First American Title Insurance Company of New York
CURRENT DEVELOPMENTS

<u>Affordable Housing</u> – Current Developments issued May 31, 2007 reported on the April 11, 2007 decision of the Supreme Court, New York County, in Real Estate Board of New York Inc. v. City Council of the City of New York, regarding Local Law 79 of 2005, adding Chapter 9 ("Right of First Refusal and First Opportunity to Purchase") to Title 26 of New York City's Administrative Code. The purpose of the Local Law was to maintain multi-family rental housing which is "assisted rental housing" as "affordable housing" when the owner of the property intends to prepay subsidized mortgages or to opt out of federal rent subsidy programs in order to be able to charge market rents. Prior to a "conversion" of "assisted rental housing" (including a "transfer of title, leasing, intention to sell or lease, mortgage pre-payment, withdrawal from an assisted housing program, decision not to extend or renew participation in the [rental assistance] program or any action taken by the owner that would result in the termination of participation by the owner in the assisted rental housing program"), a "tenant association" or a "qualified entity" was to be afforded a "first opportunity to purchase" and a "right of first refusal" to purchase. The Court ruled that the Local Law was preempted by state and federal law and therefore void.

The Appellate Division, First Department, has affirmed the lower court's ruling, holding that Local Law 79 is preempted by Section 8 of the United States Housing Act of 1937, codified at 42 U.S.C. Section 1437f. According to the Appellate Division, "Local Law 79 was enacted, in part, with the aim of nullifying the federal provision allowing for an owner's voluntary withdrawal [from Section 8]…" and "would have the effect of discouraging owners from embarking on new Section 8 housing developments, which would run afoul of congressional goals". Mother Zion Tenant Association v. Donovan, decided October 7, 2008, is reported at 865 N.Y.S. 2d 64.

<u>Contracts of Sale</u> – Plaintiffs-Sellers entered into a contract to sell their house in Clarence, New York to the Defendants for $505,000. The rider to the contract included the following "attorney approval contingency":

> **"This Contract is contingent upon approval by attorneys for Seller and Purchaser by the third business day following each party's attorney's receipt of a copy of a fully executed Contract (the 'Approval Period')….If either party's attorney disapproves this Contract before the end of the Approval Period, it is void and the entire deposit shall be returned".**

The Defendants decided to buy a different house, and instructed their attorney to disapprove the contract. The Plaintiffs-Sellers sold the house to other parties in late 1998 for $385,000.00. They sued the Defendants for breach of contract, seeking to recover the difference between the contract price and the eventual sales price, plus "carrying costs".

The Supreme Court held that the Defendants acted in bad faith by instructing their attorney to disapprove the contract and entered a judgment for the difference between the ultimate sales price and the contract price, plus statutory interest, and the Appellate Division affirmed. The Court of Appeals refused to read a bad faith exception into an attorney approval contingency clause, reversed the order of the Appellate Division, and dismissed the complaint. According to the Court,

> **"We therefore hold that where a real estate contract contains an attorney approval contingency providing that the contract is 'subject to' or 'contingent upon' attorney approval within a specified time period and no further limitations on approval appear in the contract's language, an attorney for either party may timely disapprove the contract for any reason or for no stated reason".**

Moran v. Erk, dated November 25, 2008, is reported at 2008 WL 4975380.

<u>Contracts of Sale</u> – Under a contract executed for the purchase of commercial property in Nassau County, the Seller was required to deliver at closing "copies of all existing Certificates of Occupancy for the premises". After the contract was signed, the Seller refused to produce certificates of occupancy, asserting that they did not exist and that he had no obligation to procure them. As a result, the Plaintiff-Buyer was not able to obtain financing; the Seller, declaring the Plaintiff in breach, retained the down payment. The Plaintiff-Buyer commenced an action claiming that the Seller breached the contract and asserted a cause of action in legal malpractice against the Plaintiff's attorney. The Supreme Court, Nassau County, denied the Defendant-Attorney's motion to dismiss the complaint or to stay the action as to him pending the determination of the action against the Seller. The Appellate Division, Second Department, affirmed, finding that the allegations in the complaint "state a legally cognizable cause of action to recover damages for legal malpractice", and further ruled that the lower court was within its discretion in denying the motion for a stay. Malik v. Beal, decided September 23, 2008, is reported at 864 N.Y.S. 2d 153.

