

FEDERAL STANDARD ABSTRACT

TITLE NEWS

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Title News

New Insurance Requirements for Building Permits

The NYC Dept. of Buildings has issued draft rules for comment that would require applicants for building permits (including demolition and major alteration permits) to obtain liability, workers' compensation and disability benefits insurance and to name the City as additional insured. The amount of insurance required varies according to the size and nature of the project and the size of the adjacent buildings. One and two-family dwellings are generally exempt. However, the new rules also call for indemnification of the City by permittees, whether or not they obtain insurance as required. It is uncertain whether the indemnification provision will apply to owners of one and two-family dwellings. The draft rules may be review at the following link: http://www.nyc.gov/html/dob/downloads/rules/rule_101-08_proposed.pdf.

Real Estate Transfer Tax

The NYS Dept. of Taxation & Finance was asked to issue an opinion regarding the applicability of the real estate transfer tax (RETT) to the following three transactions:

First, the purchase of real estate by A. Second, the immediate sale of the real estate by A to B. Third, the immediate

lease-back of the real estate by B back to A, together with an options to repurchase the real estate. All three transactions would occur simultaneously. The lease-back from B to A would also include a right of first refusal.

The Advisory Opinion issued by the Department concludes that all three transactions are subject to RETT. As to the first, there can be no question, as it is a simple sale. As to the second, rather expectedly, the Department responded that the fact that A would only own the real estate but for minutes or seconds was irrelevant. The simultaneous sale from A to B was subject to RETT as any sale.

As to the third transaction, the Department raised an important point. Leases are only subject to RETT if their term exceeds 49 years, including all rights to extend. This did not seem to apply because the total term and extensions aggregated to 45 years. However, the Department then noted that the granting of an option to purchase coupled with a right to use and occupy (such as a lease or a license) did trigger the RETT. Hence, the third transaction was subject to RETT as well. As a footnote, the Department added that rights of first refusal are not subject to RETT, as it is not considered an interest in property under the tax law. The Advisory Opinion is available here: http://www.tax.ny.gov/pdf/advisory_opinions/real_estate/a10_5r.pdf

Wrong Legal Description

In a recent case the Appellate Division, Second Department, reaffirmed the doctrine of the wrong-description-attached-to-closing-document. The plaintiff purchased a lot at a tax sale. Every closing and pre-closing document (including the lis pendens and the deed) referred to the property as Lot 1. However, the legal description attached to any documents that called for one (such as the lis pendens and the referee's deed) described a parcel comprised of Lot 1 and another six neighboring lots. Years later, the City initiated eminent domain proceedings over all seven lots. The City recognized the plaintiff's ownership of Lot 1 and of another lot he had subsequently secured at another tax sale, but disputed his ownership of the other five lots. The plaintiffs sued for a

declaration that he was the owner of the five disputed lots as of the day of the taking by the City, which would have entitled him to compensation.

The Supreme Court found that the referee's deed was inconsistent in that it only referred to Lot 1, but then described all seven lots. When a conveyance is inconsistent on its face, the effect of the conveyance is determined by the intention of the parties, as may be discerned by parol evidence; i.e. extrinsic evidence illuminating the circumstances of the conveyance. The Supreme Court found, and the Appellate Division confirmed, that it was clear that the intention had been to convey merely Lot 1, notwithstanding the fact that the description attached included also another six lots. See *In re New Creek Bluebelt Phase 4. City of New York*, 2010 N.Y. Slip Op. 09274 (A.D. 2 Dept., 12/14/10).

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