



First American Title Insurance Company of New York CURRENT DEVELOPMENTS

A continuing series of bulletins issued by email to clients of First American

Adverse Possession - The Appellate Division, First Department, held that adverse possession was established to a lot of land on which a billboard, surrounded by a chain-link fence, was constructed, notwithstanding that the City of New York was in title to the land from 1957 to 2000. The City acquired title in a tax foreclosure. Under Administrative Code, Section 11-420, property vested in the City by an In Rem foreclosure, not designated for a public use, is deemed to be held by the City for a public use for no more than three years from the date of the final judgment and is thereafter subject to the running of the statute of limitations for a claim of adverse possession. *Eller Media Company v. Bruckner Outdoor Signs, Inc.* was reported in the New York Law Journal on November 12, 2002.

Carbon Monoxide Detectors – The November 15, 2002 issue of Current Developments reported that Chapter 257 of the Laws of 2002, adding subdivision 5-A to Section 378 of the Executive Law, provides that every one-or-two family dwelling, including condominium and cooperative units, constructed or offered for sale after November 28, 2002 is required to have an operable carbon monoxide detector. Under Chapter 257, standards for the design, manufacture and installation of carbon monoxide detectors are to be established by the State Fire Prevention and Building Code Council. New York’s Department of State has taken the position that “the legal requirement to install a carbon monoxide detector will become effective only after final adoption of the new regulation by the Code Council”. It is believed that under Executive Law Section 383(1)(c) the requirement does not apply to property in the City of New York.

Contracts of Sale – A contract of sale provided that the property was to be transferred as a legal one-family dwelling and the seller was to “cure defects” that could be accomplished within a reasonable period of time. The seller claimed it could not obtain a certificate of occupancy within a reasonable time and returned the down payment. The purchaser rejected cancellation of the contract and returned the deposit. In an action for specific performance the Supreme Court, Richmond County, found that the seller had satisfied his burden of showing that it was unable to perform the contract within a reasonable time and was therefore entitled to cancel the contract. *McDowell v. SIFH LTD* was reported in the New York Law Journal on October 30, 2002.

Easements – The Appellate Division, First Department, held that an easement “for as long as the business of dealing in meats, meat products, or other food products is carried on” was not terminated when the benefited property was vacated due to a fire. There was no “clear and convincing” proof that the owner of the benefited land had abandoned the easement. In fact, it was actively seeking a meatpacking tenant. 450 West 14th St. Corp. v. 40-56 Tenth Avenue, LLC, decided October 1, 2002, is reported at 747 NYS 2d 506.

Leases – The Supreme Court, New York County, granted summary judgment to the League of Arab States in an action to enjoin its landlord from canceling its lease for its refusing to pay for additional security following September 11. The expense was not provided for in its lease. Further, as the League was not the “legal” cause of threats it received its occupancy was not a “private nuisance”. League of Arab States v. 4 Third Avenue Leasehold, LLC was reported in the New York Law Journal on November 27, 2002.

Mechanics Liens/Bonding - Chapter 582 of the Laws of 2002, effective January 1, 2003, amends the procedure to obtain the discharge of mechanics liens for work done and materials furnished for private and public improvements by posting a bond. The provisions for public and private mechanics liens in Chapter 582 are substantially the same. (A mechanics lien for a public improvement cannot be enforced against real property).

Subdivision 4 of Lien Law, Section 19 (“Discharge of lien for private improvement”) currently provides that a mechanics lien can be discharged once a court determines the amount of the bond, approves the bond or undertaking, and orders the lien discharged. Chapter 582, replacing Subdivision 4 of Section 19, statutorily sets the amount of the bond at 110% of the amount of the mechanics lien, and the bond may be filed and the lien discharged without a court order.