<u>Corporations</u> – Current Developments issued April 23, 2008 noted the 2007 decision of the Supreme Court, New York County, in Decana, Inc. ("Decana") v. Contogouris, reported at 851 N.Y.S. 2d 63. Contogouris, under the authority of a corporate resolution he executed as the Director and Secretary of Decana, and as the holder of all of the shares of stock of its parent company, executed two mortgages on a property owned by Decana in Manhattan, including one to the

Defendant North Fork Bank. He was not, however, either the corporate Secretary or a shareholder of the parent company, and he diverted the loan proceeds to his own account. Decana and its company sought an Order declaring that the loan was not payable and that all amounts paid should be refunded and enjoining North Fork Bank and its assignee from charging any interest rate penalties or foreclosing. The Supreme Court, New York County, in a decision issued October 9, 2007, dismissed those causes of action. This ruling was affirmed, as modified, by the Appellate Division, First Department, which held that the mortgage was valid and dismissed all the other causes of action against North Fork Bank. According to the Appellate Division,

> **"The president and sole director of plaintiff Decana was properly found to have actual authority to mortgage corporate property [citations omitted]. Although a ruling in this respect was unnecessary, we note that there was also apparent authority based on a corporate resolution and opinion letter of counsel. Since the real property used as collateral was worth several times the amount of the loan, and was non-recourse, there was little reason for the lender bank to care about the personal finances of the president and director, the purpose of the loan or other nonessential matters. Nor did the circumstances give rise to a duty to inquire into the scope of the claimed authority".**

The decision of the Appellate Division in Decana Inc. v. Contogouris, dated October 7, 2008, is reported at 865 N.Y.S. 2d 72.

Foreclosures – A non-party, defaulting bidder in a tax lien foreclosure moved for an order directing the return to him of the $16,500.00 he deposited with the Referee on his bid of $165,000.00. He claimed that he was entitled to his deposit because the final sale of the property at auction for $40,000.00 resulted in a surplus over the foreclosure judgment of $4,376.82. The Supreme Court, Kings County, denied the motion. It held that the deposit was forfeited under the Terms of Sale and became part of the surplus available for distribution to any foreclosed lienors or to the property owner. The Terms of Sale, with which the defaulting bidder agreed to comply when he executed the Memorandum of Sale, stated that "upon resale, the [defaulting] purchaser will be held liable for any deficiency there may be between the successful bid at the first sale and the bid at the resale". He also claimed that he was misled by the notice of sale as to the size and shape of the property; the Court held that his failure to ascertain the size of the lot, identified only by its tax lot designation and not by reference to lot dimensions or square footage, was not a reason to refund his deposit. NYCTL 1998-2 v. Kwah, decided October 27, 2008, is reported at 2008 WL 4745668.

Lien Law – Defendant K. Hovnanian at Monroe II, Inc. ("Hovnanian") retained Breese Corporation ("Breese") as its general contractor on a construction project in Orange County, New York. Under an agreement executed by Hovnanian, certain of its related entities, and Breese and DBD, LLC ("DBD"), which agreement noted

that Breese owed money to subcontractors at the project, Breese assigned its accounts receivable to satisfy a debt it owed to DBD. On learning of the payment to DBD, Plaintiffs-subcontractors commenced an action seeking to enforce a trust under Article 3-A ("Definition and enforcement of trusts") of New York's Lien Law. Plaintiffs moved for summary judgment against DBD and Hovnanian for their alleged diversion of trust funds.

The Supreme Court, Orange County, granted the Plaintiffs' motion for partial summary judgment, holding that the funds paid to DBD were assets diverted from a contractor's trust under Lien Law Section 70(6) ("Definition of trusts"). Under Section 70(6), "[t]he assets of the trust for which a contractor is trustee are the funds received by him and his rights of action for payment thereof (a) under the contract for the improvement of real property…"

According to the Court, while a subcontractor's actual knowledge that the general contractor assigned its rights to trust assets to another creditor is a defense to a diversion, the notice requirement can only be satisfied by either the filing of a notice of lending under Lien Law Section 73 ("Affirmative defense in action against transferee of trust assets or to charge trustee in certain cases; Notice of Lending"), the filing of a Notice of Assignment under Lien Law Section 15 ("Assignments of contracts and orders to be filed"), "or by a showing that a subcontractor which was a Lien Law trust beneficiary had actual knowledge that the contractor had assigned its rights to trust assets to another creditor. The notice must be provided to the trust beneficiaries".

