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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 mberey@firstam.com or by contacting your account representative at 212-922-9700. Issues of “Current Developments” are available on the Internet at www.titlelaw-newyork.com. Fax recipients can request future issues by email.

Acknowledgments – As previously reported, Chapter 179 of the Laws of 1997 added Section 309-a to the Real Property Law, effective July 8, 1997, to enable the use of a new uniform form of acknowledgement and a uniform form of certificate for a proof by of execution by a subscribing witness. The New York Department of State’s Division of Licensing Services has issued an advisory to the state’s county clerks stating that the new uniform acknowledgement can be used only for acknowledgments taken within the state of New York for instruments relating to real property in New York.

Chapter 596 of the Laws of 1998, signed into law September 23, adds new section 309-b to the Real Property Law authorizing the use outside of New York of a uniform form of acknowledgement and a uniform form of certificate of proof of execution by a subscribing witness for instruments relating to property situated in New York. The new section is effective January 21, 1999, 120 days after the date on which the Chapter was enacted.

Federal Priority Statute – The United States Supreme Court has held the priority of a federal tax lien over a judgment lien is governed by the Federal Tax Lien Act of 1966 (26 USC Sec 6321 et seq.), not by the

federal priority statute (31 USC Sec 3713 (a)) which provides, in part, that a claim of the government “shall be paid first” when a decedent’s estate cannot pay all of its debts. Under the Act, a federal tax lien is not valid against a mortgagee, purchaser or judgment creditor until notice of the tax lien has been filed in the county in which the property subject to the lien is located. *United States v. Estate of Romani*, 118 S.Ct. 1478 (1998).

Judgments – A judgment docketed entered with a minor misspelling of the name of the judgment debtor was held not to constitute a lien on real property. The court declined to apply the doctrine of *idem sonans* “under which a variance in the spelling of two names that sound alike is immaterial under the law” to filings affecting real estate in New York. *Big Fun L.L.C. v. Gross*, Supreme Court, New York County, decided July 15, 1998. (Justice Gammerman)

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. Draft amendments to the “Rules of the City of New York relating to the Real Property Transfer Tax” on the application of the exclusion were issued for comment and have been available for review at www.titlelaw-newyork.com.

A meeting attended by a representative of First American and others to discuss the draft amendments was held at the Department of Finance on September 24. As a result of that meeting, a number of changes to the draft amendments are to be made. For example, the draft states that a mortgage placed on the property within two years prior to a conveyance will be presumed to be in anticipation of the transfer and not an excludable lien. This provision will be deleted from the amendments.

Further information on application of the exclusion will be provided on receipt of revised draft amendments.

Prejudgment Attachments – The United States Court of Appeals, Second Circuit, has upheld issuance of an order by the District Court for the Southern District of New York under Rule 65 of the Federal Rules of Civil Procedure enjoining a defendant from transferring property located outside of New York not involved in the litigation to prevent the dissipation of assets. The court approved the use of this procedure when it is established that money damages will be an inadequate remedy due to the pending insolvency of a defendant who has engaged in a pattern of secreting or dissipating assets to avoid a judgment. This form of attachment is known in England as the “Mareva” injunction. *Alliance Bond Fund, Inc. v. Grupo Mexicano De Desarrollo*, 1998 WL 220594 (Decided May 6, 1998)

Real Estate Taxes/School Tax Relief (“STAR”) Exemption – The Executive Director of the Office of Real Property Services in the Executive Department of the State of New York has advised that the credit against school property taxes under the STAR program cannot be transferred to the seller’s new home. The Executive Director advises sellers to seek a credit at closing to obtain the current school year’s STAR tax saving. The STAR program went into effect for senior citizens for the 1998-1999 school year. All owner-occupied, primary residences are first eligible for the program for the school year 1999-2000.

Receivers – Under subdivision 2-a, added to Real Property Actions and Proceedings Law Section 1325 effective November 1, 1998, when a receiver is appointed in an action to foreclose a mortgage the order of appointment “shall” direct the owner or lessee of the mortgaged premises to turn all security deposits over to the receiver to be held pending a further order of the court.

Continuing Legal Education (“CLE”) - The Administrative Board of the Courts of the State of New York has approved a CLE requirement effective December 31, 1998 for all attorneys admitted to the New York State Bar practicing law in New York. The new rules require twenty-four hours of accredited CLE in ethics, “skills”, practice management and areas of professional practice every two years, and thirty-six hours of accredited CLE during the first two years for those admitted to the Bar after October 1, 1997. Lawyers admitted in New York who practice outside of New York will be required to certify compliance with the CLE requirements of the jurisdiction in which they practice. CLE program rules are available on the Internet at <http://ucs.ljx.com>.

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