

First American Title Insurance Company of New York
228 East 45th Street, New York, New York 10017

CURRENT DEVELOPMENTS

This is another in a series of bulletins being issued to clients of First American. For future issues, fax recipients are requested to send their email addresses to Michael J. Berey, Senior Underwriting Counsel, at mberey@firstam.com. “Current Developments” is available on the Internet at www.titlelaw-newyork.com.

Mortgage Foreclosures: The Appellate Division, Second Department, reversing the decision of the Supreme Court, Kings County, held that the owners of property purchased at a foreclosure sale can bring a strict foreclosure action under RPAPL Section 1352 to cut off the leasehold interests of commercial tenants not joined in the action, notwithstanding that the foreclosure judgment directed the sale subject to the rights of tenants or persons in possession. *6820 Ridge Realty LLC v. Goldman* was reported in the New York Law Journal on November 30, 1999.

Nassau County Transfer Tax: The Nassau County Transfer Tax, which went into effect for all real property transfers occurring on or after August 16, 1999, has been repealed by the Nassau County Legislature. The repeal, which was passed on November 24, 1999, will become effective for all transfers taking place on or after December 25, 1999, provided that the County Executive, prior to that date, neither vetoes the bill or signs it into law. For further information contact Amelia Kelly at 516-832-3200.

New York City: Due to Y2K compliance concerns at the Department of Housing Preservation and Development, all new emergency repairs will be billed by the Department of Finance as of January 1. Charges already entered in HPD will continue to be maintained and billed by HPD until the databases of the Departments are merged.

The Department of Finance will also in 2000 begin billing property owners for sewer connection charges not billed by the Department of Design and Construction. These charges may be for work done a number of years ago and, absent acceptance by the City of an “innocent owner” defense, these charges could impact owners not in title when the work was done. This is expected to particularly impact property owners in Queens and Staten Island. For further information contact Michael Alfieri at 212-922-9700.

Title Policy Endorsements : New title policy endorsements filed by the Title Insurance Rate Service Association, Inc. (“TIRSA”) on behalf of its members have been approved by the New York State Insurance Department. First, a new Access Endorsement for loan policies only is now available. The filed policy forms insure against loss or damage sustained or incurred by reason of a “lack of a right of access to and from the land”. The new endorsement expands on that coverage for a lender by insuring against loss sustained by the Insured if the land does not abut on a physically open public street. The name of the street is to be entered in the endorsement.

The existing TIRSA Contract Vendee endorsement, with minor, non-substantive modifications, has been amended and is now the TIRSA Residential Contract Vendee Endorsement. This endorsement affords title insurance to an insured executing a contract to purchase a one-to-four family residence or an individual residential condominium or cooperative unit.

TIRSA Commercial Contract Vendee and Option endorsements are new endorsements. The Commercial Contract Vendee and Option endorsements insure against loss or damage incurred by an insured vendee or optionee if its interest is held to be unenforceable for reasons other than the Insured’s failure to fulfill the terms of the contract or option. The endorsements also insure against loss or damage if either a bankruptcy trustee or the Contract Vendor/Optionor (or its successor record title holder) as a debtor in possession refuses to convey the interest agreed to be transferred and the Insured is in possession of the

Land. Coverage is also afforded against the inability of the insured to take title free of adverse interests not excepted in the Policy, as endorsed. The Vendee and Option endorsements list a number of excepted title matters.

The coverage of these two endorsements is similar. However, a specific, separate amount of insurance must be set forth within the Option Endorsement. In addition, the Option endorsement does not except liens and encumbrances arising subsequent to exercise of the option. Further, the endorsements reference different subdivisions of Real Property Law Section 294, which Section sets forth procedures that must be followed to maintain the effectiveness as notice of the recorded contract or option, or memorandum thereof.

As in the case with the TIRSA Residential Contract Vendee Endorsement, an Owner's policy with either of these two endorsements can be issued in an amount which is not less than the down payment specified in the contract to an amount not exceeding the contract price and the cost of contemplated improvements and other development and construction costs, as elected by the insured.

The liability of a title company under these two endorsements is not to exceed the least of (i) the Amount of Insurance stated in Schedule A for a Vendee Endorsement/the amount specified in the Option endorsement or (ii) the sum of (A) the excess of the fair market value of the land (less the actual cost of the buildings and improvements on the Land made by the Insured and *related costs*) when the purchase price is payable above the price at which the Insured could have acquired the Land under the contract or option, (B) the unreimbursed portion of the consideration paid by the Insured, (C) the actual cost of construction incurred by the insured under the contract or option, and (D) costs directly *related* to the acquisition of the Land and the construction of the buildings and improvements on the Land.

Related costs include, but are limited to, reasonable legal fees and other expenses incurred in obtaining building and occupancy permits, architectural, engineering and construction management fees, environmental testing and review, landscaping, and interest on loans for construction of the buildings and improvements.

The TIRSA Residential Contract Vendee endorsement provides (as did the TIRSA Contract Vendee Endorsement prior to its revision) that the liability of the Company increases by covered amounts expended by the Insured so long as the Insured has no actual or constructive notice of any defect in or objection to title when such expenses are incurred. The Commercial Contract Vendee and Option endorsements provide for the Policy to be downdated, at the election of the Insured, to the date when a payment is made or a cost is incurred. The Date of Policy, subsequent to which certain title matters are excepted from coverage, is the original policy date or last redate date.

TIRSA endorsement forms can be found at www.titlelaw-newyork.com under “Title Insurance and Survey”. Pricing for the endorsements should be discussed with a First American account representative.

Internet News: The New York State Court of Appeals WEB site at www.courts.state.ny.us/ctapps has been updated. It will provide decisions of the court on the date of their release to the general public and a list of new filings. Also, www.titlelaw-newyork.com can now be searched by entry of a keyword.

This is the last issue of Current Developments for 1999. The officers and employees of First American wish you health and prosperity in the new millennium!!

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