The Class Plaintiffs' damages against Breese, Hovnanian and DBD for breach of the Lien Law trust were left to be determined at an inquest. Dick's Concrete Co., Inc. v. K. Hovnanian At Monroe II, Inc., decided September 17, 2008, is reported at 2008 WL 4274481.

<u>Mortgage Recording Tax</u> – Under Tax Law Section 253 (1-a) (a), $.25 per $100 of the mortgage recording tax known as the "special additional tax" is payable by the mortgagee when (a) the mortgaged property is principally improved or will be improved by one of more structures containing not more than six residential dwelling units, each unit having its own separate cooking facilities or (b) the mortgagor is a tax exempt organization. Federal credit unions have been held exempt from the payment of the special additional tax, but state chartered credit unions making mortgage loans are required to pay the special additional tax. Chapter 522 of the Laws of 2008 adds Banking Law Section 486-a ("Retention of special additional mortgage tax exemption for converted credit unions") and amends Tax Law 253 (1-a)(a) to extend, effective January 1, 2009, the exemption to New York State chartered credit unions which have converted from federal credit unions on or after January 1, 2009. New York State's Department of Taxation and Finance has issued a Memorandum setting forth the requirements to claim the exemption. An affidavit, signed by the mortgagee, must be submitted to the recording office stating the following:

"The mortgagee is a credit union that has been issued an authorization certificate from the Superintendant of Banks pursuant to section 486 of the Banking Law indicating that the credit union has converted from a federal charter to a state charter on or after January 1, 2009.

Pursuant to section 486-a of Article 11 of the Banking Law, the mortgage is exempt from the special additional mortgage recording tax imposed by section 253.1-a (a) of the Tax Law".

TSB-M-08(5)R ("Special Additional Mortgage Recording Tax Exemption for Federal Credit Unions that Convert to State Credit Unions"), dated October 27, 2008, is posted at http://www.tax.state.ny.us/pdf/memos/mortgage/m08_5r.pdf.

Mortgage Recording Tax/New York State Transfer Tax – The New York State Department of Taxation and Finance has announced that the interest rate to be charged for the period January 1, 2009–March 31, 2009 on late payments and assessments of mortgage recording tax and the State's Real Estate Transfer Tax will be 7% per annum compounded daily. The interest rate to be paid on refunds of those taxes will be 4% per annum, compounded daily. The interest rates are published at http://www.tax.state.ny.us/press/2008/int1108.htm.

New York City's Real Property Transfer Tax ("RPTT") – On June 26, 2008, the City's Department of Finance issued a letter ruling that the transfer of real property by the church requesting the ruling which is incorporated under the State's Religious Corporations Law is exempt from the RPTT under Administrative Code Section 11-2106.b.2 ("Exemptions"). The ruling noted that the actual activities of the church "promote the purposes of the church" and that "[n]one of the assets of the church will inure to any private shareholder or individual".

New York City's Real Property Transfer Tax ("RPTT"/"Bulk Sales") - RPTT is applied to the transfer of a one-to-three family dwelling, an individual residential condominium unit and an individual residential cooperative apartment at the rate of 1% when the consideration is $500,000.00 or less, and at the rate of 1.425% when the consideration is more than $500,000.00. These rates of tax are often identified as the "residential" rates. The transfer of other property is taxed at the so-called "commercial" rates of 1.425% when consideration is $500,000.00 or less, and 2.625% when consideration is above $500,000.00. The City's Department of Finance generally deems the transfer of multiple, uncombined units as bulk sales, to which it applies the commercial rates.

In a ruling dated September 2, 2008 (FLR 084875-021) the City's Department of Finance applied the residential rate of 1.425% on the transfer of two uncombined, contiguous units for more than $500,000.00 since the grantee-taxpayer's intent was to combine the units. His request to combine the units prior to closing was denied by

the Sponsor's attorneys, he had architectural drawings for the combination of the units, and he advised the Department that he was going to combine the units after closing. According to the ruling,

> **"[g]enerally, in order to be treated as a single unit, the units need to be combined prior to closing. However, when the facts are particularly clear with regard to the intent to combine apartments, we will treat the units as a single apartment for purposes of calculating the RPTT".**

However, according to the ruling, if the work was not commenced within fifteen days of closing, additional RPTT would be payable at the 2.625% rate. The higher rate would also apply if the combination of the units was not substantially completed within one year of closing, or if either of the units was separately sold within one year following closing.

