



**First American Title Insurance Company of New York
CURRENT DEVELOPMENTS
SPECIAL ADDITION**

Current Developments issued September 8, 2003 reported that the New York State Department of Finance has determined that new Section 663 of the Tax Law requires that the owner/mortgagor of the property being foreclosed execute Schedule D of Form TP-584 to claim the exemption applicable to “a mortgagor conveying the mortgaged property to a mortgagee in foreclosure” The Bulletin reported that the Department will not accept the signature on Schedule D of either the referee in the foreclosure action or the mortgagee.

The Department has reconsidered its position at the request of the Real Property Section of the New York State Bar Association. The Department now advises that Form TP-584 will be accepted by a county recorder, and a referee’s deed will be accepted for recording, if the referee conveying property in a mortgage foreclosure signs the bottom of Schedule D of Form TP-584 as “*referee in the foreclosure action*” in the section captioned “Exemption for nonresident transferor(s)/seller(s)” and (regardless of whether the referee knows whether the owner/mortgagor is, in fact, a resident or a non-resident of New York State) claims the exemption from the payment of estimated personal income tax by a non-resident which provides that the “transferor/seller is a mortgagor conveying the mortgaged property to a mortgagee in foreclosure”. Otherwise, absent curative legislation, Form TP-584 will not be accepted and a referee’s deed will not be recorded.

The referee’s may not, however, consistent with existing practice, sign as or on behalf of the grantor at the bottom of Schedule C of Form TP-584. That part of the Form will continue to be accepted with the signature of one party to a transfer which, in the case of a referee’s foreclosure deed, will likely be the transferee.

It was further reported in the Bulletin of September 8 that a property owner will be required to execute Schedule D of Form TP-584 (or Form IT-2663 where there is no exemption applicable on Schedule D) when a deed is being executed by any court appointed person (other than a fiduciary appointed in an estate proceeding), such as a sheriff acting to complete a sheriff’s sale or a court ordered transfer. While the Department continues to review the issue, this remains its current position.

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