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CURRENT DEVELOPMENTS

This is another in a series of bulletins issued by email to clients of First American. Prior issues are on the Internet at www.titlelaw-newyork.com. A copy of any item noted in this bulletin can be obtained by email to mberey@firstamny.com.

Lead Paint Regulations – As reported in the New York Law Journal on October 13, Justice York of the New York Supreme Court in New York City Coalition to End Lead Poisoning v. Vallone (Index No. 120911/99) has struck down the City of New York's lead poisoning law for having been passed by the City Council without the preparation of environmental impact statements as required by New York State's Environmental Quality Review Act. Holding Local Law 38 of 1999 void, according to the article, reinstates Local Law 1 of 1982, the previous ordinance on lead paint control.

Lien Law – Chapter 324 of the Laws of 2000 effective January 1, 2001 amends Sections 17 and 18 of the Lien Law to provide that a mechanic's lien and a lien under a contract for a public improvement may be extended for one year by court order for only two successive years. The law, as amended, provides that "a new order and entry may be made in each of two successive years". Existing law only provides that "a new order and entry may be made in each successive year". In addition, Section 18 was amended so that a public improvement lien is effective for one year instead of six months from the date on which the notice of lien was filed, unless within that period either an action is commenced to foreclose the lien or an extension is filed.

Lien Law – The Appellate Division, Third Department, in affirming an order denying a motion to discharge a mechanic's lien, held that Lien Law Section 10(1) does not require a notice of lien to be filed only after the last date on which work was done or materials were furnished. A mechanic's lien may be filed although work is in progress. Mario's Home Center, Inc. v. Welch, decided September 21, 2000, is reported at 713 NYS 2d 244.

Lien Law - The Supreme Court, New York County, held that a mechanic's lien cannot be enforced for work done for a sublessee at property owned by a municipality and a public benefit corporation, although the nominal involvement of the public benefit corporation did not qualify the project as a public improvement for which there would be a statutorily mandated payment bond. The lien was filed against property in Times Square owned by the City of New York and the 42nd Street Development Project, Inc. The decision in Jersey Electrical Supply Co., Inc. v.

MJR Electrical Contracting Corp. (Index No. 605562/99) was issued by Justice York on November 9, 2000.

Lien Law - The Supreme Court, Kings County, held that the assignment to the holder of a building loan mortgage of monies due under a contract between the New York City Housing Authority and its turnkey developer, and the reduction of the mortgage indebtedness prior to payment of subcontractors' claims, was a diversion of trust assets under the Lien Law requiring subordination of the mortgage to filed mechanic's liens. The court indicated that the lender could have protected its position by either filing a notice of assignment or a notice of lending under Lien Law Sections 15 and 73. Aspro Mechanical Contracting Inc. v. Fleet Bank, N. A. was reported on page 31 of the New York Law Journal on October 30, 2000.

Lien Law - Affirming a District Court's reversal of the ruling of a bankruptcy court in the Southern District of New York, the Second Circuit held that a Section 22 Lien Law affidavit was not rendered materially false by including in its statement of the net sum available to the borrower-mortgagor for the improvement amounts to be used for the reimbursement of others who completed work prior to execution of the construction loan. Here an entity, related to the borrower, which owned an adjoining section of a rental housing complex under development was reimbursed for common site work done on the property prior to the borrower acquiring title. Ritz-Craft Corp. of PA Inc. v. National Electric Benefit Fund was reported in the New York Law Journal on December 15, 2000.

Mortgage Foreclosure – In an unreported case, the Supreme Court, Suffolk County, dismissed a foreclosure action and directed cancellation of the lis pendens to foreclose due to the lender having had erroneously recorded a mortgage satisfaction after the action was commenced. The mortgage was held not to be enforceable against a bona fide purchaser of the property who took title relying on the recorded satisfaction. Regions Bank v. Campbell was decided on October 18, 2000.

