Adjoining Owner/License for Access

The owner of a building under renovation sought an Order compelling the owner of an adjoining property to provide the petitioner access to the other property to enable the digging of a trench to install of subgrade waterproofing. Under Real Property Actions and Proceedings Law ("RPAPL") Section 881 ("Access to adjoining properties to make improvements or repairs"),

> *"[w]hen an owner or lessee seeks to make improvements or repairs to real property so situated that such improvements or repairs cannot be made by the owner or lessee without entering the premises of an adjoining owner or his lessee, and permission so to enter has been refused, the owner or lessee seeking to make such improvements or repairs may commence a special proceeding for a license so to enter… The licensee shall be liable to the adjoining owner or his lessee for actual damages occurring as a result of the entry".*

The Supreme Court, Kings County, denied the Petitioner's motion for an Order under Section 881. According to the Court, the Petitioner "has failed to demonstrate the reasonableness and the necessity for a license…In any event, the scope of RPAPL 881 is limited to granting an applicant a license to access a neighboring property to perform work on the applicant's own property". 840 Realty Group, LLC v. Wing Yee Lee, 2017 NY Slip Op 32949, decided August 18, 2017, was posted by the New York State Law Reporting Bureau on January 4, 2019 at http://www.nycourts.gov/reporter/pdfs/2017/2017_32949.pdf.

Condominiums/Units Withheld from Initial Offer

On December 20, 2018, New York State Department of Law's Real Estate Finance Bureau issued a Memorandum, published as a "guidance document", captioned "Withholding Condominium Units from the Initial Offer". The Memorandum states that "[t]his guidance document is intended to guide sponsors in the submission of condominium offering plans in which [the] sponsor is withholding certain residential units from the initial offer". Sections of the Memorandum deal with "Offering Plan Disclosure Requirements For Withholding Units From The Initial Offer" and "Amendment Requirements For Offering Withheld Units". According to the Memorandum, "[t]he [Department of Law] reserves the right to reject offering plans and amendments thereto that include withheld units and fail to comply with this guidance document…". The Memorandum is posted at https://on.ny.gov/2Szn4pn.

Contracts of Sale/Liquidated Damages

Closing under a contract of sale was to take place on or about thirty days after the contract vendee's attorney received a fully executed contract. The closing did not take place; the sellers sought an Order allowing the seller to retain the down payment. The Supreme Court, Nassau County, denied the Plaintiffs'-sellers' motion for summary judgment and granted the Defendant's motion for summary judgment, dismissing the complaint and directing the return of the down payment. The Appellate Division, Second Department, modified the Order of the lower court by deleting the provision which dismissed the complaint and directed the return of the down payment.

The Appellate Division found that the seller was ready, willing and able to transfer title on the date set for closing, but the Court also found that there was a triable issue of fact as to whether the contract vendee defaulted. The contract of sale provided that the vendee would be in default, and the seller could retain the down payment, if the vendee "willfully" defaulted under the contract. Because the Defendant received a letter from its lender denying his application for an extension or renewal of credit, "a triable issue of fact existed as to whether the defendant had a lawful excuse for defaulting…or whether he willfully defaulted". Goetz v. Trinidad, 2019 NY Slip Op 00099, decided January 9, 2019, is posted at http://www.nycourts.gov/reporter/3dseries/2019/2019_00099.htm.

Contracts of Sale/Property Condition Disclosure Statement ("PCDS")

After the sale of a home in Broome County closed in 2008, the purchasers noted current and prior water infiltration in the basement of the house and mold and other damage to the foundation. During a flood in the region in 2011, water poured into the basement. They sued the seller for breach of contract, fraud/intentional misrepresentation, negligent misrepresentation and, the seller having provided the buyer a PCDS under Real Property Law ("RPL") Article 14 ("Property condition disclosure in the sale of residential real property") without disclosing water damage, a violation of subparagraph "2" of RPL Section 465. Section 465.2 reads as follows:

> *"2. Any seller who provides a property condition disclosure statement or provides or fails to provide a revised property conditions disclosure statement shall be liable only for a willful failure to perform the requirements of this article. For such a willful failure, the seller shall be liable for the actual damages suffered by the buyer in addition to any other existing equitable or statutory remedy".*

