

**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. As *future issues will be sent by email only*, fax recipients are requested to send their email addresses to Michael J. Berney, Senior Underwriting Counsel, at mberney@firstam.com. Issues of “Current Developments” are on the Internet at www.titlelaw-newyork.com.

Condominiums - The Supreme Court, New York County, in Board of Managers of 130 Barrow Street Condominium v. Royal Blue Realty Holdings, Inc., has interpreted Real Property Law Section 339-aa as authorizing in the foreclosure of a common charge lien the recovery, if provided for in the condominium’s By – Laws, of a “reasonable rental” in lieu of common charges for the period between signing of the judgment of foreclosure and sale and the date of sale. This decision was reported in the New York Law Journal on February 2, 2000.

Corporations – The Supreme Court, Kings County, in WHC, Inc. v. Carbone, has held that the president of a business corporation created for the purpose of buying and selling real property, had apparent authority to sell corporate real property in the regular course of its business to a bona fide purchaser without authorization of the shareholders or board of directors, as the property did not constitute all or substantially all of the corporation’s assets. This decision was reported in the New York Law Journal on February 2, 2000.

Entireties – The Surrogate’s Court, Westchester County, in a case regarding the Estate of Robert Earle Griffith, has held that the estate of a mortgagor, who after executing the mortgage married and conveyed title to his spouse and himself as tenants by the entirety, is responsible for the mortgage debt when a deficiency results from the foreclosure of the mortgage. The property remains

primarily liable for the mortgage payments, notwithstanding that the surviving spouse did not affirmatively assume the indebtedness. This decision was reported in the New York Law Journal on January 19, 2000.

Lead Based Paint – A federal district court for the Northern District of New York has held in Sweet v, Sheehan that the disclosure requirements of the Lead-Based Paint Hazard Reduction Act (42 U.S.C. Sections 4851-4856) apply to the sale or lease of target housing on and after October 28, 1995, even though that the disclosure requirements in regulations published by HUD became effective on for owners of one to four family residential dwellings on December 6, 1996. Damages were alleged for violation of the disclosure requirements. The tenant leased the apartment from December 1995 to October 1996. The case, decided on November 5, 1999, is reported at 1999 WL 1011921 (N.D.N.Y.).

New York City's Local Law 38 of 1999 added new Article 14 ("Lead Poisoning Prevention and Control") to Subchapter 2 of Chapter 2 of Title 27 of the Administrative Code of the City of New York. It sets forth requirements for the correction of lead-based paint hazards and includes provisions for the notification of occupants of multiple dwellings erected prior to January 1, 1960. The Local Law was approved by the Mayor on July 15, 1999 and became effective 120 days after enactment. It can be downloaded from the Internet at <http://leah.council.nyc.ny.us/law99/int0582.htm>.

Mortgages – The Appellate Division, Second Department, in Russo Enterprises, Inc. v. Citibank, N. A., reported at 699 NYS 2d 437, affirmed a lower court decision that a mortgagee could demand a penalty for prepayment absent a provision in the mortgage unambiguously granting a right to prepay.

Mortgage Recording Tax – The New York State Department of Taxation and Finance has issued an Advisory Opinion (TSB-A-00(1)R) dated February 25, 2000 on the mortgage tax consequences of the "defeasance" of a securitized commercial mortgage loan. The Opinion finds that there is no new principal debt or obligation, and therefore no additional mortgage recording tax is due, under the stated circumstances.

A new lender advances funds under a “Defeasance Note” executed by the original borrower/mortgagor to enable the purchase of U.S. Treasury Securities the proceeds of which will fund the mortgage payments. The obligations under the Defeasance Note are assumed by a new, successor borrower, and the original borrower is released from liability under the Defeasance Note. The Defeasance Note is assigned to the REMIC Trust mortgagee, and the original note and the mortgage are assigned to the new lender.

The recording of a modification or extension of the mortgage so assigned without the advance of new money would also be exempt from tax. The Advisory Opinion is on the Internet at address [www.tax.state.ny.us/pdf/Advisory Opinions/Mortgage/A00_1r.pdf](http://www.tax.state.ny.us/pdf/Advisory%20Opinions/Mortgage/A00_1r.pdf)

Notice of Pendency – The Appellate Division, Second Department, in *Greenpoint Savings Bank v. St. Hilaire*, decided on December 6, 1999 and reported at 699 NYS 2d 458, affirmed a lower court decision that the holder of an interest in real property acquired after filing of a notice of pendency in a mortgage foreclosure is bound by the action as if it were a duly served party defendant and its interest is deemed foreclosed.

Similarly, the Supreme Court, Suffolk County in an unreported case confirmed that title was held by the grantee of a deed delivered eight days after expiration of the notice of pendency in a mortgage foreclosure. An order extending the lis pendens from the from its last effective date nunc pro tunc was held to be improper as a matter of law. The purchaser at the foreclosure sale was deemed to be the assignee of the mortgage being foreclosed. The case of *Coakley v. First Bank of Beverly Hills, F.S.B.* was decided November 15, 1999

In addition, the Supreme Court, Bronx County, has held that under CPLR 6513 an expired notice of pendency cannot be extended nunc pro tunc to cover any period between the expiration of the prior notice and the entry of an order authorizing the filing of a new lis pendens. A purchaser for value between expiration of the prior notice and the filling of the new notice is protected. Matter of the

Estate of Max Sakow, decided November 19,1999, is reported at 699 NYS 2d 660.

Internet News: The TitleLaw-New York WEB at www.titlelaw-newyork.com now incorporates a chat facility to enable a visitor after logging in to ask or leave questions for the site operator. Click on the icon that asks, “Need Help ?”.

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