



## ***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 maintained on the Internet at [www.titlelaw-newyork.com](http://www.titlelaw-newyork.com). To obtain a copy of any case cited in this bulletin send an email to [mberey@firstam.com](mailto:mberey@firstam.com).

**Acknowledgements** - Defendants residing at the property being foreclosed alleged that the deed from them to the mortgagor was a forgery. The Appellate Division, Second Department, reversing the decision of the Supreme Court, Suffolk County, that dismissed the complaint as against said defendants, held that unsupported testimony of an interested party was insufficient to establish the deed had been forged. The acknowledgment attached to the deed raised a presumption of due execution which could be overcome only with clear and convincing evidence. *Republic Pension Services, Inc. v. Cononico*, decided December 26, 2000, is reported at 718 NYS 2d 76.

**Condominiums** - The Appellate Division, First Department, affirming the decision of the Supreme Court, New York County, held that a Board of Managers' grant of a revocable license to enclose a portion of a hallway to create a single entrance for the benefit of two adjoining units, not prohibited by the condominium's Declaration or By-Laws, did not violate New York's Condominium Act. The common interest appurtenant to each unit and the method for computing common charges was not affected and construction of a walled area did not compromise the plaintiff's use of the hallway. *Cohen v. Board of Managers of the 22 Perry Street Condominium*, decided December 21, 2000, is reported at 718 NYS 2d 61.

**Constructive Trusts** - In litigation to impose a constructive trust on a home conveyed by a father to his son nine years prior to the action, the Appellate Division held that the six year statute of limitations under CPLR Section 213(1) ran from when the son was requested to transfer back the property and refused to do so. According to the court, when a constructive trustee acquires property in a lawful manner the limitations period runs from the date the trustee breaches the agreement to transfer back the property. For property acquired wrongfully, the statute of limitations runs from the date the property was acquired. *Jakacic v. Jakacic*, decided January 22, 2001, is reported at 719 NYS 2d 675.

**Easements** - The Appellate Division, Second Department, affirmed the Supreme Court, Westchester County's denial of a motion to dismiss a complaint alleging trespass for interference with the use of a street shown on a subdivision map. A deed with reference to a subdivision map that has streets abutting the lot conveyed includes the benefit of easements in the streets, which continue absent the abandonment, conveyance, or condemnation of the street or the establishment of

adverse possession. *Bogan v. Town of Mt. Pleasant*, decided December 11, 2000, is reported at 718 NYS 2d 181.

Merger - The plaintiff in *Jarecki v. Louie* exercised an option to purchase contained in his sublease of a cooperative unit. A formal contract of sale was entered into with the unit owner containing a clause merging all prior agreements. The cooperative's board of directors rejected the plaintiff's application to purchase and the contract terminated. Nevertheless, the plaintiff asserted that the option continued and was assignable. The Court of Appeals, reversing the holding of the Appellate Division, held that the bilateral contract, which arose on exercise of the option, merged into and did not survive termination of the contract of sale. This case, decided February 15, 2001, is reported at 2001 WL 168155.

Mortgage Foreclosure - Due to the mortgagee's lengthy delay in obtaining a judgment of foreclosure and sale, the Appellate Division held that the mortgagee was entitled to interest at the rate provided in the note for only one year from the grant of summary judgment, instead of through the date of the referee's computation of the amount owed. *Yagamo Acquisitions, LLC v. Baco Development 102 Street Inc.*, decided December 21, 2000, is reported at 718 NYS 2d 325.

Mortgage Foreclosure - The failure to enter a judgment of foreclosure and sale prior to the foreclosure sale was held to be a correctable defect since the defendant would not be prejudiced thereby. The Appellate Division, First Department, affirmed the order of the Supreme Court, New York County, denying the defendant's motion to vacate the sale and granted plaintiff's motion to resettle and enter the original judgment of foreclosure and sale nunc pro tunc. *Chase Home Mortgage Corporation v. Marti*, decided January 4, 2001, is reported at 719 NYS 2d 14.

New York City, Environmental Control Board Judgments - Local Law 45 of 2000 effective September 4, 2000 added Section 26-126.5 ("Enforcement of environmental control board judgments against owners for certain building code violations") to Title 26, Chapter 1 ("Department of Buildings") to the Administrative Code of the City of New York. This Section provides an alternative method for the enforcement of Environmental Control Board judgments for building code violations with respect to private dwellings, wooden-framed single room occupancy multiple dwellings, or dwellings with a legal occupancy of three or less dwelling units. The judgment will be a lien on the related real property payable to the City Collector and recoverable by a tax lien sale or foreclosure once a record of the judgment is filed in the office of the City Collector. The lien will not, however, be enforceable against a subsequent purchaser or mortgagee in good faith unless a record of such a judgment is filed in the records of the Building Department. In addition, the judgment is not to be enforced as a tax lien against any property unless a copy of a notice of violation was mailed to the property owner and to all mortgagees and lienors of record.

New York City, Rent Stabilization Fees - Section 26-517.1(a) of Title 26, Chapter 4 ("Rent Stabilization") of the Administrative Code of the City of New York requires the owner of each housing accommodation registered under the Emergency Tenant Protection Act of 1974 with the State Division of Housing and Community Renewal to pay an annual fee of ten dollars per unit. Subdivision (b) of that Section was amended by Chapter 116 of the Laws of 1997 to provide that unpaid charges become a lien on the related real property recoverable by a tax lien sale or foreclosure once a record of them is filed in the office of the City Collector. On March 5, 2001 the City began to transfer delinquent rent stabilization fees to the Department of Finance for collection. It is understood that the Department of Finance, in accordance with Chapter 116, will not enforce the charges against a subsequent purchaser or mortgagee acting in good faith prior to the posting of charges with the City Collector.

New York City, Tax Lien Sales - Notices of a tax lien sale involving approximately 20,000 properties were to be issued commencing on or about March 27. The sale is expected to take place on or about June 1, 2001.

Notice of Pendency - The Appellate Division, Second Department, affirming the decision of the Supreme Court, Nassau County, held that a notice of pendency was properly filed in an action seeking specific performance of a provision of a joint venture agreement which would require the transfer of real property. *Urgo v. Patel*, decided January 16, 2001, is reported at 719 NYS 2d 120.

Parkland - The Second Circuit Court of Appeals, in litigation brought by citizen groups and the State of New York against the City of New York, certified to the Court of Appeals the question whether state legislative approval must be obtained before the City of New York could construct an underground water treatment plant on twenty acres of the Mosholu Golf Course in Van Cortlandt Park, Bronx County. Van Cortlandt Park was dedicated a parkland by Chapter 522 of the Laws of 1884. The Court of Appeals responded that legislative approval was necessary. According to the Court, "legislative approval is required when there is a substantial intrusion on parkland for non-park purposes, regardless of whether there has been an outright conveyance of title and regardless of whether the parkland is ultimately to be restored". *Friends of Van Cortlandt Park Parks Council Inc. v. City of New York*, decided February 8, 2001, can be found at the Court of Appeals Website at <http://www.courts.state.ny.us/ctapps/decision.htm>.

Rule Against Perpetuities - The Supreme Court, New York County, held that an agreement granting the plaintiff and his "heirs and assigns" a right to purchase an interest in certain property "at any time hereafter" without limitation as to the time in which the right could be exercised violated the rule against perpetuities codified in Section 9-1.1(b) of New York's Estates, Powers and Trusts Law. *Reynolds v. Gagen* was reported in the New York Law Journal on February 28, 2001.

April 9, 2001