These two letter rulings are posted on the Department's web site at www.nyc.gov/html/dof/html/pub/pub_guidance_letterrulings_rptt.shtml.

New York State Real Estate Transfer Tax – CBS Corporation, owning real estate in New York valued in excess of $200 million, merged with Viacom, Inc. in May 2000. The transfer of a "controlling interest" in a corporation, defined in Tax Law Section 1401(b) ("Definitions") as including the transfer of 50% or more of the "total combined voting power of all classes of stock of [a] corporation" or the transfer of 50% or more of the "beneficial interest in such voting stock of such corporation", is taxable.

Holders of CBS voting stock received nonvoting common stock in the merged entity and, based thereon, a 54.88% exemption from the State's transfer tax was claimed under Tax Law Section 1405 ("Exemptions") as a "mere change of identity or form of ownership or organization where there is no change in beneficial ownership".

The New York State Department of Taxation and Financed disallowed the exemption since the CBS voting stock was exchanged for nonvoting stock, and the Department assessed a tax of $493,965.08, plus interest and penalties. A petition for review was denied by an Administrative Law Judge, whose ruling was sustained by the Tax Appeals Tribunal. In an Article 78 proceeding, the Appellate Division, Third Department, confirmed the determination of the Tax Appeals Tribunal.

According to the Appellate Division, the Tax Appeals Tribunal "reasonably concluded that the transfer of a controlling interest in CBS for nonvoting stock in petitioner represented a change in substance, not in form, because the loss in voting power represented a transfer of control over corporate assets". The Court also denied Petitioner's request that a penalty not be assessed because the failure to pay the transfer tax was, under Tax Law Section 1416(b) ("Interest and penalties"), "due to reasonable cause and not due to willful neglect". "Advancement of a

reasonable legal theory in good faith or reliance upon professional advice, in the absence of inquiry to ascertain the position of the Department of Taxation and Finance, does not constitute reasonable cause or provide us with a basis to disturb respondent's imposition of a penalty".

Matter of CBS Corporation, formerly known as Viacom, Inc. v. Tax Appeals Tribunal of the State of New York, decided November 13, 2008, is reported at 2008 WL 4889119.

Notices of Pendency – Plaintiff 2386 Creston Avenue Realty, LLC ("Creston") entered into a contract with Defendant M-P-M Management Corp. ("MPM") to sell to MPM property in Bronx County. The closing was adjourned to enable MPM (as provided in the contract) to clear outstanding municipal violations, However, in January 2005, MPM contracted to sell the same property to Defendant Pioneer Parking LLC ("Pioneer"). On February 14, 2005, MPM cancelled its contract with Creston, and on February 14, 2005 MPM deeded the property to Pioneer. Also, on February 14, 2005, Creston filed a notice of pendency against the property and commenced an action for specific performance. The deed was recorded on March 1, 2005.

Defendant Pioneer's motion for summary judgment dismissing the complaint against it and vacating the notice of pendency was granted by the Supreme Court, Bronx County. Absent admissible evidence suggesting Pioneer was aware of the other contract, Pioneer was a bona fide purchaser for value without notice protected under New York's Recording Act (Real Property Law Section 291 ("Recording of Conveyances").

On appeal, Plaintiff alleged that the filing of a lis pendens protected its rights as a contract vendee. The Appellate Division, First Department, disagreed and affirmed the ruling of the lower court, holding that "a contract vendee such as plaintiff does not, by virtue of the filing of a notice of pendency, create an interest in real property superior to a subsequent good faith purchaser from the same vendor who records a contract or conveyance". According to the Appellate Division, citing Real Property Law Section 294(3) ("Recording executory contracts and powers of attorney"), "[e]very executory contract for the sale...of real property, not recorded, shall be void as against any person who subsequently purchases or…contracts to purchase…the same real property", and the filing of the lis pendens did "not create rights that did not already exist". 2386 Creston Avenue Realty, LLC v. M-P-M Management Corp., decided November 18, 2008, is reported at 2008 WL 4911799.

