

**First American Title Insurance Company
of New York**

228 East 45th Street, New York, New York 10017

CURRENT DEVELOPMENTS

This is part of a series of bulletins issued to clients of First American. Toward the issuance of *future issues by email only*, fax recipients are requested to send their email addresses to Michael J. Berey, Senior Underwriting Counsel, at mberey@firstam.com. Issues of “Current Developments” are on the Internet at www.titlelaw-newyork.com.

Bankruptcy: The Supreme Court, Suffolk County, denied a motion to set aside a referee’s deed and vacate a judgment of foreclosure despite the foreclosure being commenced and prosecuted while a bankruptcy stay was in effect. Since the judgment was entered and the sale took place when the bankruptcy case was closed and there was no stay in effect, other parties were not prejudiced by violation of the stay. Further, the Court would not overturn the referee’s deed to the bona fide purchaser when the foreclosed owner waited one year to raise the issue. Federal National Mortgage Association v. Sing was reported in the New York Law Journal on December 29, 1999.

Bankruptcy: The Second Circuit Court of Appeals has held that Bankruptcy Code Section 1307(b) (“Conversion or Dismissal”) affords a debtor an absolute right to dismiss a voluntary Chapter 13 (“Adjustment of Debts of an Individual With Regular Income”) bankruptcy petition, notwithstanding that there is pending a creditor’s motion to convert the case to a Chapter 7 liquidation. Barbieri v. RAJ Acquisition Corp., was reported in the New York Law Journal on January 3, 2000.

City of Yonkers Transfer Tax: The City of Yonkers has reduced the rate of its transfer tax effective January 3, 2000 from 1.4% to 1% of the total consideration. The tax applies to transfers where the consideration is in excess of \$25,000. The rate had been 2.75% prior

to January 1, 1999. For further information contact Jean Partridge at 914-428-3433.

Credit Line Mortgages: A Declaratory Ruling issued by the State Department of Taxation and Finance on November 9, 1999 states that the period in which a borrower under a home equity credit line mortgage can obtain re-advances may be extended without the payment of additional mortgage recording tax if the draw period is extended by an agreement *recorded* prior to conclusion of the original draw period under a provision in the original mortgage allowing for a right to extend the draw period or authorizing later execution of an agreement to change the loan terms. This Ruling will be applied to credit line mortgages recorded on and after April 1, 2000. The Department advises that it will allow a pre-April 1, 2000 credit line mortgage to be modified to provide for an extension of the draw period after April 1 even when the draw period has expired. The Ruling can be downloaded from the Internet at URL http://www.tax.state.ny.us/pdf/memos/Mortgage/m99_3r.pdf.

Eminent Domain: The Supreme Court, New York County, has held that a month-to-month SRO tenant, whose occupancy was protected under the Rent Stabilization Laws, does not have a property interest which entitles him to compensation upon the condemnation of the building in which he resides. Matter of Dormitory Authority of the State of New York v. Davis was reported in the New York Law Journal on December 8, 1999.

Foreclosure: The Appellate Division, Second Department, has held that a tenant in common is a necessary party in the foreclosure of a mortgage encumbering the interest of its co-tenant. Since the foreclosing party will ultimately commence a partition action, the tenant in common has a “real and substantial interest in the outcome of the foreclosure”. Capital Resources Co. v. Prewitt, decided November 1, 1999, is reported at 697 NYS 2d 320.

Federal Tax Liens: The United States Supreme Court has held that a disclaimer of an inheritance, creating under state law the fiction that the heir predeceased the decedent and thereby preventing the heir's creditors from reaching the disclaimed property, does not defeat the enforcement of federal tax liens filed against the disclaimant. The inheritance being a property interest under state law, federal law is applied to determine whether that interest is "property" or "rights to property" under 26 USC Section 6321 ("Lien for taxes") and subject to levy for unpaid federal taxes. The Court noted that inheritances or devises disclaimed under state law are not specifically exempt from levy under Code Section 6334 ("Property exempt from levy"). *Drye v. United States*, decided December 7, 1999, reported at 120 S. Ct. 474, can be found on the Internet at <http://laws.findlaw.com/US/000/98-1101.htm>.

Fraudulent Conveyances: The Appellate Division, Second Department, in a case involving the determination of who was entitled to surplus money after a foreclosure sale, has held that a judgment creditor who did not have an action pending against the fee owner when the property was "fraudulently" conveyed cannot attack the conveyance under Debtor and Creditor Law Section 273-a ("Conveyances by defendants"). The creditor may attack the conveyance under Debtor and Creditor Law Section 276 ("Conveyances made with intent to defraud"). *North Fork Bank v. Schmidt*, decided October 18, 1999, is reported at 697 NYS 2d 106.

Husband and Wife: A marital residence in Staten Island was transferred to the wife pursuant to a judgment of divorce. The Supreme Court, Richmond County, held that there being nothing stated in the judgment or the stipulation of settlement, the terms of which were incorporated in the judgment, as to the payment or other disposition of mortgages on the property, the wife took title subject to the mortgages. Payments of the mortgage loan not being made by the wife but by the husband were to be treated as payments he was making in lieu of maintenance. *Raniga v. Raniga* was reported in the New York Law Journal on December 21, 1999.

Mortgage Assignments: The Supreme Court, Westchester County, has held that the priority of competing mortgage assignments is governed by Real Property Law Section 291 (“Recording Act”). Therefore, the Assignee of a note and mortgage in the secondary mortgage market, notwithstanding the delivery to the Assignee of the original note, is subject to rights under prior, recorded mortgage assignments. *Parman Mortgage Associates v. Patterson* was reported in the New York Law Journal on December 15, 1999.

Mortgage Payoffs: The Appellate Division, Second Department, reversed an order of the lower court and reinstated the complaint in a class action predicated on charges in a mortgage payoff letter for facsimile services and for recording of a satisfaction. For imposition of the fax fee there is a cause of action for violation of Real Property Law Section 274-a (“Certificate of principal amount unpaid on mortgage or real property”) which provides, in part, that the “(m)ortgagee shall not charge for providing the mortgage-related documents”. It also held that the fax fee and the charge for recording the satisfaction, a service the mortgagee did not perform, were examples of consumer fraud actionable under Section 349 of the General Business Law (“Deceptive acts and practices unlawful”). *Negrin v. Norwest Mortgage, Inc.*, decided November 15, 1999, is reported at 1999 WL 1038597 (N.Y.A.D. 2 Dept.).

January 12, 2000

Revised January 18, 2000