

FEDERAL STANDARD ABSTRACT

TITLE NEWS

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Title News

New York City Department of Finance Updates

The NYC Department of Finance has issued new rules to be followed for the apportionment of tax lots for condominiums and has posted proposed new rules for obtaining refunds on real property taxes. Both lengthy releases are available for viewing on the Department's website.

New York Department of Buildings On-Line Diagrams

The previously-announced requirement that all new building applications must include diagrams of the proposed buildings will become effective on July 13, 2009. The diagrams will be posted on-line, on the Department of Buildings' website under the "My Community" section. The diagrams will include the size of the project, drawn to scale, and where the building will stand in relation to the street. The Challenge Period, whereby neighbors can object to the permit application, has been extended from 30 days to 45 days from the day the diagrams become available on-line. Objections will be reviewed by the Borough Commissioner, with an opportunity to appeal to the First Deputy Commissioner, and a final appeal to the Board of Standards & Appeals.

The New York City Loft Board Moves to the Department of Buildings

The Loft Board is an agency created in 1982 under the Mayor's Office, whose function is to facilitate the legalization of warehouse buildings into legal loft residences without displacement of tenants. Buildings under its jurisdiction may be considered legal residences, even though they may not have properly-issued certificates of

occupancy. The Mayor's Office has announced that the Loft Board will become an agency within the Department of Buildings. This move is intended to coordinate its activities with those of the Department's code-enforcement agencies. The Loft Board has approximately 300 buildings under its jurisdiction.

Bulk Sales and Sales Tax

Despite the broad coverage provided by title insurance, it is always important to remember that there are a number of problems that only surface after the closing of title, but that are beyond the scope of title insurance. For example, water re-bills for periods owned by the seller, but that are only charged after closing; re-assessments on real property taxes because the seller was claiming an exemption she wasn't entitled to; or the seller underpaid the transfer taxes and the taxing authority now holds the purchaser liable for the shortage. What these scenarios have in common is that there was no lien at the time of closing, therefore, title insurance does not cover against them, even though they relate to events that happened during the seller's ownership. A similar problem is posed by the sales tax in the purchase of a business or its assets.

Suppose your client walks into your office and says he wants you to represent him in the purchase of real estate. After asking some questions, you find out that there is restaurant in the ground level operated by the seller. As part of deal, the seller will leave all restaurant equipment behind. Your client wants the equipment to open his own restaurant, with a different name, and under a new entity. "But that's all irrelevant," he says, "it's just for info, right?"

The problem with this transaction is that it qualifies as a "bulk sale" for sales tax purposes. A "bulk sale" is the purchase of a business or its assets. Whenever a bulk sale occurs, the taxing authority retains a lien on the assets being sold. The purpose of the lien is to secure payment of all past sales taxes collected by the seller -or that should have been collected by the seller- while the seller was in operation. If the taxing authority discovers that the seller owes sales taxes from prior operating periods, the purchaser of the assets will be liable for the shortage. The liability, however, is limited to the greater of the price paid for the assets (if any was allocated to them) or their fair market value.

The New York State Department of Taxation and Finance has issued guidelines to be followed in bulk sales. Simply stated, the purchaser of the business (or the assets) must report the transaction to the Department. The Department has issued a simple form -form AU-196.10, available in its website- to be submitted. The form requires information only available to the seller, such as sales tax ID number, trade name, legal name and last day of operation. Hence, it is recommended that the purchaser's attorney study the form before entering into contract to know what to request from the seller.

After the Department receives the notification - form AU-196.10- it will study its records and issue letters with its findings. The Department may respond that (a) that there is no outstanding liability and release the lien; (b) that there is a lien and issue a bill; or (c) that it needs more time and possibly request more information. Therefore, a well-drafted contract must also state that the

portion of the purchase price allocated to the assets will be held in escrow until the Department verifies that there is no outstanding sales tax liability and issues a release. Further, the contract should provide that if the Department issues a bill, the purchaser will have the right to use the seller's escrow to pay it, in order to obtain the release. The Department's turn-around time in simple cases is about three weeks from the date the notification is mailed.

In addition, it is also possible that the purchase of the assets itself may be subject to sales tax payable by the purchaser. The lien discussed above only covers the possibility that the seller may owe taxes. The other concern is that the purchaser may owe sales taxes from the purchase of the assets, just like one would sales tax for buying clothes, for example. While this would be the purchaser's fair responsibility, it is the type of cost that should be disclosed to the client when first discussing the transaction. The applicable sales tax will be that of the jurisdiction where the transaction takes place; most often 8.65%. The bulk sale notification -the same form AU-196.10- also serves to report the purchaser's transaction. In other words, on receiving the notification, the Department may issue a bill on the seller's account, for past sales tax, and a bill to the purchaser for sales tax on the immediate purchase of assets.

For more information, see: *Guidelines for Bulk Sales Transactions*, Tax Memorandum TSB-M-83 (6)S; and *A Guide to Sales Tax in New York State*, Publication 750 (8/04), both issued by the Department of Taxation and Finance and both available on its website free of charge.

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