

**Date:** March 18, 2004  
**To:** All Clients  
**From:** David Gorenstein  
**Re:** Various Subjects

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**1. City of Rye/Westchester County** - Please note that the City of Rye has passed and increase of 27 ½ % for the City Tax due 05/01/04. When escrowing for this tax, we will escrow at least 30% to cover the aforementioned increase.

**2. New York City/Water Charges** - The City's Water and Wastewater Rate Schedule for its 2000-2001 fiscal year imposed a surcharge of "100 percent of either the last annual un-metered water charge or the last annualized meter charge when a customer fails to install a meter or reading device" by July 1, 2000. The surcharge was to "be applied from July 1, 2000 until the date of installation". The Supreme Court, New York County, held that the surcharge was not unconstitutional. The Court did not find that the imposition of a 100% surcharge "shocks the judicial conscience". Matter of 77 Realty LLC v. New York City Water Board was reported in the New York Law Journal on February 25, 2004.

**3. ACRIS E-Tax Forms** - The preparation of transfer tax returns and related forms on the Internet to record a transfer of an interest in real property in Manhattan, Bronx, Kings or Queens County is now anticipated to be in effect in either late April or early May. New York City's Department of Finance intends to post a tutorial on the ACRIS Website this month. ACRIS is at <http://www.nyc.gov/acris>.

**4. Corporations** - Business Corporation Law Section 909(a) requires shareholder approval of the "sale, lease, exchange or other disposition of all or substantially all of the assets of a corporation, if not made in the usual or regular course of business actually conducted by such corporation" (Emphasis added). In an action for specific performance of a contract for the sale of all of a corporation's real property, the Supreme Court, Bronx County, held that since the corporation was in the business of property management, the transfer of all of its real property was not within its regular course of business, notwithstanding that its certificate of incorporation provided that it was formed "to buy, sell, exchange, lease... improve, develop, repair, manage, maintain and operate real property...". The contract of sale, absent approval of two-thirds of the corporation's shareholders, was therefore void. The motion for summary judgement dismissing the claim for specific performance was granted. Edbar Corp. v. Sementilli was reported in the New York Law Journal on February 18, 2004.

**5. Mortgages** - A judgement creditor brought a special proceeding to determine ownership of a loft in Manhattan that had been conveyed by the judgement debtor to his ex-wife. The Appellate Division, First Department, reversing the decision of the Supreme Court, New York County, held that the deed to the wife was intended only as security in the event the husband-grantor defaulted on his obligation under their separation agreement. The husband therefore had title to the property. The deed was a mortgage that had to be foreclosed to extinguish the husband-mortgagor's interest in the property. His ownership interest was subject to the judgement. *Leonia Bank v. Kouri* was reported in the New York Law Journal on February 19, 2004.

**6. Mortgage Recording Tax** - Effective March 1, 2004 the mortgage recording tax rate was increased in Westchester County (outside of the City of Yonkers) to \$1.25 for each \$100.00 secured; in the City of Yonkers the mortgage recording tax rate was increased to \$1.75 for each \$100.00 secured. The rate of mortgage recording tax on real property located, in whole or in part, in Seneca County was also increased effective February 1, 2004 to \$1.00 for each \$100.00 secured.

**7. Notice of Pendency** - An action was commenced seeking the removal of a fence that the plaintiff claimed encroached on his property. The plaintiff filed a notice of pendency against the defendant's property; the defendant moved for an order canceling the lis pendens claiming the issue was merely about an encroachment. The motion was denied by the Supreme Court, Queens County. According to the Court, if the fence was on the plaintiff's property it could change the boundary line between the parties which would "affect the title to, or the possession, use or enjoyment of real property", grounds to file a notice of pendency under CPLR Section 6501. *Ungureanu v. Battaglia* was reported in the New York Law Journal on January 21, 2004.