



*First American Title*

First American Title Insurance Company

# Current Developments

## SPECIAL EDITION

*Governor Cuomo has announced that he signed the following legislation on September 23.*

### **Electronic Recording**

Senate Bill 2373A and Assembly Bill 6870A authorize county recorders to record, “during business hours maintained by the recording officer”, instruments affecting real property submitted as a “digitized paper document” or as an “electronic record.” The new law is effective on the 365th day after the date of its enactment.

The State’s Electronic Signatures and Records Act, Article III of Chapter 57-a of the State Technology Law, commonly known as “ESRA”, allows instruments signed electronically to be received, accepted, recorded and stored by governmental entities in an electronic format. However, ESRA has not applied “to any conveyance or other instrument recordable under article 9 [‘Recording instruments affecting real property’] of the real property law.” The new law removes the exclusion of real property recordings from ESRA.

According to new Real Property Section 291-I (“Validity of electronic recording”), the requirement that the original of a document be accepted for recording is satisfied by the submission of a digitized paper document or an electronic record of the instrument. The requirement that the instrument be signed is satisfied if the digitized image includes the digitized image of a wet signature or if the signature, in the case of an electronic record, is signed by the use of an electronic signature.

A “digitized paper document” is “a digitized image of a paper document that accurately depicts the information on the paper document that cannot be altered without detection.” An “electronic record” is “information evidencing any act, transaction, occurrence, event or other activity, produced or stored by electronic means and capable of being accurately reproduced in forms perceptible by human sensory capabilities.”

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Rules and regulations governing the recording by electronic means are to be issued prior to the effective date by New York State's Office of Technology Services, the Electronic Facilitator under ESRA.

The Assembly Bill is posted at:

[http://assembly.state.ny.us/leg/?default\\_fld=&bn=A06870&term=2011&Text=Y](http://assembly.state.ny.us/leg/?default_fld=&bn=A06870&term=2011&Text=Y).

### **Private Transfer Fees**

Under Senate Bill 5203A and Assembly Bill 7358A, private transfer fee obligations entered into in New York on and after its effective date are void and unenforceable. Disclosures are required for any private transfer fee obligation imposed prior to the effective date and the failure to meet the requirements of the legislation will render the obligation unenforceable. The new law is effectively immediately.

A private transfer fee obligation is a charge imposed by a developer, typically one percent (1%) of the sales price, on each transfer of a property during a period of 99 years. According to the American Land Title Association, private transfer fee obligations have been banned in 37 other states. In addition, the Federal Housing Finance Agency has issued a proposed rule, published at 74 FR 49932 (August 18, 2010), that would prevent Fannie Mae, Freddie Mac and Federal Home Loan Banks from investing in mortgages on property subject to these fees.

The Chapter sets forth types of charges which are not to be considered private transfer fees, including the following:

“[A]ny fee, charge, assessment, fine, or other amount payable to a homeowners', condominium, cooperative, mobile home, or property owners' association pursuant to a declaration or covenant or law applicable to such association, including, but not limited to, fees or charges payable for estoppel letters or certificates issued by the association or its authorized agent”.

The Assembly Bill is posted at:

[http://assembly.state.ny.us/leg/?default\\_fld=&bn=A07358&term=2011&Text=Y](http://assembly.state.ny.us/leg/?default_fld=&bn=A07358&term=2011&Text=Y).

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