The Supreme Court, Broome County, granted the Defendant's motion for summary judgment dismissing the complaint as to him. (The Plaintiffs also sued their home inspector for malpractice). The Appellate Division, Third Department, affirmed the lower court's ruling. New York follows the doctrine of caveat emptor and the Plaintiffs had not established that the Defendant had actual knowledge of any material property defect when the Defendant signed the PCDS and at the time of the closing. Disclosures required in a PCDS are based on a seller's actual knowledge. Issues related to breach of the contract of sale were not addressed by the Plaintiffs on appeal and were deemed by the Appellate Division to be abandoned. Kazmark v. Wasyln, 2018 NY Slip Op 08990, decided December 27, 2018, is posted at http://www.nycourts.gov/reporter/3dseries/2018/2018_08990.htm.

Cooperative Units/Westchester County

Section 700.21-a ("Applications to purchase shares of stock in cooperative housing corporations"), identified as the Housing Corporation Disclosure Law, was added to the Laws of Westchester County on November 29, 2018 by Local Law 2018-11, effective immediately. Among other requirements imposed upon cooperative boards dealing with applications to purchase shares of stock in a cooperative corporation, the Section requires that

> *"[w]ithin sixty days of its receipt of a properly completed application, such a governing board shall either reject or approve an application…and shall provide written notice thereof. In the case of a rejection, a copy of the written notice shall be sent by the governing board to the Human Rights Commission within fifteen days of the notice [of the rejection] being provided to the prospective purchaser".*

According to the County Legislature's Labor and Housing Committee's Memorandum accompanying the legislation, also referred to as the Cooperative Transparency Bill (Intro No. 10626-2018), the change in law was necessary because it has been "difficult for the [Westchester County] Human Rights Commission to investigate and act on unlawful discriminatory practices…[and] to determine if there is a pattern or practice of discriminatory conduct by a cooperative housing corporation".

Fines can be imposed for the failure to provide the Human Rights Commission with a copy of a rejection notice. The Local Law sunsets three years from its effective date. Section 700.21-a can be obtained at https://bit.ly/2FsPbVf.

Deeds/False Pretenses

A decedent's estate, including real property in Brooklyn, was left to his son and to his daughter, Bernice. The son predeceased the decedent and was survived by his three adult children. Beatrice executed a deed conveying the property to herself as the sole heir and executed a mortgage on the property. The Petitioner, one of the children of the decedent's son, commenced a proceeding to invalidate the deed and the mortgage. The Surrogate's Court, Kings County, granted the Petitioner's motion for summary judgment, holding that the deed and the mortgage were void ab initio. The Appellate Division, Second Department, affirmed the lower court's ruling. According to the Appellate Division, "[a] deed based on forgery or obtained by false pretenses is void ab initio, and a mortgage based on such a deed is likewise invalid [citations omitted]. Matter of Bowser, 2018 NY Slip Op 08927, decided December 26, 2018, is posted at http://nycourts.gov/reporter/3dseries/2018/2018_08927.htm.

Deeds/Fraud in the Inducement

In Holder v. Folsom PL Realty Inc., the Plaintiffs sued to recover title to real property in Brooklyn. The Supreme Court, Kings County, found that the Plaintiffs had transferred their property to the Defendant for $6,000 in reliance on the Defendant's promise that the Defendant would assist the Plaintiffs in effectuating a short sale because their mortgage was in default. The Court granted the Plaintiffs' motion for summary judgment and held that the deed from the Plaintiffs to the Defendant was null and void. According to the Court,

> *"the evidence shows that defendant misrepresented the transaction to plaintiffs to induce them to transfer the property, that plaintiffs justifiably relied on defendant, and that plaintiffs have been injured as a result".*

The Court also found that the Plaintiffs had proved a claim for unjust enrichment; the Defendant was enriched at their expense and it was "against equity and good conscience for defendant to retain the property…". The Court, however, denied the Plaintiffs' claim for an accounting because there was no evidence that the Defendants received income from the property. Holder v. Folsom Pl. Realty Inc., 2018 Ny Slip Op 33122, decided December 4, 2018, is posted at http://www.nycourts.gov/reporter/pdfs/2018/2018_33122.pdf.

