

FEDERAL STANDARD ABSTRACT

TITLE NEWS

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Title News

Proposed New ACRIS Rules: Notice Registration

The NYC Dept. of Finance has issued a proposed set of rules regarding ACRIS. The new rules create a system by which parties having an interest in specific real estate -whether a title owner or a lienholder- will be able to register themselves to receive notice of any deed or mortgage related interest subsequently recorded in ACRIS. For example, an owner may want to register in order to receive notice in the event anyone records a deed or a mortgage against his property and without his consent. The holder of a mortgage may also want to register to receive notice of deed transfers or satisfactions of mortgage. The proposed rules are aimed at curbing fraud in real estate transactions. The Department's explanatory note reminds the public that, currently, the City Register has neither the power nor authority to evaluate whether documents are legitimate. Rather, the City Register is required to record upon payment any documents that meet formal requirements. The Dept. will conduct a public hearing on June 28, 2010, at 345 Adams St., 3rd Fl., Brooklyn, New York, to receive feedback on the proposed rules. No tentative enactment date has been announced as of yet. The proposed rules and explanatory note can be found here: http://www.nyc.gov/html/dof/html/pdf/rules/proposed_rules_city_register.pdf

Funeral Monuments

Before going into contract, the seller disclosed to the purchaser an old survey of the property and pointed out that a portion of it had been used as a burial ground. After contracts were executed and exchanged, the seller disclosed to the purchaser a letter from a relative of someone buried at the property asking for permission to bury another relative there. The purchaser promptly forwarded the letter to its title insurer. Upon review, the title insurer raised exceptions regarding the rights of others to ingress and egress the property for the purpose of visiting the burial ground. Armed with these new exceptions, which the seller could not abate, the purchaser sued for breach of contract and demanded its deposit back. The Supreme Court ruled, and the Appellate Division, First Dept., affirmed, that the purchaser could not get out of the contract. Because the survey showing the burial ground had been disclosed to the purchaser prior to entering into the contract, the purchaser was placed "at least on inquiry notice as to the risk potential relatives might present." *681 Chestnut Ridge Rd LLC v. Edwin Gould Found. for Children*, 2010 WL 203581 (N.Y.A.D. 1 Dept, May 25, 2010).

Condominium Liens

A homeowners association brought suit to recover unpaid common charges, which

had accrued during the tenancy of the last owner, and prior to the foreclosure sale from which the current owner took title. The home owners association argued that since it had not been made a party to the foreclosure action, the foreclosure sale had failed to extinguish its lien. The court noted that although the Condominium Act provides for the creation of liens for unpaid common charges (RPL §339-z), the same act also provides that such charges shall not be effective until a notice of lien has been filed against the unit (RPL §339-aa). As the plaintiff had failed to file its notice of lien prior to the commencement of the foreclosure action, the plaintiff could not recover from the current owner. *Port Village HOA Inc. v. Summit Assoc.*, 27 Misc.3d 1217(A), 2010 WL 1756880 (N.Y. Civ.Ct., April 21, 2010).

Improvements by Loft Tenants

The Loft Law (Multiple Dwelling Law Art. 7-A) allows for the legal occupancy of basically warehouse buildings as residential buildings, as long as the building was so used at the time the Loft Law was passed. The Loft Law also provides that monies spent by loft tenants to render their unit inhabitable -such as expenses for installing cooking and sanitary facilities- create a lien on the property for the amount so spent (MDL §286(6)). However, it had been the administrating agency's -the Loft Board's- view that such liens inured only to the benefit of the specific loft tenants and not to anyone else. The question reached the Court of Appeals of whether the estate of a loft tenant could benefit from such a lien. By unanimous decision, the Court of Appeals ruled that the executrix of a loft tenant's estate could recover monies paid by the decedent for loft improvements. *Bikman v. NYC Loft Board*, 14 N.Y.3d 377, 2010 WL 1233542 (N.Y., April 1, 2010).

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