



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.

Condominiums – Chapter 354 of the Laws of 2001 has amended Section 339-e of the Real Property Law to expand the definition of a “qualified leasehold condominium” to include property as to which the Queens West Development Corporation holds the landlord’s interest in the leasehold.

Continuing Legal Education – The New York State Continuing Legal Education Board has issued a bulletin setting forth procedures to assist attorney who are unable to certify completion of CLE requirements due to the events of September 11. Attorneys without access to their CLE records may submit with their biennial registration an Affirmation on a form provided by the Board certifying that although the supporting records are inaccessible there has been completion of CLE requirements. In addition, attorneys required to file a biennial registration statement between September 1, 2001 and March 31, 2002 whose compliance with CLE requirements has been “adversely affected” by the events of September 11 may apply for up to a six month extension of time to file. Such applications can be filed by an organization’s CLE coordinator on behalf of all eligible attorneys in the organization needing an extension of time. The CLE Board can be contacted at 212-428-2105.

Cooperatives – Ruling on a motion to dismiss, the Supreme Court, New York County, held that a viable cause of action arises out of the allegation that a cooperative corporation’s Board of Directors improperly rejected the application to purchase a cooperative unit made by young married or engaged persons who were likely to have children. Section 296(5) of the state’s Executive Law prohibits discrimination on the basis of age and familial status, and Section 8-107(5) of New York City’s Administrative Code prohibits refusing to approve a sale “because children are, may be or would be residing”. *Axelrod v. 400 Owners Corp.* was reported in the New York Law Journal on November 14, 2001,

Cooperatives - The Appellate Division, Second Department, held that a cooperative corporation could enforce its lien for maintenance charges unpaid as to a cooperative unit against the unit lender which foreclosed and purchased the stock attributable to the unit since the legend on the stock certificate provided that the corporation “shall have a first lien upon the shares” for such charges. Under Uniform Commercial Code Section 8-209 (as in effect prior to its amendment when UCC Article 9 was revised) a “lien in favor of an issuer upon a certified security is valid against a purchaser...if the right of the issuer of the lien is noted conspicuously on the security certificate”. *Berkowners, Inc. v. Dime Savings Bank of New York,*

decided September 17, 2001, is reported at 730 NYS 2d 339. [Note that as amended effective July 1, 2001 by Chapter 84 of the Laws of 2001, Section 8-209 provides for the Issuer's Lien if either the right of the issuer to the lien is noted on the cooperative stock or is set forth in the "Cooperative Record"].

Easements – The Appellate Division, Third Department, held that the rights under an easement of right of way passed to a grantee of the benefited land without express mention of the easement by virtue of the clause in the deed that the conveyance was made "together with the appurtenances and all of the estate and rights of the parties of the first part in and to said premises". Fischer v. Anger, decided on May 24, 2001 by the Appellate Division, Third Department, is reported at 725 NYS 2d 437.

Electronic Commerce – The Office of the Attorney General of the State of New York issued Informal Opinion No. 2001-3 which takes the position that the federal "Electronic Signatures in Global and National Commerce Act" ("E-Sign") (106 P.L. 229) does not require a recording officer to accept for recording a conveyance submitted with an electronic signature. It takes the position there is a "substantial possibility" that E-Sign does not preempt New York's "Electronic Signatures and Records Act" (State Technology Law, Consolidated Laws, Chapter 57-A) which provides that "an electronic signature shall have the same validity and effect as the use of a signature affixed by hand" (Section 104(2)) but excludes "any conveyance or other instrument recordable under article nine of the real property law" (Section 107). The Opinion, dated June 8, 2001, is reported at 2001 N.Y. AG LEXIS 6.

Indian Claims – The Federal District Court for the Northern District of New York upheld a jury verdict in which the state of New York was found liable to the Cayuga Indian Nation for \$1,911,672.62 for the fair rental value of its former homeland over 204 years and \$35,000,000 in damages for the future loss of the use and possession of that land. The Court held the plaintiff was also entitled to an award of \$211,000.326.80 in prejudgment interest on the reasonable rental award. In a 1990 decision it was held the Cayuga's 1795 and 1807 treaties with the state were invalid under the federal Non-Intercourse Act because the federal government never ratified those conveyances. The Cayuga Indian Nation of New York v. Pataki, decided October 2, 2001, is reported at 2001 U.S. Dist. LEXIS 16030.

Leases – The Supreme Court, New York County, held that the acceptance of rent from the assignee of a restaurant lease did not constitute consent to the assignment since correspondence between the parties indicated that the lessor's acceptance of the rent while considering the required application for permission to assign did not signify acceptance of the assignment. 200 Eighth Ave. Rest. Corp. v. Daytona Holding Corp. was reported in the New York Law Journal on October 24, 2001.