Title Insurance – The New York State Insurance Department has approved revised loan policy endorsements filed by the Title Insurance Rate Service Association, Inc. ("TIRSA") Rate Manual effective December 1, 2008. The revised New York Standard Endorsement (Loan Policy) adds to the 2006 ALTA Loan Policy "Exclusions From Coverage", for loan policies issued in New York on and after December 1, 2008, new Section 8:

"8. Any consumer protection law including, without limitation, New York Banking Law Sections 6-l ("High-Cost Home Loans") and 6-m ("Subprime Home Loans"), relating to a mortgage on Land improved or to be improved by a structure or structures intended principally for occupancy by one-to-four families".

The TIRSA Variable Rate Mortgage Endorsement, the TIRSA Variable Rate Mortgage Endorsement Fixed Rate Conversion, the TIRSA Variable Rate Mortgage Endorsement Negative Amortization, and the TIRSA Fannie Mae Balloon Mortgage Endorsement have been amended to confirm that the coverage of each of those endorsements is subject to "Section 8 of the Exclusions From Coverage, as added by the Standard New York Endorsement (Loan Policy)".

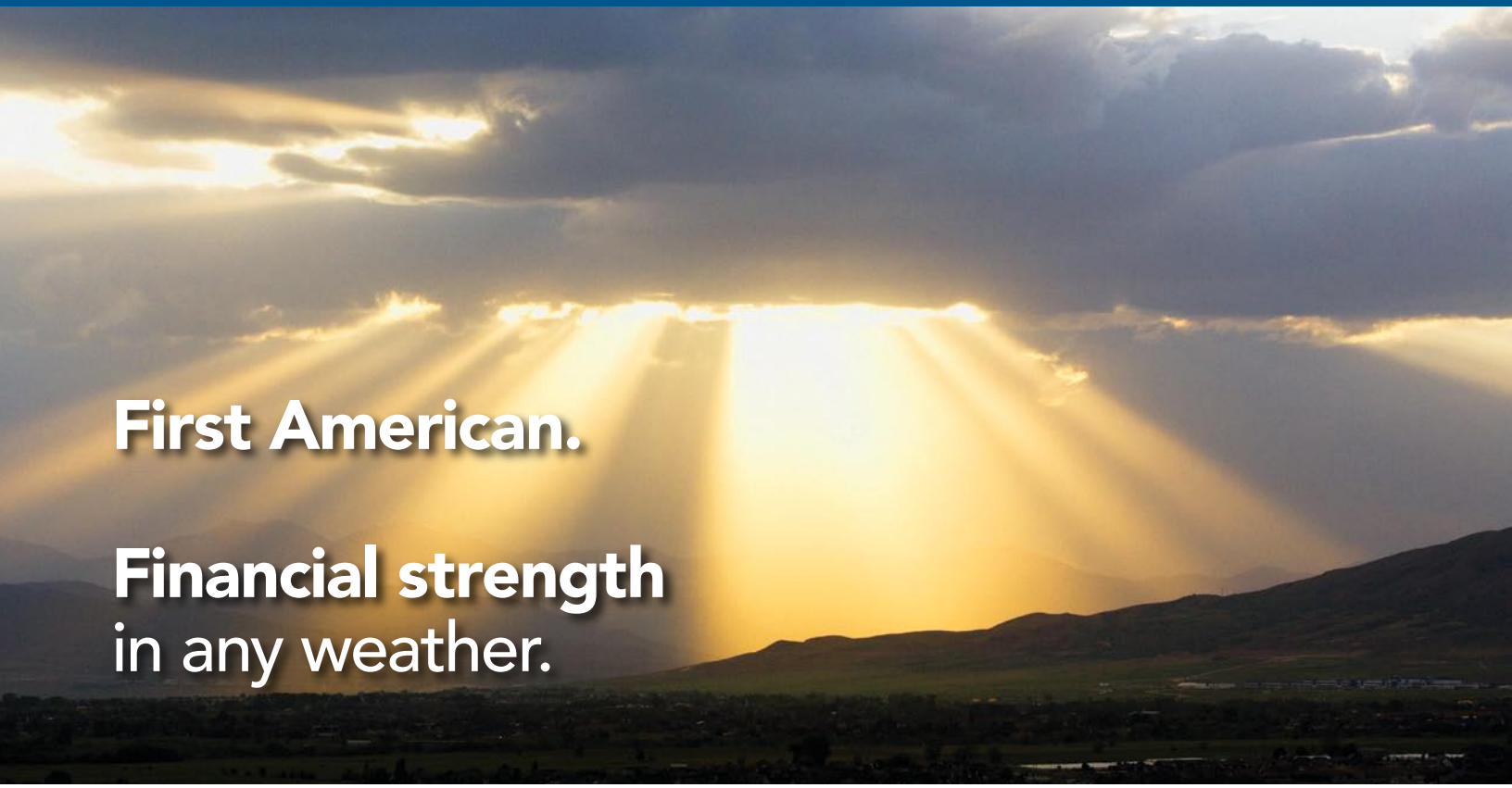
First American News

Joseph S. Petrillo, President of All New York Title Agency, Inc., an agent of First American Title Insurance Company of New York, has been elected as a Director of the Board of Directors of First American Title Insurance Company of New York.

Information on the financial strength of First American accompanies this Bulletin. For further information please contact Phillip Salomon, Executive Vice-President, at 212-551-9437.

The officers and employees of First American wish you good health and prosperity in the New Year.

Michael J. Berey, General Counsel
No. 107. December 10, 2008
mberey@firstam.com