Deeds/Heirship

A deed executed by purported distributees of the Estate of Annie Blango conveyed property owned by the decedent to a corporation which re-conveyed the property to an LLC., the Appellant in this case. The Administrator of the Estate sought a ruling that title to the property was held by the Estate and an Order setting aside the deeds. The Surrogate's Court granted the petition, directing the City Register to strike the deeds from the public record. The Appellate Division, Second Department, reversed the lower court's ruling, stating that

> *"[w]hen the decedent died intestate, title to the subject property automatically vested in her distributees as tenants in common…Thus, to the extent that the [grantors in the deed to the corporation] were actually the decedent's distributees and the deeds were property executed by them, the deeds would validly convey those distributees' interests in the property. The deeds, therefore, should not have been set aside".*

The Appellate Division remitted the matter to the Surrogate's Court to determine whether title was vested in the decedent's estate and whether the grantors in the deed to the corporation were, in fact, the decedent's distributees, those facts not having been conclusively established at trial. Matter of Blango, 2018 NY Slip Op 07721, decided November 14, 2018, is posted at http://www.nycourts.gov/reporter/3dseries/2018/2018_07721.htm.

Lien Law/Mechanics' Liens

Lien Law Section 11-b ("Copy of notice of lien to a contractor or subcontractor") provides, in part, that "[w]ithin five days before or thirty days after filing a notice of lien…the lienor shall serve a copy of such notice…by certified mail on the contractor, subcontractor, or legal representative for whom he was employed or to whom he furnished materials…A lienor having a direct contractual relationship with a subcontractor or a sub-subcontractor but not with a contractor shall also serve a copy of such notice…by certified mail to the contractor. Failure to file proof of such a service with the county clerk within thirty-five days after the notice of lien is filed shall terminate the notice as a lien…".

The Plaintiff, a materialman, in an Action to foreclose its mechanic's lien, alleged that a subcontractor failed to pay it for goods and merchandise it had delivered. The Plaintiff served notice of the fling of the lien on the subcontractor and the property owner, but not on the general contractor, all of whom were Defendants. The Supreme Court, Kings County, granting the Defendant's motion for summary judgment, dismissed the complaint and vacated the mechanic's lien.

The Plaintiff alleged that the general contractor had actual notice of the filing of the lien and asserted that the failure to serve notice on the general contractor was a "de minimis" violation of Section 11-b. The Court, however, ruled that the failure to comply with the requirement that notice be sent by certified mail to the contractor was "not a de minimis deviation" from the statutory requirement. According to the Court, "[m]echcnics' liens are created by statute and therefore require strict compliance". Maximus Supply Corp. v. M. Hiller & Sons, Inc., 2018 NY Slip Op 32912, decided November 13, 2018, is posted at http://www.nycourts.gov/reporter/pdfs/2018/2018_32912.pdf.

Mortgage Foreclosures/Deceased Mortgagor

The Defendant-mortgagor died in 2009; a mortgage foreclosure was commenced in 2016. No representative was substituted for the decedent in the foreclosure. The foreclosing Plaintiff's motion to vacate the foreclosure sale, the Order of Reference and the notice of pendency was granted by the Supreme Court, Queens County, which also vacated all prior Orders issued in the foreclosure. However, the Court denied the Plaintiff's motion for leave to file a Supplemental Summons and Amended Complaint.

According to the Court, "before [the Court] can obtain jurisdiction in this case, an application must first be made [by the Plaintiff] in Surrogate's Court to have an heir appointed administrator for the estate of the deceased mortgagor…Alternatively, an application can be made in Surrogate Court to have the Public Administrator or someone else appointed as the representative of…[the] estate".

The Plaintiff asserted that neither the deceased nor her estate was a necessary party because the Plaintiff had waived its right to seek a deficiency judgment. However, "the plaintiff has failed to establish that the deceased mortgagor made an absolute conveyance of all her interest in the mortgaged premises, including her equity of redemption, to another person or entity".

The Court did not dismiss the complaint for lack of jurisdiction because substitution for the decedent was possible. All proceedings were stayed. Wells Fargo Bank, NA v. Ramdin, 2018 NY Slip Op 28412, decided December 21, 2018, is posted at http://www.nycourts.gov/reporter/3dseries/2018/2018_28412.htm.

