

Date: January 22, 2004
To: All Clients
From: David Gorenstein
Re: Various Subjects

Bulletin Bulletin Bulletin Bulletin Bulletin

ACRIS - In one of our earlier memos we 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.

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 REO, LLP v. Pequeno Restaurant Food Corp., decided August 13, 2003, is reported at 765 N.Y.S 2d 465.

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 of 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/Absenteeownerregs.pdf