Economic climates change, but one thing remains the same: First American continues to back all of your transactions with the financial strength of an industry leader. Since 1889, we've been a trusted leader in title services and, today, we continue to earn "Excellent" and "Exceptional" ratings in financial stability from Demotech, A.M. Best, and other respected financial analysis firms. In an economic downturn, First American has you, and your business, covered.

- More Than a Century of Financial Strength and Stability
- The First American Corporation is ranked #312 on the FORTUNE 500® List
- World's Leading Provider of Title Insurance
- Strong Financial Ratings

Financial Strength Ratings of First American Title Insurance Company

Rating Agency	Rating	Rating Agency Comments
Demotech, Inc. (Financial Stability Rating)	**A**	"Regardless of the severity of a general economic downturn or deterioration in the insurance cycle, underwriters earning a Financial Stability Rating® of "A" possess exceptional financial stability related to maintaining positive surplus as regards policyholders."
A.M. Best Company (Financial Strength Rating)	**A –**	"Assigned to companies that have, in our opinion, an excellent ability to meet their ongoing insurance obligations."
Fitch Ratings (Insurer Financial Strength Rating)	**A –**	"Strong capacity to meet policyholder obligations relative to all other issues or issuers in the same country, across all industries and obligation types."
Standard & Poor's (Insurer Financial Strength Rating)	**A –**	"Strong financial security characteristics."
Moody's Investors Service (Insurance Financial Strength Rating)	**A3**	"Insurance companies rated "A" offer good financial security."

Ratings as of November 2008.

First American

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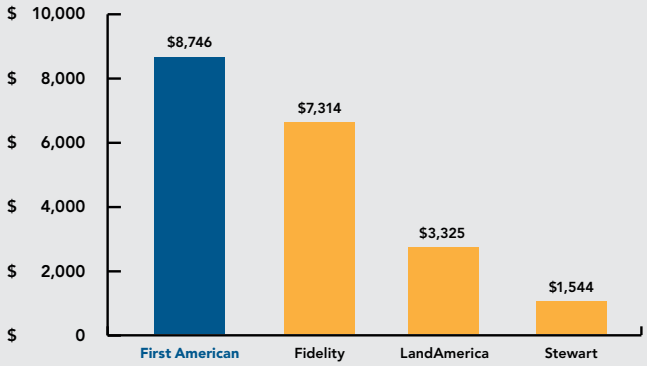
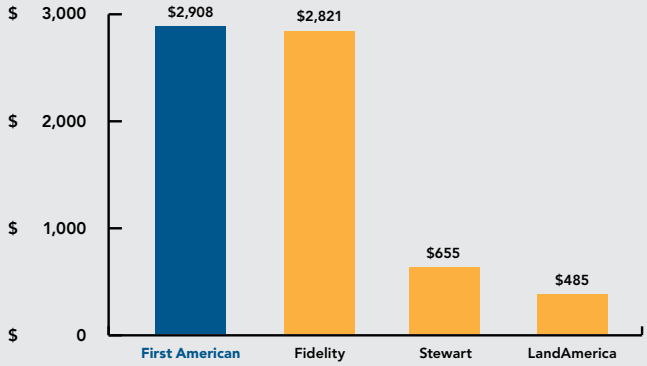
The First American Corporation—Comparison of Key Financial Metrics

