

**First American Title Insurance Company  
of New York**  
228 East 45th Street, New York, New York 10017-3303  
[www.firstam.com](http://www.firstam.com) [www.titlelaw-newyork.com](http://www.titlelaw-newyork.com)

## **CURRENT DEVELOPMENTS**

This is another in a series of bulletins issued to clients of First American on cases, legislation and other matters of interest. A copy of any item noted below can be requested by email to Michael J. Berey, Senior Underwriting Counsel at [MB@TheOffice.net](mailto: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](http://www.titlelaw-newyork.com). Fax recipients can request future issues by email.

**Adverse Possession** - The Court of Appeals has held that under Real Property Law Section 541 ("Adverse possession; how affected by relation of tenants in common"), a tenant in common must, absent an actual or implied in law ouster of its co-tenant, possess the premises exclusively for twenty years before successfully asserting a claim of adverse possession. A co-tenant's holding adversely commences after ten years of exclusive possession. *Meyers v. Bartholemew*, decided May 5, 1998.

**New York City Real Property Transfer Tax** - As previously reported, the Tax Law and the City's Administrative Code were amended effective August 28, 1997 to allow for the RPT a continuing lien exclusion 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 law states that the exclusion does not apply (i) to a transfer to the existing lienor or to a REIT, or (ii) to a mortgage, lien or encumbrance "placed on the property" in anticipation of the conveyance or by reason of deferred payments of the purchase price.

The City's Department of Finance, Tax Law Division, has issued for comment "Draft Amendments" to the "Rules of the City of New York relating to the Real Property Transfer Tax" on application of the

exclusion. The draft provides, in part, that a mortgage placed on the property within two years of a conveyance will be presumed to be in anticipation of the transfer and not an excludible lien. In addition, a mortgage will not be deemed an excludable lien if after the conveyance the identity of the mortgagee changes and there has been a material change in the loan's interest rate or repayment term. A change of ten percent or more would be considered material.

The Tax Law Division requests comments on the Draft Amendments by June 12. A copy can be obtained on the Internet at <http://www.titlelaw-newyork.com> under Transfer Tax.

Business Corporation Law ("BCL") Amendments - Chapters 449, 470 and 494 of the Laws of 1997 and Chapter 17 of the Laws of 1998 have been enacted to amend provisions of the BCL to (as stated in the Memorandum of Support to the bill that became Chapter 449) "make New York a more hospitable and attractive state for incorporation". The changes made by this legislation were effective by February 22, 1998, and include the following.

Sections 901, 907, 914 and 915 of the BCL were amended by Chapters 449 and 470 to conform to and expand on the merger provisions of the Limited Liability Company Law. Authorized are a merger or consolidation of two or more domestic corporations and limited liability companies, a domestic corporation and a joint stock corporation formed under the General Associations Law, foreign corporations with domestic limited liability companies, and domestic corporations with one or more domestic or foreign limited partnerships, limited liability companies or other foreign business entities. Merger or consolidation with an entity formed under the law of another jurisdiction depends, of course, on whether the law of that other jurisdiction authorizes such merger or consolidation. In each instance title to all real and personal property of the constituent entities vests by operation of law in the surviving or consolidated entity. There is no provision for merger or consolidation with a Limited Liability Partnership.

Prior to enactment of Chapter 449, New York's Department of State could not accept for filing a certificate of merger or consolidation absent payment of all fees and taxes, including any interest and

penalties thereon, due to the State's Department of Taxation and Finance. To expedite the process of merger and consolidation, Section 56 of the Chapter amends BCL Section 907 ("Merger or consolidation of domestic and foreign corporations") to provide for the filing of an agreement with the Department of Taxation and Finance that the surviving or consolidated foreign corporation will within thirty days after the date of filing of the certificate or merger or consolidation file the final franchise tax report for its constituent domestic corporation(s) and promptly pay to the Department all fees, taxes, interest and penalties due from each constituent domestic corporation.

Section 615 of the BCL ("Written consent of shareholders . . . without a meeting") has provided that shareholder action can be taken without a meeting on written consents signed by the holders of all outstanding shares. Section 33 of Chapter 449, amending Section 615, provides that if permitted by the certificate of incorporation, only written consents signed by the number of shareholders required to authorize the action in question must be obtained. However, written consents obtained are only effective if delivered to the corporation within sixty days of the date of the earliest dated consent.

Section 909 of the BCL ("Sale, lease, exchange or other disposition of assets") has required the consent of two-thirds of all outstanding shares entitled to vote to sell, lease, exchange or otherwise dispose of all or substantially all of a corporation's assets. Section 58 of Chapter 449 amends that Section to require only the vote of a majority of all outstanding shares entitled to vote for such action for (i) corporations formed after February 22, 1998 and (ii) any corporation formed prior to that date which amends its certificate of incorporation to provide for a majority vote.

Section 1001 of the BCL ("Authorization of Dissolution") has required the consent at a meeting of shareholders of two-thirds of the outstanding shares entitled to vote to effect a dissolution. Section 63 of Chapter 449 amends that Section to require only the vote of a majority of all outstanding shares entitled to vote for such actions for (i) corporations formed after February 22, 1998 and (ii) any corporation formed prior to that date which amends its certificate of incorporation to provide for a majority vote.

**In addition, under the amendment to Section 1001, the certificate of incorporation of any domestic corporation can be amended to provide that dissolution can be authorized at a meeting of shareholders by a specified proportion of all outstanding shares entitled to vote thereon so long as such proportion is not less than a majority. Contact Michael Kelly at 212-922-9700 for more information.**

**Sanction Rules - As previously reported in “Current Developments”, 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 March 1, 1998. The following information has been obtained.**

**The required signature must be that of a partner or associate with knowledge and can not be a “law firm” signature. The Rule applies to all civil cases other than cases in town and village courts, small claims cases in any court, and certain Family Court cases, and to papers served and filed in an appellate court. The Rule applies to all papers including, without limitation, discovery demands, affidavits, memoranda of law and briefs. If the signature is on a page submitted with but separate from the papers in question, that separate page should recite “Part 130 Certification for the following papers:” followed by a list of all papers included. Contact Alan Rubin at 516-832-3200 for further information.**

**May 11, 1998**