A bond or undertaking of a fidelity or surety company authorized to transact business in the State of New York, is effective without a court order when filed in the County Clerk office where the mechanics lien is filed, subject to certain conditions. A certified copy of the resolution of the Board of Directors of the fidelity or surety company authorizing the bond or undertaking is required to be filed with the bond or undertaking. In addition, if a Certificate of Qualification under Insurance Law Section 1111 is not filed with the bond or undertaking, the mechanics lienor may except to the sufficiency of a surety. If there is no objection to the surety, or if the Court dismisses the exceptions taken, the bond or undertaking is deemed effective. The Chapter sets forth provisions as to notice and service.

When the surety is not a fidelity or a surety company authorized to transact business in New York State, a Court in the County where the property is located must approve the bond or undertaking on not less than five days notice to the

mechanics lienor. When the Court approves the bond or undertaking it issues an order discharging the lien. Chapter 582 is at <http://assembly.state.ny.us/leg/?ch=582>.

Mortgage Foreclosure – The terms of a foreclosure sale provided that transfer taxes were to be paid by the purchaser. The successful bidder claimed that this conflicted with that part of the judgment of foreclosure and sale which required the referee to pay taxes “which are or may become liens on the premises” from the proceeds of sale. The Supreme Court, Queens County, held that the purchaser was required to pay the transfer taxes in accordance with the terms of sale since transfer taxes are not a lien on real property. Notwithstanding that the bidder was in default for its failure to close due to a genuine dispute over the payment of transfer taxes, the Court afforded it with an additional opportunity to close title and not forfeit its deposit. *Regency Savings Bank, FSB v. Terry-Ross Associates* was reported in the *New York Law Journal* on November 27, 2002.

New York City Real Estate Taxes – The City Council has fixed the rates for real property tax rates for the period July 1, 2002 – June 30, 2003. The rate for each \$100 of assessed valuation has been changed for Class One from 11.609 to 11.936; for Class Two from 10.792 to 10.564; for Class Three from 10.541 to 10.607; and for Class Four from 9.712 to 9.776. Class One generally includes one-to-three family residential real property. Class Two includes all other residential real property. Class Three includes utility real property. Class Four includes all other real property. The increase in tax for the 1st half of the tax year is payable as part of the 2nd half tax bill and equally as between the 3rd and 4th tax quarter tax bills for taxpayers making quarterly payments.

New York City Recordings – As a reminder, a State Board of Real Property Services Form RP-5217NYC is required in connection with each deed submitted for recording in the Counties of the Bronx, Brooklyn, New York or Queens effective January 1, 2003. The County Clerk of Richmond County has announced that all deeds it receives for recording after December 16 require Form RP-5217NYC, submitted in duplicate. In addition, as of January 2, 2003, the City Register will only accept for recording documents submitted using the new Internet based Automated City Register Information System (“ACRIS”). The ACRIS Tutorial Program is on the Internet at <http://nyc.gov/html/dof/html/acris.html>. See the November 27 issue of *Current Developments* at <http://www.titlelaw-newyork.com/Mans/Current47.htm>.

Sub-Prime Loans – Amendments to the Banking Law, General Business Law, and Real Property Actions and Proceedings Law by Chapter 626 of the Laws of 2002 regulate the making and foreclosure of high-cost home loans. Chapter 626 was enacted to protect consumers against abuses in the sub-prime lending market. The law, effective April 1, 2003, is at <http://assembly.state.ny.us/leg/?bn=A11856&sh=t>.

“Talkline-The Stoler Report” – The radio talk show hosted by First American Vice-President Michael Stoler will broadcast each Wednesday in January at 9PM on WSNR 620 AM. The topic on January 8 is “The Commercial Broker’s Perspective on the State of Real Estate in 2003”. Joining Michael Stoler will be Bruce Mosler, President of Cushman & Wakefield USA, Stephen Siegel, President of Insignia Financial Group, Inc. and James D. Kuhn, President of Newmark & Company Real Estate, Inc. For further program information contact Michael Stoler at mstoler@firstam.com.

The officers and employees of First American wish you health and prosperity in the New Year.

Michael J. Berey
Senior Underwriting Counsel
mberey@firstam.com
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