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UNDERWRITING BULLETIN

TO: *ALL NEW YORK STATE AGENTS*

CC: *HELEN POWELL*

FROM: JOHN CRUZ, MICHAEL ALFIERI & JAMES THANASULES

RE: *CURRENT DEVELOPMENTS*

DATE: *January 14, 2004*

Happy New Year!

Attached please find our latest edition of Current Developments.

Please feel free to call us with any questions or comments.

First American Title Insurance Company of New York
CURRENT DEVELOPMENTS

ACRIS – Current Developments issued December 22, 2003 reported that New York City's Department of Finance intended to implement in March 2004 a procedure requiring that certain forms submitted to the Register's Office in connection with a transfer of an interest in real property be prepared on-line in ACRIS's new E-Tax Forms module. Herb Stratton, Chief, of the Office of Technology Solutions, Department of Finance, and Annette Hill, the Acting New York City Register, will discuss E-Forms at the Annual Meeting of the Real Property Law Section of the New York State Bar Association on January 29. E-Forms is now anticipated to be in effect no earlier than April. It is not yet available on the Department's WEB site.

Adverse Possession – The Supreme Court, Richmond County, held that a homeowner may not acquire title by adverse possession based on rights allegedly accruing during the period in which the land in question was designated as "open space" in the Special South Richmond Development District Plan under Section 247 of the General Municipal Law. Under the GML an "open space" or "open area" is land in which a county, city town or village has acquired an interest (such as a fee estate, development right, or easement) to maintain the land's "natural scenic beauty" or the land's " openness, natural condition, or present state of use, (which) if retained, would enhance the present or potential value of abutting or surrounding urban development, or would maintain or enhance the conservation of natural or scenic resources". Quinn v. Sundale Homes, Inc. was reported in the New York Law Journal on October 29, 2003.

Cellular Towers – The September 18, 2003 issue of Current Developments reported on a holding of the Supreme Court, Westchester County, that the City of New Rochelle has jurisdiction to regulate the placement of cellular telephone towers on property in that City owned by New York State which is under the jurisdiction of the State Department of Transportation. The Appellate Division, Second Department, has reversed this decision. According to the Appellate Division, the City's zoning regulations do not apply to the activities of commercial telephone communications providers which have licensed space on towers owned by the State. In the Matter of Crown Communications New York, Inc. v. City of New Rochelle, decided October 20, 2003, is reported at 765 N.Y.S. 898.

Condominium Common Elements - The Appellate Division, First Department, affirmed the decision of the Supreme Court, New York County, holding that a commercial unit owner had neither title to nor an easement over vaults or cellar space adjacent to and under the condominium building. As regards the vaults, they are owned by the City of New York and are common elements of the condominium. The provision of the Declaration granting the commercial unit owner the right to make such use of the common elements "as may be reasonably necessary incident to the operation of the Commercial Unit" did not provide the unit owner an express easement for the exclusive use of any of the common elements. Further, plaintiff did not have an implied easement since it did not demonstrate exclusive access is reasonably necessary for its fair enjoyment of the commercial unit. The Board of Managers of the Atrium Condominium v. West 79th Street Corp., decided December 16, 2003, is reported at 2003 N.Y. App. Div. LEXIS 13283.

Contracts of Sale - The Supreme Court, New York County, held that a general merger clause in a contract of sale, providing that the plaintiff-buyers could not rely on any representations made by any person not expressly set forth in the contract, did not bar allegations of fraud in the inducement. According to the Court, a contracting party may not claim fraud in the inducement as to a specific matter only when the merger clause explicitly states that the buyer is not relying on any representations as to that matter. In this case, it is alleged the seller's real estate broker advised the buyers of a cooperative unit that they would be able to obtain Board approval of certain alterations, and after the contract was signed they were informed the Board would not approve the proposed plans. Purches v. Carroll was reported in the New York Law Journal on December 3, 2003.

Disclosures – The Supreme Court, Monroe County has dismissed an action brought by a mortgage banker to recover an application fee and a fee to lock in the interest rate on a mortgage loan that did not close. After the lock-in agreement was signed, the borrower-defendant received a RESPA disclosure on the number of mortgages the plaintiff routinely sold in the secondary market. Since the borrower did not want its mortgage to be assigned the loan did not close. According to the Court, although federal law is silent on the issue, "contracts to pay fees such as the lock-in agreement must be preceded by all the disclosures that federal law requires". In this case, the disclosures would have enabled the borrower to withdraw her loan application without the imposition of any penalty. Rochester Home Equity, Inc. v. Upton, decided October 29, 2003, is reported at 767 N.Y.S. 2d 201.

Mortgage Recording Tax - The rate of mortgage recording tax on real property located, in whole or in part, in Schuyler County was increased to $1.00 for each $100.00 secured effective January 1, 2004.

