisition and is not a permissible building loan cost. Ritz-Craft Corporation of PA, Inc. v. National Education Benefit Fund, 234 B.R. 349, decided May 28, 1999.

Mortgage Assignments - The Appellate Division, First Department has held that there is no right to compel a mortgage assignment absent a written agreement requiring the mortgage to execute an assignment. LaRuffa v. Fleet Bank, N.A., 689 NYS 2d 59, decided April 27, 1999.

Mortgage Foreclosures – The Appellate Division, Second Department, has held that an inaccurate description of the mortgaged property in the advertisement for a foreclosure sale, inadvertently including a description of an additional half-acre parcel, did not require setting aside of the sale. Since the notice of the sale also contained a provision

that the sale was subject to the terms of the filed judgment of foreclosure, which judgment included the correct property description, prospective purchasers would not have been mislead by the error. There was no evidence that any prospective purchasers were mislead and thereby inhibited from bidding. Stein v. Cula Capital Corporation, 688 NYS 2d 636, decided April 19, 1999.

Nassau County Transfer Tax – It has been reported that the New York State Legislature will enact enabling legislation authorizing the Nassau County Legislature to impose a one percent (1%) tax on real estate transfers over an eighteen month period. Although the final bill has not been reviewed, Senate Bill No. 6056, introduced July 9, 1999 to add new Tax Law, Article 31-E ("Tax on Real Estate Transfers in the County of Nassau") would make the grantor primarily responsible for payment of the tax. The bill provides that conveyances made on and after the effective date of the tax (under the local law to be adopted in Nassau County to implement the tax) would be grandfathered if made pursuant to a binding written contract entered into prior to that effective date, "provided that the date of execution of such contract is confirmed by independent evidence such as the recording of the contract, payment of a deposit, or other facts and circumstances as determined by the Treasurer". Contact Amelia Kelly of First American at 516-832-3200.

Prejudgment Attachments – The United States Supreme Court, in the case Grupo Mexicano de Desarrollo, S.A. v. Alliance Bond Fund, Inc., decided June 17, 1999 and reported at 1999 WL 392980 (U.S.N.Y.), has reversed the decision of the Second Circuit Court of Appeals, reported at 1998 WL 220594, which upheld an order of the District Court for the Southern District of New York enjoining a defendant from transferring property located outside of New York not involved in the litigation to prevent the dissipation of assets, a form of attachment known in England as a "Mareva" injunction. The Supreme Court concluded that the equitable powers of federal courts do not encompass interfering with the disposition of property at the instance of a nonjudgment creditor.

Promissory Notes – In an action to enforce a promissory note, the original of which was lost, the Appellate Division, Fourth Department held that a copy of the note could be admitted into evidence and enforced when the inability to produce the original is satisfactorily explained and it is established that the copy was a true and accurate

representation of the original. Chamberlain v. Amato, 688 NYS 2d 345, decided March 31, 1999.

Restrictive Covenants – The Appellate Division, Fourth Department, has held that a restrictive covenant in a deed requiring that certain lands be maintained in their natural state and providing that the covenant was "for the benefit of and enforceable by all parties owning property adjoining the premises hereby conveyed" is enforceable by an adjoining landowner as a third party beneficiary notwithstanding the absence of privity of estate between the grantor of the restriction and the adjoining landowner. The Nature Conservancy v. Congel, 689 NYS 2d 317, decided March 19, 1999.

Resolution Trust Corporation – The Supreme Court, New York County, has held that liens for unpaid real estate taxes assessed by New York City while the RTC held a mortgage on the real property are valid and enforceable notwithstanding 12 USC Section 1825 (b) of the Financial Institutions Reform, Recovery and Enforcement Act of 1989 ("FIRREA") which provides that tax liens do not attach to property owned by the RTC. No lien for taxes attached to "property of the Corporation". Yardeni Investments Corp. v. City of New York, reported in the New York Law Journal on July 28, 1999.

Reverse Mortgages – Under Real Property Law Section 281 a "credit line mortgage" is afforded lien priority for future advances stated in the mortgage to be made within twenty years of recording. A reverse mortgage loan under RPL Sections 280 and 280-a is included within the section's definition of a credit line mortgage. Under Chapter 183 of the Laws of 1999, effective July 6, 1999, a reverse mortgage loan is not subject to Section 281's twenty year limitation.

Subrogation – The Court of Appeals, in Chemical Bank v. Meltzer, reported at 1999 WL 262418 (N.Y.) and decided May 4, 1999, has held that the guarantor of an indebtedness secured by a first mortgage can on default in the payment of that obligation pay the debt and as a surety with rights of subrogation obtain an assignment of the bond and mortgage, notwithstanding that the mortgagee held an unconsolidated second mortgage securing other indebtedness that might be impaired.

August 6, 1999