

FEDERAL STANDARD ABSTRACT

TITLE NEWS

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Title News

NYC Penalty Relief Program

New York City has enacted a violation payment program by which interest and penalties will be waived on violations, if payment is made on or before December 21, 2009. Examples of covered violations are illegal curb cuts, building code violations, sidewalk violations, and Environmental Control Board violations. In order to be eligible, the violation must have been in default before May 1, 2009, and participants must sign an agreement waiving their rights to contest the violations. If the violation requires remedial work, such as removing an illegal curb cut or an illegal basement apartment, such work must be performed before payment can be made under the program. Parking tickets and moving violations are not part of the program.

Corporate Dissolution in New York City

As of October 1, 2009, dissolving corporations that have reported income in New York City will now require clearance from the New York City Department of Finance. This is, of course, in addition to the clearance that must be obtained from the New York State Department of Taxation and Finance. The City's press release did not address LLCs. However, it is expected that LLCs that are being taxed as corporations will undergo the same resolution requirement.

SCRIE to Be Administered by the Department of Finance

The New York City Department of Finance has announced that it will assume responsibility for administering the Senior Citizen Rent Increase Exemption program (SCRIE). SCRIE is a rent subsidy by which the City freezes a senior citizen's rent increases and compensates the landlord with real property tax credits. In order to qualify, applicants must be at least 62 years old and have an annual income no greater than \$29,000, among other requirements. Until now, SCRIE was administered by the NYC Department for the Aging.

Westchester County Recordings

The Office of the Westchester County Clerk has created a system, much like ACRIS, for the recording and public web-access to land records. The system is called the Property Records Electronic Portal (PREP). As of January 1, 2010, all documents to be recorded in Westchester must be presented with cover pages prepared with PREP, just like documents in NYC are recorded with cover pages from ACRIS. For those who wish to acquaint themselves with PREP, the system is available to be used and to print cover pages as of October 1, 2009, even though it is not required for recording.

Despite its similarities with ACRIS it should not be assumed that it is exactly like ACRIS. The first difference to keep in mind is that NYC and Westchester have very different record-keeping practices which affect the functioning of their respective systems; namely, NYC indexes land records by block and lot while Westchester indexes by grantor-

grantee. To illustrate, on ACRIS title can be examined simply by running a block and lot search; on PREP, the search would be by name. In order to study a chain of title, one would have to run a search on the current owner, then a search on the previous owner, then a search on the owner before that one, etc. until the desired period is covered. Another important difference is that PREP does not cover UCC filings. UCCs in Westchester County will continue to be filed separately. An obvious advantage of using PREP is the ability to spot all applicable mortgage recording taxes prior to closing. The Office of the Westchester County Clerk has announced a future enhancement to PREP that will give users the ability to prepare the transfer tax forms applicable to the cities of Yonkers and Mount Vernon.

Marchand v. NYS Dept. of Env. Cons.

The Village of Bayville obtained a tidal wetlands permit from the Department of Environmental Conservation (DEC) to improve drainage along a mapped street called Shore Rd. a/k/a Washington Ave. a/k/a Traveled Way. The street runs along the shore of Mill Neck Creek. One of the homeowners abutting Shore Rd. sued to revoke the DEC permit. It alleged that it was the fee owner of abutting portion of Shore Rd., and further, that Shore Rd. was not a public street.

The court cited the well-known common law doctrine that municipalities do not typically own the streets. Title to the streets is owned by the abutting landowners and municipalities only hold a public easement. Therefore, the court agreed with the homeowner on the issue of title.

The question as to whether there was public road, i.e. a public easement, was different. Land becomes burdened with a public easement if it is used by the general public as a road for ten years (Highway Law §189; Village Law §6-626). However, the public easement is released

if the road is not used by the public for six years (Highway Law §205). The parties produced accordingly conflicting evidence of use and nonuse and the court decided that the issues of fact would have to be decided at a trial. *Marchand v. NYS DEC*, Index No. 13478/06 (Nassau County, Sup. Ct., decided September 17, 2009).

It is possible that the court may have missed an important question of law. One of the homeowner's affidavits said that Shore Rd. was "covered by water and impassable" at high tide. It is also a well-known common law doctrine that private real property rights extend only to the high tide. In other words, an owners' property line is the high tide. What lands lie beyond the high tide belong to the sovereign; i.e. to the State of New York. It is possible that neither the homeowner nor the village may have had any rights to Shore Rd. at all.

Whether a court has the authority to order a foreign entity to delivery property to New York to a judgment creditor?

As we all know, under the Federal Rule of Civil Procedure 69(e), a district court has the authority to enforce a judgment by attaching property in accordance with the law of the state in which the district court sits. In New York, that law is the New York Civil Practice Law and Rules. Section 5225 (b) authorizes a court to order the delivery of property that belongs to a judgment debtor but is not in his possession. However, what about the reach of courts in New York over extraterritorial assets? In *Koehler v. Bank of Bermuda Ltd.*, decided recently, United State Court of Appeals for the Second Circuit rendered an opinion regarding this issue here. This 4-3 decision in the Court of Appeals has the potential to significantly change the enforcement of judgments.

The plaintiff in *Koehler*, obtained a \$2 million default judgment in the United States District Court for the District of Maryland in the early 1990s against his former business partner, A. David Dodwell. Koehler registered the Maryland judgment in the Southern District of New York, and filed a petition against the Bank of Bermuda Limited ("BBL"), a bank located in Bermuda with a branch in New York City. The petition against BBL sought delivery of stock in a Bermuda corporation owned by Dodwell, and pledged by him to the Bank of Bermuda Limited ("BBL") as security for a loan. During the enforcement action, BBL had consented to personal jurisdiction in New York.

In finding that a bank may be required to turn over out-of-state assets owned by a judgment debtor, the Court of Appeals interpreted Article 52 of C.P.L.R., which governs the enforcement of money judgment. As distinguished from Article 62, which deals with pre-judgment attachment and operates only against the property, Article 52 requires personal jurisdiction over the defendant and orders that a defendant turn over property or pay

judgment creditors. The Court of Appeals further suggested that a court may order any entity over which it has personal jurisdiction to turn over out-of-state property, regardless of whether that entity is the judgment debtor. It reasoned "if the personal jurisdiction that a court has over a judgment debtor is the key to its ability to force him to facilitate judgment enforcement by bringing his own property into New York, then we see no principle reason why a court in New York should not be able to order a garnishee that has submitted to its personal jurisdiction to deliver property within its control.... and nothing in the text of N.Y. C.P.L.R. §5225 that would limit the power of a court to order a party within its personal jurisdiction to delivery property to New York."

Under the decision, judgment creditors may seek recovery of assets outside the jurisdiction of New York through post-judgment remedies against custodians and garnishees with a New York nexus.

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