



First American Title Insurance Company of New York **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. To obtain a copy of any item referred to below email to mberey@firstamny.com.

Adverse Possession - The Appellate Division, First Department, held that the occupancy of property on City Island in the Bronx since 1982 coupled with open conduct consistent with ownership did not constitute adverse possession since the occupants did not take possession under an initial claim of right to the property. Under New York law, to constitute adverse possession, the possession must be "hostile and under a claim of right, actual, open and notorious, exclusive and continuous". Here the defendants occupied abandoned property as "squatters" with no intention other than to enjoy a free tenancy. *Haim v. Whitcombe*, decided January 11, 2001, was reported on page 21 of the New York Law Journal of January 16, 2001.

Consumer Protection - The Appellate Division, First Department modifying the ruling of the Supreme Court, New York County, held that New York City's Consumer Protection Law (Administrative Code Section 20-700 et seq.) does not apply to the marketing and sale of residential homes. The Supreme Court decision in *Polonetsky v. Better Homes Depot Inc* was noted in the August 28, 2000 issue of Current Developments. The Appellate Division's decision was reported on page 25 of the New York Law Journal on January 29, 2001.

Easements - The Supreme Court, Kings County held that an easement for ingress and egress grants only a right of passage and not any right in the physical passageway itself. The owner of the land burdened by the easement may, therefore, narrow the easement area, cover it over, gate it or fence it off, so long as the right of passage is not impaired. *Ferraro v. Pantazopoulos* was reported in the New York Law Journal on February 8, 2001.

Easements - The Appellate Division, Third Department held that property constituting three filed map lots which the map maker conveyed to a predecessor in title by a deed containing a metes and bounds description but no reference to the previously filed subdivision map has no easement by implication in a paper street on the filed map. *Palma v. Mastroianni*, decided October 18, 2000, is reported at 714 NYS 2d 537.

Foreclosure - The Appellate Division, Second Department affirmed the order of the Supreme Court, Nassau County vacating a 1998 foreclosure sale pursuant to a 1994 judgment of foreclosure due to ambiguity in the judgment as to whether the sale was

to be made subject to outstanding real estate taxes or if the referee was to pay the taxes from the proceeds of sale, and in light of the 1997 amendment to Section 1354(2) of the Real Property Actions and Proceedings Law providing that the referee is to pay all outstanding taxes from the proceeds of the sale. *Fleet Finance, Inc. v. Gillerson*, decided November 13, 2000, is reported at 716 NYS 2d 66.

Joint Tenancy - The Supreme Court, Richmond County, held that Real Property Law Section 240-c allows a joint tenancy to be severed by a deed executed by one joint tenant without the consent of the other joint tenant(s). Title was held as joint tenants, Helen holding a one-half interest, and Charles and Barbara, his wife, as tenants by the entirety, holding a one-half interest. Helen's deed to a third party created a tenancy in common, her grantee holding a one-half interest and the Charles and Barbara, as tenants by the entirety, owning the other half interest. *Pattelli v Bell* was reported on February 8, 2001 in the New York Law Journal.

Mortgage Recording Tax – The New York State Department of Taxation and Finance in its Technical Services Bulletin issued November 20, 2000 (TSB-A-00(4)R) has confirmed the position taken in Section 644.1(b) of the Mortgage Recording Tax Regulations that Section 577(2) of the Private Housing Finance Law exempts a mortgage made to a housing development fund company from payment of the mortgage recording tax.

Mortgages - A forgiveness provision in a purchase money mortgage to the seller forgiving the mortgage debt if the seller died prior to full payment of the indebtedness and requiring the estate to provide a mortgage satisfaction was held enforceable although the seller-mortgagee did not sign the mortgage. By the seller's acceptance of the note and mortgage prepared by her counsel, even if ignorant of their terms, she was deemed to have assented to and is bound by their provisions. *Wranovics v. Finnerty*, decided by the Appellate Division, Fourth Department on November 28, 2000, is reported at 716 NYS 2d 799.

Rent Regulations – The New York State Division of Housing and Community Renewal has issued amendments to the Rent Stabilization Code for New York City, the New York City Rent and Eviction Regulation, and, as to rent stabilized apartments outside of New York City, the Emergency Tenant Protection Act and the State Rent and Eviction Regulations. The amendments were effective on December 20, 2000. A summary of the changes reported in a "Special Bulletin" issued by Belkin Burden Wenig & Goldman, LLP, can be located on the Internet at <http://www.titlelaw-newyork.com/Mans/RentRegs.pdf>.

Theatre Subdistrict Development Rights - The decision of Justice McCoe of the New York Supreme Court in *Fisher v. Giuliani* that annulled adoption of the Theatre Subdistrict Zoning Map and Zoning Text Amendments and enjoined the City Planning Commission from certifying the transfer of development rights thereunder for lack of an Environmental Impact Statement has been modified by the Appellate Division, First Department. It vacated those parts of the judgment enjoining as-of-

right development rights transfers and directing the Department of City Planning to prepare an Environmental Impact Statement, and it reinstated the zoning map amendments. It affirmed the lower court ruling requiring an environmental review of provisions allowing the discretionary transfers of development rights. The Supreme Court's decision was noted in the October 12, 1999 issue of Current Developments. The Appellate Division's decision was reported on page 21 of the New York Law Journal on January 29, 2001.

Tax Sales - Mailing notice of a County tax foreclosure to the address of the property owner set forth on the deed to him raises a presumption that the notice was received since the property owner did not allege that he notified the County of his change of address. A mere denial of receipt is insufficient to rebut the presumption that notice of the tax sale was received. *Sendel v. Diskin*, as Treasurer and Tax Enforcement Officer of Essex County, decided by the Appellate Division, Third Department on November 22, 2000, is reported at 716 NYS 2d 471.

Title Policy Endorsements - Five title policy endorsements and a revision to one existing endorsement were approved by the State Insurance Department effective December 27, 2000. The new endorsements for a loan policy *only* are a Mortgage Tax Endorsement, a Tax Parcel Endorsement (Single Tax Lot), Tax Parcel Endorsement (More than One Tax Lot), and a Partial Release of Mortgaged Premises Endorsement. The charge for the first three endorsements is \$25.00; the charge to issue the Partial Release endorsement is \$150.00. The new endorsement for *either* an owner's or loan policy is the Contiguity Endorsement. The charge to issue this endorsement is \$25.00.

The Industrial Development Agency or similar Public Benefit Corporation Transfer to Beneficial Owner Endorsement ("IDA" Endorsement) amends the Industrial Development Agency Transfer to Insured Beneficial Owner endorsement issued January 28, 1995 and revised on January 28, 1999. The charge for this endorsement remains at \$25.00. The revision expands the coverage of the endorsement to include transactions involving Public Benefit Corporation's similar to an IDA. In addition, it expands the definition of a Beneficial Owner to include, and the benefit of the endorsement is now available to, the assignee of the leasehold executed by the Industrial Development Agency (or similar Public Benefit Corporation) to the Beneficial Owner or its nominee notwithstanding that the assignee has no relation to the Beneficial Owner, provided that the assignee was insured by the Company that issued the Owner's policy to the IDA (or similar Public Benefit Corporation).

Transfer Tax - An article on issues relating to application of the continuing lien deduction for the computation of New York City's Real Property Transfer Tax, published in the New York Law Journal on February 14, 2001, is on the Internet at <http://www.titlelaw-newyork.com/Mans/ContinLien.pdf>.

February 26, 2001