Mortgage Foreclosures/Property Description

A mortgage being foreclosed against Lots 4, 5 and 6 identified the mortgaged property as Lot 5; however, the metes and bounds description in Schedule A annexed to the mortgage described Lots 4, 5 and 6. The Defendant moved for an Order dismissing the complaint on the ground that the mortgage only encumbered Lot 5. The Supreme Court, Dutchess County, granted the Plaintiff's motion for summary judgment and denied the Defendant's cross-motion for summary judgment dismissing the complaint. The Appellate Division, Second Department, affirmed, holding that "when there is a discrepancy between the legal address and the legal description of a piece of property, the legal description controls [citations omitted]". SRP 2012-5, LLC v. Carrao, 2018 NY Slip Op 08524, decided December 12, 2018, is posted at http://www.nycourts.gov/reporter/3dseries/2018/2018_08524.htm.

Mortgage Foreclosures/Tenancies

The purchaser at a mortgage foreclosure sale, and the net lessee of the property, commenced an Action against a tenant of one of the apartments in the building, seeking an Order declaring that the Defendant-tenant's fifteen-year lease was void, ejecting the Defendant, and awarding damages for use and occupancy. The Defendant had entered into a lease with the prior owner a month prior to the foreclosure sale. The Supreme Court, New York County, denied the Plaintiffs' motion for summary judgment, except to the extent of dismissing the Defendant's cross-claims, and ordered the Defendant to deposit with the Court $600 per month for use and occupancy during the period February 2015 through December 2018 and to deposit that amount monthly into court until the proceeding is concluded.

The Court considered the following points. First, although RPL Section 291 ("Recording of conveyances") provides that a lease for a term of three years of more not recorded is void, a purchaser with actual or constructive pre-purchase notice of an unrecorded conveyance is not entitled to the protection of the recording statutes. The Court ruled that there "is an issue of fact as to whether plaintiffs had notice of [Defendant's] tenancy, and whether plaintiffs satisfied their duty of inquiry. [citations omitted]".

Second, the Plaintiffs contended that the lease was not enforceable because it contradicted restrictions in the foreclosed mortgage. The Court noted that the Defendant was not a party to the mortgage and, in any event, "plaintiffs may not rely on obligations in a mortgage agreement which has since been extinguished. [citation omitted]".

Third, the Plaintiffs argued that the lease was voidable because it was entered into after the notice of pendency for the mortgage foreclosure was filed. However, the lis pendens, valid for three years unless extended, was not extended and had expired three months before the lease was entered into.

Lastly, the Plaintiffs asserted that the lease was a fraudulent conveyance under New York's Debtor and Creditor Law. The Court found that there was no evidence, other than the fact of the foreclosure, that the prior owner was insolvent when it entered into the lease or that fair consideration was not payable under the lease, and the prior owner and the Defendant did not have a relationship. 179-94 ST LLC v. Hassan, 2018 NY Slip Op 33161, decided December 11, 2018, is posted at http://www.nycourts.gov/reporter/pdfs/2018/2018_33161.pdf.

Mortgages/Abandoned Residential Property

The so-called "zombie property remediation act of 2016" includes RPAPL Section 1308 ("Inspecting, securing and maintaining vacant and abandoned residential real property"), requiring a mortgage loan servicer authorized to accept payments on a first lien mortgage loan on a one-to-four family residential property to secure and maintain the property when the loan is delinquent and the servicer has a reasonable basis to believe that the property is "vacant and abandoned". A civil penalty of up to $500 per day for each day that a violation of a requirement of Section 1308 by a mortgagee or its agent persists may be issued by a hearing officer or by a court of competent jurisdiction. The Civil Court, Albany County, imposed on a foreclosing mortgage assignee fines totaling $63,000 under RPAPL Section 1308 for the "failure to take reasonable and necessary steps to maintain real property".

The Defendant-mortgagee claimed that it was not subject to those fines under subsection j(4) of 12 U.S.C.A. Section 4617 ("Authority over critically undercapitalized regulated entities") of the federal Housing and Recovery Act of 2008 ("HERA"). That Section provides that "[t]he [Federal Housing Finance Agency] shall not be liable for any amounts in the nature of penalties or fines, including those arising from the failure of any person to pay any real property, personal property, probate, or recording tax or any recording or filing fees when due". The Defendant asserted that the exemption applied in this case because the exemption also applies to the Federal Home Loan Mortgage Corporation ("Freddie Mac") which is an "investor" in the subject property.

