

**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 issues are being sent by email only, other readers 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.

Acknowledgments - The Supreme Court, Kings County, held that a deed alleged to be fraudulently executed was not to be set aside due to its having been improperly acknowledged. The issue of due acknowledgment does not bear on the validity of the transfer of the title. Tinkel v. Parkin was reported on page 28 of the New York Law Journal of May 31, 2000.

Condominiums – The Supreme Court, New York County held that absent a limiting provision in the By-Laws of a condominium, and so long as the enclosing of space does not hinder the passage of other unit owners, the Condominium Act allows a Board of Managers to grant a revocable license providing for the enclosure of a small portion of hallway space for a single entranceway to contiguous units. Cohen v. Board of Managers of the 22 Perry Street Condominium was reported on page 27 of the New York Law Journal of May 3, 2000.

Cooperatives – The Court of Appeals, affirming the decision of the Appellate Division, First Department held that a cooperative corporation is prohibited under Business Corporation Law Section 721 from indemnifying directors for bad faith acts violating Civil Rights Laws in connection with the approval of prospective unit purchasers. Biondi v. Beekman Hill House Apartment Corporation, decided April 11, 2000, is located on the Internet at <http://www.courts.state.ny.us/ctapps/decisions/18opn.htm>

Nassau County Real Estate Taxes – The Nassau County Legislature passed Local law 12-2000 on May 10, 2000 which provides that taxes in arrears will be charged a 5% penalty beginning on June 1, 2000 for the 1999/2000 school taxes and on September 1, 2000 for the 2000 general taxes. This is in addition to the compounded monthly interest charge of 1%. The fee for listing a parcel will also increase to \$75.00 effective June 1, 2000. For further information contact Vincent Ferro at 516- 832-3200.

New York City Water Board - The Supreme Court, New York County, held that a bona fide purchaser of real property, acting in reliance on the public record which stated no amount due for water and sewer charges and a credit due the seller (due to what was later determined to be an error in the posting of a payment to the property), was an “innocent owner”. Plaintiff was not subject to arrears appearing of record when a payment incorrectly posted to the property’s water account was adjusted after closing. Matter of 333 E. 89 Realty LLC vs. New York City Water Board was decided on January 29, 1999. The decision has been appealed.

In addition, under Part VIII, Section 3 of the Water and Wastewater Rate Schedule of the New York City Water Board, effective July 1, 2000, the Department of Environmental Protection or the Water Board may enter into an installment agreement for the payment of water charges in arrears over a “period not to exceed 36 months at the prevailing interest rate and (with) a down payment of at least 25% of the amount due. Customers must remain current on future bills throughout the term of the installment payment agreement”.

New York City Real Estate Taxes – The real property tax rates for fiscal year 2000 (July 1, 1999 - June 30, 2000) will remain in effect until the City Council sets the rates for the fiscal year 2001 (July 1, 2000 – June 30, 2001). New tax bills reflecting the change in rates will be issued in November for payment on January 1 (or January 1 and April 1 for properties with quarterly payments). For fiscal year 2000, the rates were 11.167 for Class One property, 10.851 for Class Two property, 9.398 for Class Three property, and 9.989 for Class Four property. Class One generally includes one-to-three family residential real property, (including condominiums of three or less stories which have always been condominiums). Class Two includes all other residential real property. Class Three includes utility real property. Class Four includes all other real property.

Options – A leasehold option to purchase the Roosevelt Hotel in Manhattan was for a stated purchase price, with title was to be conveyed on exercise of the option free and clear of liens and encumbrances other than those specified, which included an existing mortgage. The lessee’s rights were subject and subordinate to that mortgage and all “renewals, modifications, consolidations, replacements and extensions of such mortgages”. The Supreme Court, New York County, held that the parties did not intend for the purchase price to be increased by the amount of the mortgage debt nor for the premises to be conveyed to the optionee subject to mortgage indebtedness. *Roosevelt Hotel Corporation, N.V. v. Letoh Associates* was reported on page 28 of the New York Law Journal of June 14, 2000.

Persons in Possession – The Civil Court, Kings County held that a mortgage was subject and subordinate to the life estate claimed by a person in possession at a two family residence. The Court found that the mortgagee had a duty of inquiry since the appraisal report on which the mortgagee relied listed the occupant in question as “owner” with “\$0” rent paid. *Mazza v. Realty Quest Brokerage Corp.* was reported on page 30 of the New York Law Journal of June 7, 2000.

Right of First Refusal - The Supreme Court, New York County held that a thirty day period in which the holder of a right of first refusal could “match a bona fide purchase price” was not tolled by a request for additional information as to the property condition and the terms of the third – party sale when the requirement to provide that information was not a part of the agreement between the parties. In addition, the thirty days was not tolled by the commencement of an action to extend the acceptance period since no injunction staying expiration of the period was sought. *M & A Oasis, Inc. v. MTM Associates* was reported on page 30 of the New York Law Journal of May 10, 2000.

Tenancy by the Entireties – The Court of Appeals has affirmed the decision of the Appellate Division, Second Department, holding that a mortgage executed only by the wife to secure the payment of legal fees, after she had commenced an action for divorce but prior to entry of the final judgment of divorce, was not impaired by the subsequent divorce decree awarding title to the property to the husband. *Goldman v. Goldman*, decided on June 13, 2000, is on the Internet at <http://www.courts.state.ny.us/ctapps/decisions/68opn.pdf>.

July 6, 2000