Mechanic's Lien - Lien Law Section 9(1) provides that a mechanics lien is to include the lienors "principal place of business within the state". The Supreme Court, New York County, considering a mechanics lien filed by a New Jersey

Corporation which never qualified to do business and did not have an office in New York, held that the corporation could specify an out of state address since the notice of lien set forth the name and address of an attorney in New York upon whom service in connection with the lien could be made. The court also opined that the corporation could file the mechanics lien notwithstanding it was not qualified to do business since filing the notice of lien was not the commencement of an action. However, the court ordered the lien discharged, holding that since the corporation was dissolved in 1990 it could not file a mechanics lien for work done in New York in 2000. The lien was not filed for the purpose of winding up the affairs of a dissolved corporation. Matter of New Jersey Window Sales Inc. was reported in the New York Law Journal on October 25, 2001.

Mortgage Recording Tax and Real Estate Transfer Tax – The New York State Department of Taxation and Finance has indicated that the interest rate to be assessed or paid, as the case may be, for the first quarter of calendar year 2002 on late payments, underpayments, overpayments or refunds of the mortgage recording tax and the real estate transfer tax will be 6%, compounded daily. Rates for the fourth quarter of 2001 are 6% on refunds and overpayments and 7% on late payments and underpayments. The interest rates are published on the Internet at http://www.tax.state.ny.us/taxnews/int_curr.htm.

New York City Municipal Office Searches - The title industry has been advised by companies engaged to search the records of agencies of the City of New York for information relating to real property that procedures implemented following the events of September 11, 2001, suspending the usual access of their researchers to property records, are delaying the timely return of their search requests. The search companies have also related their concern that the new procedures may compromise the accuracy of the information received from the City.

New York City Real Estate Taxes - The City Council has fixed the real property tax rates for fiscal year 2002 (July 1, 2001 - June 30, 2002). New tax bills reflecting the change in rates are being issued for payment on January 1 (or January 1 and April 1 for properties with quarterly payments). The rate for each \$100 of assessed valuation has been changed for Class One from 11.255 to 11.609; for Class Two from 10.847 to 10.792; for Class Three from 10.540 to 10.541; and for Class Four from 9.768 to 9.712. Class One generally includes one-to-three family residential real property, (including condominiums of three stories or fewer 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.

Notice of Pendency – The Supreme Court, New York County, held that an expired notice of pendency cannot be extended nunc pro tunc and denying a motion for an extension. CPLR 6513 provides that a prior to expiration of the three year period of a notice of pendency, a court “for good cause shown” may extend the filing, The court cited New York case law holding also that once a lis pendens expires a court may not grant permission to file a new, prospective notice. Elizabeth Street, Inc. v.

217 Elizabeth Street Corp., was reported in the New York Law Journal on November 14, 2001.

Property Condition Disclosure Act – On November 13 Governor Pataki signed into law, as Chapter 456 of the Laws of 2001, the “Property Condition Disclosure Act” as Article 14 of the Real Property Law (“Property Condition Disclosure in the Sale of Residential Real Property”). The Act applies to the sale of real property improved by a one-to-four family dwelling used or occupied, or intended to be used or occupied, in whole or in part, as the home or residence of one or more persons. It is effective on March 1, 2002 and applies to contracts of sale entered into on or after that date. The Act does not apply to the conveyance of unimproved real property, newly constructed residential real property not previously inhabited, condominium or cooperative units, or property in a homeowner’s association not owned in fee simple by the seller.

Under the Act, every seller of residential real property to whom the Act applies is to complete and deliver to his or her buyer, or the buyer’s agent, prior to the buyer’s execution of a binding contract of sale, a signed, completed statutory form of Disclosure Statement in which the seller is to make required representations as to property based on the seller’s actual knowledge. Representations are to be made on the physical condition of the property, as to whether any rights adverse to title have been asserted, and whether there are certificates of occupancy issued. The buyer is to receive a credit of \$500 against the purchase price if the seller does not deliver a disclosure statement prior to the buyer signing a binding contract of sale. The seller may also be liable for the buyer’s actual damages if, notwithstanding the delivery of a property condition disclosure statement, the seller willfully fails to comply with the requirements of the Act. A copy of the Property Condition Disclosure Act can be obtained on the Internet at <http://assembly.state.ny.us/leg/?bn=S05339&sh=t>. For further information contact Joseph DeSalvo at 914-428-3433.

Right of First Refusal – In the case of Dennis H. Sniezyk v. Stocker, a parcel of land was conveyed together with a separate grant of a right of first refusal to an adjoining parcel. The Supreme Court, Fulton County, held that right of first refusal, was personal to the holder, did not run with the land, and was extinguished on its assignment to a third party. According to the Court, the instrument granting the first refusal right did not include language that it benefited the grantee’s successors and assigns. The case, decided April 13, 2001, is reported at 729 NYS 2d 264.

First American News – An article, “New Advances and Tools for Lenders and Counsel in Title Insurance”, by James M. Orphanides and S.H. Spencer Compton, has been published in the Fall 2001 issue of The Real Estate Finance Journal. “Basics of Revised Article 9”, by Michael J. Berey, was published in the Summer 2001 Edition of the New York State Bar Association. The articles are on the Internet at http://www.firstamny.com/pages/legal_pages/lb_pb.ganjo

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