The Civil Court denied the Defendant's motion to vacate the Decision and Order imposing the fines. According to the Court,

> *"…Freddie Mac's status as an 'investor' in the subject property does not confer upon defendant the 'entity specific' protection provided by HERA to qualifying federal entities. The federal entities entitled to the protection of the Section 4617(j)(4) exemption are the FHFA, Freddie Mac, and Fannie Mae…[T]his Court finds that the plain language of the HERA exemption at issue does not apply to defendant, and defendant is not exempt from the imposition of the subject fine based on the fact that defendant transacts business on behalf of Freddie Mac".*

City of Albany v. Bayview Loan Servicing Center, LLC, 2019 NY Slip Op 29000, decided January 3, 2019, is posted at http://www.nycourts.gov/reporter/3dseries/2019/2019_29000.htm.

Mortgages/Statute of Limitations

A number of decisions were reported on the application to a mortgage foreclosure of the six-year statute of limitations under Civil Practice Law and Rules Section ("CPLR") 213 ("Actions to be commenced within six years: … on bond or note, and mortgage on real property…"). If the mortgage debt is accelerated, the statute of limitations runs on the entire indebtedness. Absent acceleration of the indebtedness, the statute of limitations runs separately as to each installment of the debt from their respective due dates.

-In Ditech Financial, LLC v. Corbett (2018 NY Slip Op 07862), the Appellate Division, Fourth Department, affirmed the Supreme Court, Onondaga County's granting of the foreclosing Plaintiff's motion for summary judgment. The Defendant had asserted that the foreclosure was time-barred because the debt was accelerated in 2010 by the Plaintiff's predecessor-in-interest. A letter in 2010 advising the Defendants of their default in making payments of the mortgage loan stated that the lender intended to accelerate the debt if certain conditions were not met. According to the Appellate Division, "…a letter discussing acceleration as a possible future event does not constitute an exercise of the mortgage's optional acceleration clause". This case, decided November 16, 2018, is posted at http://www.nycourts.gov/reporter/3dseries/2018/2018_07862.htm.

-A mortgage foreclosure commenced in 2007 was discontinued in 2009 by the Plaintiff, DLJ Mortgage Capital, Inc. ("DLJ"). DLJ had started that foreclosure before the assignment to it of the note and mortgage. In 2015 DLJ again commenced to foreclose the mortgage. The Defendants moved to dismiss the amended complaint, asserting that the mortgage debt had been accelerated and the six-year statute of limitations to foreclose a mortgage under CPLR Section 213 had expired. The Appellate Division, Second Department, affirmed the denial of the Defendants' motion by the Supreme Court. Nassau County.

According to the Appellate Division, a notice sent by DLJ in 2007 "merely indicated that acceleration [of the debt] was a possible future event…Further, neither the prosecution of the 2007 mortgage foreclosure action nor DLJ's motion for summary judgment in the context of that action was shown to constitute a valid acceleration of the mortgage". The 2007 foreclosure was commenced before the note was assigned to DLJ; not then owning the note and mortgage, its standing to foreclose would have been a nullity and ineffective to accelerate the debt. DLJ Mortgage Capital, Inc. v. Hirsh, 2018 NY Slip Op 03505, decided May 16, 2018, is reported at 161 A.D. 3d 944 and 78 N.Y.S. 3d 160, and is posted at http://nycourts.gov/reporter/3dseries/2018/2018_03505.htm.

- In 2008, the Plaintiff's predecessor-in-interest commenced a mortgage foreclosure which was discontinued on the Plaintiff's motion in 2013. In 2014 the Plaintiff commenced a further Action to foreclose the mortgage. The Defendant claimed that the foreclosure of the mortgage was barred by the statue of limitations. The Plaintiff argued that it had revoked the acceleration of the mortgage debt when it moved to voluntarily discontinue the prior foreclosure and by serving various notices on the Defendant, including the notice required by RPAPL Section 1304 ("Required prior notices"). The Supreme Court, Queens County, denied the Plaintiff's motion for summary judgment insofar as asserted against the Defendant and granted the Defendant's cross-motion for summary judgment dismissing the complaint as to him as being barred by the statute of limitations. The Appellate Division, Second Department, affirmed the lower court's ruling. According to the Appellate Division,

