



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

Mortgage Satisfactions – Real Property Law ("RPL") Section 275 ("Certificate of discharge of mortgage required") requires a mortgagee to arrange for a certificate of discharge to be presented for recording within thirty days of the date on which the amount due the mortgagee is paid. Real Property Actions and Proceedings Law ("RPAPL") Section 1921 ("Discharge of mortgage") requires a mortgagee to arrange for a certificate of discharge to be presented for recording or, on request, delivered to the mortgagor or the mortgagor's designee within forty-five days of payment.

Chapter 467 of the Laws of 2005, effective November 7, 2005 amended RPAPL Section 1921 to require the certificate of discharge to be presented within thirty days of payment. In addition, both RPL Section 275 and RPAPL Section 1921 were amended to provide that the mortgagee shall be liable to the mortgagor in the amount of \$500.00 if the certificate of discharge is not presented for recording within 30 days, \$1,000.00 if the certificate is not presented for recording within 60 days, and \$1,500.00 if the certificate is not presented for recording within 90 days. For the purposes of these amendments, the term "mortgagee" does not include a person or entity making less than five mortgage loans in a calendar year.

New York City Recordings/Tax Lot Subdivisions - At a meeting of representative of the New York State Land Title Association and officials of New York City's Department of Finance on September 22, 2005 the City Register advised that effective immediately her offices would not accept for recording a deed or a mortgage that affects only a part of a tax lot without the prior subdivision of the tax lot. The process to subdivide a tax lot in the City of New York, and the forms to do so, are on the Department's website at http://nyc.gov/html/dof/html/pub/pub_property_lots.shtml.

The following information has been obtained in further communications with the City Register:

1. The requirement that there be a tax lot subdivision prior to recording will not apply to any instrument other than a deed. A mortgage, lease, or easement, for example, can be recorded without there having been a prior tax lot subdivision. In addition, a deed to air space above a horizontal plane will be accepted for recording without there being a prior tax lot subdivision.

2 The requirement that there be a tax lot subdivision prior to recording does not apply when the City of New York, or any of its agencies, is the grantor of a deed to a part of a tax lot.

3. The requirement that there be a tax lot subdivision prior to recording will not, in most instances, apply when a part of a tax lot is being conveyed together with another parcel on which there are existing improvements.

4. The requirement that there be a tax lot subdivision prior to recording will not apply when the City surveyor requires a deed to be recorded as part of the process of subdividing a tax lot.

5. If the property has been subdivided but the newly issued tax lots are not shown in ACRIS (the "Automated City Register Information System"), the Deputy Register for the County in which the property is situated can be contacted to arrange for the new tax lots to be reflected in ACRIS to enable recording.

It is believed that a deed for a part of a tax lot will in all instances be recorded if all ACRIS forms and the deed do not identify the property as being a part of a tax lot.

This requirement does not currently apply to the recording of deeds in Staten Island, which is under the jurisdiction of the Richmond County Clerk.

Notice of Pendency – The Appellate Division, First Department, in its decision in *Campbell v. Smith*, reported at 747 N.Y.S. 2d 18 (which decision was "recalled and vacated" by its holding reported at 768 N.Y.S. 2d 182) held that a mortgage foreclosure may not continue when the notice of pendency filed in the action as required by the Civil Practice Laws and Rules ("CPLR") has expired without being renewed. Other state court decisions, also reported in *Current Developments*, dealt with the impact on a mortgage foreclosure of the failure to extend the CPLR notice of pendency and the cancellation of the lis pendens for the failure to comply with the service requirements of CPLR Section 6512. Under CPLR Section 6512 a lis pendens is effective only if, within thirty days after its filing, a summons is personally served on the owner-defendant or service is effectuated by court ordered publication and publication is subsequently completed.

The issue of whether the mortgage foreclosure can proceed in such instances has been resolved by the enactment of Chapter 387 of the Laws of 2005, adding Section 6515 ("Successive Notice of Pendency") to the CPLR effective as to RPAPL Article 13 mortgage foreclosures pending on and after August 2, 2005. Section 6515(a) provides that "(i)n a foreclosure action, a successive notice of pendency may be filed to comply with section 1331 of the [RPAPL], notwithstanding that a previously filed notice of pendency in such action or in a previous foreclosure action has expired pursuant to Section 6513 of this article or has become ineffective because service of a summons has not been completed within the time limited by section 6512 of this

article, whether or not such expiration has been determined by the court. This subdivision is inapplicable to an action to foreclose a mechanic's lien..."

"The Stoler Report: Real Estate Trends in the Tri-State Region" – New York's only television show on real estate trends in the tri-state region, hosted by First American Vice-President Michael Stoler, airs on CUNY TV, Channel 75. The program "Developments in Downtown", first broadcast on September 26, will be re-broadcast on October 8 at 4 PM, October 11 at 2 AM, October 13 at 11 PM, October 17 at 10 AM, 4 PM and 10 PM, October 18 at 5 AM, October 19 at 7 AM, 1 PM and 12 Midnight, and October 22 at 5 PM. Michael Stoler's guests are Christopher Daly, President, The Sheldrake Organization Inc., Stephen Kliegerman, Executive Director, Halstead Properties, Edward J. Minskoff, President, Edward J. Minskoff Equities Inc., Stephen Siegel, Chairman, Global Brokerage, CB Richard Ellis, Kent Swig, President, Swig Equities, and Steven Witkoff, President, The Witkoff Group, Inc. WEB Casts are at <http://www.stolerreport.com>.

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