Easements – Under Section 2001 of the Real Property Actions and Proceedings Law ("RPAPL") an action to restrict the use of land predicated on the infringement of an easement, or to recover damages by reason thereof, cannot be commenced after two

years from the date of completion of a structure encroaching on the easement. The date on which a certificate or occupancy is issued, or the date of actual occupancy of the structure if no certificate of occupancy is issued, is deemed the date on which the structure is completed. In Berardi v. Palomba, an action was commenced to compel the removal of encroachments upon an easement for a right of way leading to an adjoining development parcel reserved in the deed conveying the property on which the improvements were constructed. The defendant asserted the protection of RPAPL Section 2001. The Supreme Court, Richmond County, however, held that Section 2001 applies to negative easements restricting the use of land, and not to affirmative easements granting a right of use to the owner of a dominant estate, such as in this case, as to which the six-year statute of limitations in Civil Practice Law and Rules Section 213(1) applies. This case was reported in the New York Law Journal on December 31, 2003.

New York City Real Estate Taxes – The October 28, 2003 issue of Current Developments reported on a tax surcharge of 25% to be imposed on Class One real property owned by "absentee" landlords. Although first in effect for the July 1, 2003 – June 30, 2004 tax year, the surcharge has not yet been billed. In connection therewith, a proposed new Chapter 46 to Title 19 of the Compilation of the Rules of the City of New York, setting forth "Rules Relating to the Real Property Tax Surcharge on Certain Class One Properties" has been issued by the Department of Finance. "The purpose of these rules is to inform property owners how the Department of Finance will implement the surcharge" and "and instruct taxpayers how to provide a certification of eligibility for exclusion from the surcharge". The Rules are at www.titlelaw-newyork.com/Mans/Absentee Owner Regs.pdf.

Powers of Attorney/Fiduciaries – The Co-executor of an Estate submitted to the Clerk of the Surrogate's Court, Broome County, a Durable General Power of Attorney naming the Co-Executor as her attorney in fact to carry out "estate transactions". The Surrogate Court, by this decision, ordered the Clerk not to file the Power of Attorney. According to the Court, a "fiduciary cannot delegate the whole responsibility for the administration of the estate, even to a co-fiduciary". Probate Proceeding, Will of Cecile S. Jones, Deceased, decided October 1, 2003, is reported at 765 N.Y.S. 2d 756.

Railroad Property – Under Section 18 of the New York State Transportation Law, a property owner can dispose of property being abandoned for railroad purposes only after obtaining from the Commissioner of the State Department of Transportation a release of that preferential right or notice from the Commissioner from the that the preferential right does not apply. Conveyances violating this Section are void. The Supreme Court, Cattaraugus County, held a lease executed by a railroad approximately two months before requesting a release of the preferential right was void. The lease, providing for a one-time payment of $42,0000 and an option to purchase for $1.00, was effectively a sale and it could not be entered into without first complying with Section 18. Krog v. Village of Ellicottville, decided September 19, 2003, is reported at 764 N.Y.S. 2d 606.

Tax Lien Foreclosures – The Appellate Division, First Department, affirming the decision of the Supreme Court, Bronx County, denying a motion to vacate an in rem judgment of foreclosure, held that the mere assertion that notice was not received is insufficient to rebut the presumption arising on recording of the deed, under NYC Administrative Code, Section 11-412.1(h), that that notice was received. The presumption became conclusive four months after entry of the final judgment. In Re Tax Foreclosure Action No. 44 v. Family House Real Estate Corp., decided December 16, 2003, is reported at 2003 N.Y. App. Div. LEXIS 13294.

Tax Lien Foreclosures – The Supreme Court, Kings County, held that the interest of tenants not served in the foreclosure of a tax lien could be cut-off by a strict foreclosure action brought under Section 1352 of the Real Property Actions and Proceedings Law. In addition, the Court held that the tenants are required to pay for their use and occupancy for the period in which the foreclosing plaintiff held title to the premises. The amount payable for use and occupancy is to be determined based on the fair market value of the premises on the terms of their leases. The Court also held that the right to foreclose on a tax lien is not subject to a statute of limitations. NYCTL 1996-1 Commercial RE0, LLP v. El Pequeno Restaurant Food Corp., decided August 13, 2003, is reported at 765 N.Y.S. 2d 465.

"The Stoler Report: Real Estate Trends in the Tri-State Regiion" – New York's only television talk 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, first broadcast at 10 AM on January 26, will be on "Developments North of 96th Street". The program will be re-broadcast on January 26 at 10 PM, on January 31 at 5 PM, on February 1 at 8:30 AM, on February 4 at 11 PM, on February 10 at midnight, on February 12 at 2 AM, and on February 17 at 5 AM. Michael Stoler's guests will be Sheena Wright, President and CEO, Abyssinian Development Corporation, Naomi Bayer, Director, New York City Partnership, and Director, Fannie Mae, Deborah Wright, President, CEO and Director, Carver Federal Savings Bank, Michael Caridi, Principal, Majic Development Group, and General Partner, Harlem Park Renaissance Project, and Eugene Webb, Chairman, Webb & Brooker, Inc. Live broadcasts and later Webcasts of programs can be viewed at www.stolerreport.com. Information can be obtained at the site, or by e-mail to mstoler@firstam.com.

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