Mortgage Foreclosure - The District Court for the Southern District of New York granted summary judgment to the plaintiff-mortgagee notwithstanding that the proposed order did not specify the amount of the money judgment being sought. The court indicated that the complaint set forth the amount owed through the filing of the action and the amount of the judgment could be determined from the terms of the mortgage. The case was referred for computation of the amount owed. National Life Insurance Company v. Koncal Realty Associates Limited Partnership was reported in the New York Law Journal on November 30, 2000.

Mortgage Recording Tax – The May 17, 2000 issue of "Current Developments" reported the informal position of the Technical Services Bureau of the New York State Tax Commission as regards mortgages guaranteeing a borrower's revolving credit obligations. Further clarifying its position, Technical Services has advised

that credit line mortgages claiming exemption from tax for re-advances under Tax Law Section 253-b (mortgages securing less than $3,000,000 or on one-to-six family owner occupied residences) must be executed by the borrower and cannot be guarantee mortgages. A guarantee mortgage in such circumstances must specify that it secures an identified non-revolving portion of the credit facility. For the May 17 Bulletin see http://www.titlelaw-newyork.com/Mans/ Current24.htm.

Mount Vernon Transfer Tax – The City of Mount Vernon has enacted Local Law 3 of 2000 which, effective January 1, 2001, makes the grantor of a deed of real property responsible for the payment of the City's transfer tax of one percent of the consideration in excess of $100,000. The grantee is liable for payment of the tax in the event the grantor is exempt from tax. This does not apply, however, to deeds delivered pursuant to contracts made prior to the effective date. Until this change, the grantee has been charged by the Code of the City of Mount Vernon with payment of the tax.

New York City Water Charges - Guidelines were adopted in October by the New York City Water Board for the "Conservation Program for Multiple Family Residential Buildings". This program enables owners of housing consisting of six or more dwelling units being billed for water usage on a metered or frontage basis the option to elect billing based on a fixed charge per unit in lieu of metered billing if the owner has meters installed, invests in low water consumption plumbing fixtures and otherwise undertakes conservation efforts in cooperation with the Water Board. For the fiscal year beginning July 1, 2001, the fixed charge will be $424.00 per dwelling unit. Applications for the program can be obtained through the City's Department of Environmental Protection and must be submitted no later than December 31, 2003. The Guidelines are at www.titlelaw-newyork.com/Mans/ waterguidelines.pdf .

New York State Property Conditions Disclosure Legislation Vetoed – The Governor has vetoed legislation that would have added a "Property Conditions Disclosure Act" as new Real Property Law Article 14-A. Assembly Bill A01173 would have required the seller of a one-to-four family dwelling, prior to the seller accepting a purchase contract, to provide the buyer with a Property Condition Disclosure Statement setting forth all defects in the condition of the property of which the seller had actual or constructive knowledge or actual notice.

Recording Act – The Supreme Court, Richmond County, held that purchaser of real property in Staten Island did not have constructive notice of a mortgage recorded against a former Land Map Block and Lot when the County Clerk's real property index had been converted to a Tax Block and Lot system prior to the conveyance. Sragg v. Feiger was reported in the New York Law Journal on November 27, 2000.

Telecommunications – The Supreme Court, Richmond County, granted a Condominium Board of Managers' motion to enjoin a unit owner from maintaining a satellite dish antenna on an exterior wall in violation of the Condominium's Rules and Regulations. In applying a FCC Rule codified at 47 C.F.R. Section 1.4000 and adopted pursuant to Section 207 of the Telecommunications Act of 1996, which prohibits certain restrictions on the installation of satellite antennas in areas over which the viewer has exclusive use, the court held that the exterior wall of the building was not an area over which the defendant unit owners have exclusive use. Fawn Ridge Condominium v. Nasr was reported at page 25 of the New York Law Journal on November 8, 2000.

The officers and employees of First American wish you health and prosperity in the new year.

January 2, 2001