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CURRENT DEVELOPMENTS

This is another in a series of bulletins issued to clients of First American on cases and legislation of interest. A copy of any item noted can be requested by email to Michael J. Berey, Senior Underwriting Counsel at MB@TheOffice.net or by contacting your account representative at 212-922-9700. Issues of "Current Developments" are available on the Internet at www.titlelaw-newyork.com.

New York City Real Property Transfer Tax - As previously reported, the Tax Law and City's Administrative Code were amended effective August 28, 1997 to allow for the RPT a continuing lien deduction from consideration on the transfer of a one-to-three family house, an individual residential cooperative or condominium unit, or an economic interest in such property if the continuing lien existed before the date of transfer. The exclusion from consideration does not apply to a transfer to the lienor or to a REIT. The Department of Finance in a recent meeting with representatives of the title industry has advised that the City will allow for a continuing lien deduction in cases of arm's length for consideration transfers and even when the continuing lien is assigned to a new lender, so long as the mortgage is not modified in any respect other to provide for the grantee's assumption of the debt. The deduction will not, however, in any event, be allowed if the lien was granted in contemplation of the transfer of the property.

New York City Real Property Transfer Tax - The rate of tax for the transfer of an individual condominium unit or individual cooperative apartment is 1% when the consideration is \$500,000 or less and 1.425% when the consideration is a greater amount. In those instances where multiple units occupied as a single unit by the transferor have been sold, the Department of Finance of the City of New York has required payment of the commercial transfer tax rate unless a single certificate

of occupancy had been issued for the combined units. Absent such proof, the transfer tax rate applied was the commercial rate, 1.425% when the consideration is \$500,000 or less, and 2.625% in all other instances.

As previously reported, Technical Policy and Procedure Notice #3/97 of the City's Department of Buildings dated November 3, 1997 eliminates for all multiple dwellings "effective immediately" the requirement that the certificate of occupancy be amended when apartments are combined to create larger dwelling units. An Alteration Type II application is needed and, after filing of a completion sign-off by a Professional Engineer or Registered Architect, the Department will issue a letter of completion which, the Department advises, will state that "the Department of Buildings does not require a new or amended Certificate of Occupancy for combining these apartments".

The Department of Finance has informally confirmed that it will apply the lower rate of tax to the transfer of combined units absent an amended certificate of occupancy if there is included with the RPT form an affidavit stating that (a) the transfer involves the combination of one or more units into a single unit, (b) the second kitchen has been eliminated, (c) the combination of units has been approved by the Department of Buildings, and (d) the approval was issued pursuant to Technical Policy and Procedure Notice #3/97 of the Department of Buildings. The Department's letter of completion should be attached to the affidavit. Contact Michael Alfieri at 212-922-9700 for additional information.

New York City Tax Lien Sales - Local Law 26 of 1996 (amended in part by Local Law 37 of 1996) authorized the City of New York to conduct tax liens sales until December 31, 1997. The first sale of tax liens took place May 26, 1996. Pursuant to Local Law 98 of 1997, approved by the Mayor on December 30, 1997, the authority to conduct the sale of tax liens has been extended to December 31, 1999. Local Law 98 made the following additional changes:

1. Local Law 26 of 1996 provides that in the case of Class

One property and of Class Two property that is a residential cooperative or a condominium unit a tax lien may be sold when a real estate tax has been unpaid for three years. For all other property, it is sufficient that any type of charge, be it a real estate tax, a water charge or a sewer charge be unpaid for one year so long as there is a real estate tax other than a Business Improvement District tax then unpaid. This provision remains in effect for sales of other than “subsequent tax liens”.

A “subsequent tax lien” is defined in Local Law 98 as being a lien that includes a real estate tax component arising after the date of a tax lien sale relating to the same tax lot. If the prior tax lien remains unpaid at the date of first publication of the sale of the subsequent tax lien, the latter lien may now be sold even if it is unpaid for less than one year, excepting as to Class One or Class Two property that is a residential cooperative or a condominium unit where the tax lien must be unpaid for at least one year.

2. The Commissioner of Finance is no longer required to issue a notice requesting statements of interest for a negotiated sale of tax liens when the sale is to be to a trust or other entity created by the City of New York or in which the City has an ownership or residual interest.

3. Any tax lien that was noticed for sale but not sold on the original sale date may be sold without any additional advertisement or notice if the subsequent date of sale is within six months of the date of the second publication of the notice for the original sale. Local Law 26 requires the second publication to be not less than ten days preceding the date of sale.

4. A tax lien sold on property owned for providing low income housing by a Housing Development Fund Company organized under Article XI of the Private Housing Finance Law with the consent of the Department of Housing Preservation and Development, is “deemed defective”.

5. The purchaser of a tax lien will have the same rights and remedies as the City of New York would have if the tax lien(s) had not been sold. Further, the Corporation Counsel is authorized in his discretion to represent the purchaser of a tax lien or the holder of a tax lien certificate in any matter relating to the lien, the certificate or the advertisement for the sale of tax liens.

Sanction Rules - As previously reported, 22 NYCRR Section 130-1.1 (“Rules of the Chief Administrator”) has been amended to include a requirement that all pleadings, written motions and other papers “served on another party or filed or submitted to the court shall be signed by an attorney, or by a party if the party is not represented”. The failure to promptly correct the omission of the signature may require that the paper be stricken. The effective date of this amendment was changed from January 1, 1998 to March 1, 1998. Contact Alan Rubin at 516-832-3200 for further information.

Bankruptcy - The United State Court of Appeals for the Fourth Circuit has held that Bankruptcy Code Section 502 (b)(6) limits a lessor’s claim for damages for termination of a lease against a guarantor of a lease even when only the guarantor and not the lessee is in bankruptcy. In Re Lindsey, 1997 U.S. App. LEXIS 30502.

Deficiency Judgments - The Appellate Division, Second Department, has held that the complaint in a foreclosure action cannot be amended after entry of the judgment of foreclosure and sale to enable recovery of a deficiency judgment against guarantors notwithstanding that they were party defendants in the action. Barclays Bank of New York, N. A. v. Strathmore Five Realty Co., 1997 N.Y. App. Div. LEXIS 13074.

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