



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

Current Developments issued August 30, 2004 reported on state legislation amending the Tax Law as regards mortgage recording tax for transactions on property in New York City.

Chapter 60 of the Laws of 2004 amended paragraph (a) of subdivision 1 of Tax Law Section 255 (“Supplemental Mortgages”) to provide that mortgage recording tax will be applied to a “spreading agreement or additional mortgage” recorded in the City of New York imposing the lien of a mortgage on property not originally covered by a recorded primary mortgage unless that additional property is owned by the mortgagor of the real property subject to the recorded primary mortgage. Chapter 60 also eliminated the practice by which a wrap-around mortgage is utilized to refinance an underlying mortgage without increasing the amount of overall mortgage indebtedness. In such instances the courts have held that no mortgage recording tax is payable on what is the mere substitution of indebtedness. These changes went into effect on November 18, 2004.

A Memorandum interpreting these Tax Law amendments has been posted to New York State Department of Taxation and Finance’s WEB Site. TSB-M-04(9)R, captioned “2004 Amendments to the Tax on Mortgages”, was posted November 23 and is on the Internet at [http://www.tax.state.ny.us/pubs and bulls/Memos/mortgage_rec memos.htm](http://www.tax.state.ny.us/pubs_and_bulls/Memos/mortgage_rec_memos.htm).

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