Total Assets (Millions)
As of September 30, 2008



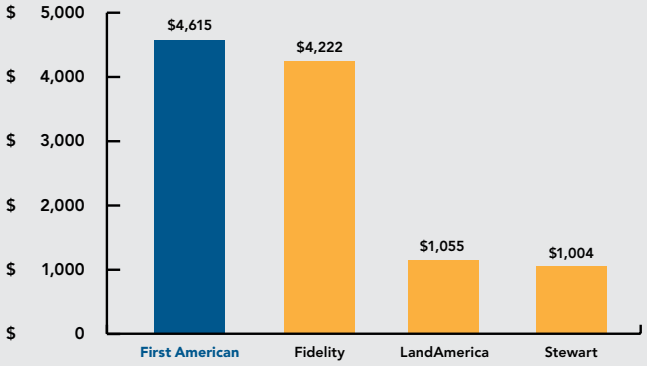
Source: Securities and Exchange Commission filings.

Shareholders' Equity (Millions)
As of September 30, 2008



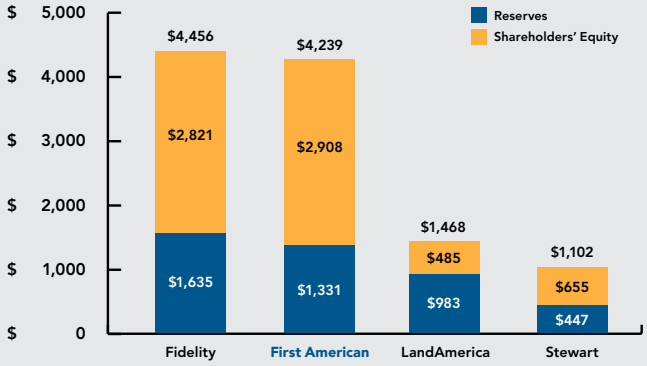
Source: Securities and Exchange Commission filings.

Total Capital (Millions)
As of September 30, 2008



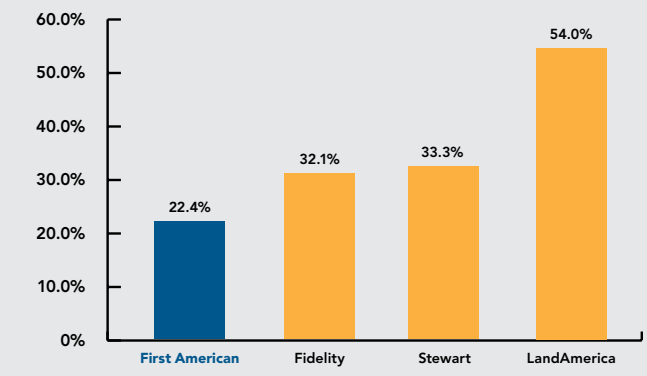
Source: Securities and Exchange Commission filings.
Note: Total Capital is defined as the sum of shareholders' equity, debt and minority interest.

Reserves + Shareholders' Equity (Millions)
As of September 30, 2008



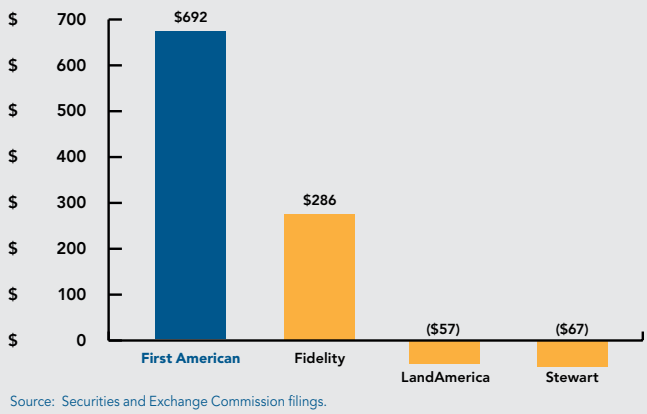
Source: Securities and Exchange Commission filings.

Debt/Capital Ratio
As of September 30, 2008



Source: Securities and Exchange Commission filings.
Note: Debt/Capital Ratio is defined as debt divided by the sum of shareholders' equity, debt and minority interest.

Operating Cash Flow (Millions)
For the seven quarters ending September 30, 2008



Source: Securities and Exchange Commission filings.

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