> *"the six-year statute of limitations began to run on May 13, 2008, when the plaintiff's predecessor in interest accelerated the mortgage debt through its commencement of the 2008 action [citations omitted].…[T]he order dated December 12, 2013, which discontinued the 2008 action upon its motion, was insufficient, in itself, to evidence an affirmative act to revoke the election to accelerate the mortgage debt [citations omitted]…The plaintiff's further contention that it affirmatively revoked the election to accelerate the mortgage debt by serving the defendant with various notices, including the 90-day notices pursuant to RPAPL 1304, is also without merit. [citations omitted]".*

U.S. Bank Trust, N.A. v. Aorta, 2018 NY Slip Op 08528, decided December 12, 2018, is posted at http://www.nycourts.gov/reporter/3dseries/2018/2018_08528.htm.

Notice of Pendency

The Supreme Court, Suffolk County, granted the application the Petitioner had submitted to the Town of East Hampton's Zoning Board for approval of a subdivision map and directed the Zoning Board to grant final approval. Intervenors opposed the application, filed a notice of pendency against the subject property, and moved for a corrected judgment requiring preliminary approval prior to a grant of final approval. The Intervenors' motion was denied.

Petitioner subsequently filed a motion for an Order cancelling the notice of pendency filed by the Intervenors. The Supreme Court granted the motion and ordered the cancellation of the lis pendens. Under Civil Practice Law and Rules Section 6501 ("Notice of pendency; constructive notice"), "[a] notice of pendency may be filed [when] the judgment demanded would affect title to, or the possession, use or enjoyment of real property...". In this case, the Intervenors did not "assert a right, title or interest in or to Petitioner's real property". Further, according to the Court,

> *"Intervenors' claims that they are attempting to prevent a misuse of neighboring land is disingenuous at best and without legal claim at worst. The Court finds that Intervenors have failed to file their notice of pendency in good faith; rather they filed to improperly delay the case".*

The Court also granted the Petitioner's motion that it be awarded its costs and expenses and the attorneys' fees it had incurred in prosecuting and defending the motion.

The Court scheduled a hearing to consider imposing sanctions against the Intervenors under 12 NYCRR Section 130-1.1 ("Costs; sanctions") based on the Petitioner's claim that the Intervenors' "pattern of malicious motion practice and frivolous legal delay…has caused significant financial damage to Petitioner". Matter of 55 Wainscott Hollow, LLC v. Planning Board of the Town of East Hampton, 2018 NY Slip Op 32873, decided October 30, 2018, is posted at http://www.nycourts.gov/reporter/pdfs/2018/2018_32873.pdf.

Tax Liens/New York City

The day after certain tax liens were assigned by New York's City's Department of Finance to the Plaintiffs-Appellants, the Defendant-Respondent paid the amounts owed to the Department. An Action was commenced to foreclose the tax liens. The Supreme Court, New York County, denied the Plaintiffs' motion for summary judgment and granted the Defendant's cross-motion for summary judgment dismissing the complaint. The Appellate Division, First Department, unanimously reversed the lower court's ruling and granted the Plaintiffs' motion for summary judgment.

Subsection (b)(1) of New York City Administrative Code's Section 11-320 ("Notice of sale to be advertised and mailed") requires the City to provide notice of its intention to sell a tax lien. The Appellate Division found that the City had complied with that requirement and, in doing so, had advised the Defendant that after August 1, 2011 arrangements to pay off the liens had to be made with the new lienholder. Notwithstanding, on the date after the tax liens were assigned to the Plaintiffs, the Defendant made payment of the amount owed to the City. The payments were not applied to the debt represented by the tax liens. According to the Appellate Division,

> *"…once the assignment had taken place, payments had to be made to plaintiffs [citation omitted]….Once a debtor has notice that the debt has been assigned, or has been put 'on inquiry' as to an assignment of the debt, payments to the assignor (the original creditor) are not applied to the debt [citation omitted]".*

NYCTL 1998-2 Trust v. 70 Orchard LLC, 2018 NY Slip Op 09004, decided December 27, 2018, is posted at http://www.nycourts.gov/reporter/3dseries/2018/2018_09004.htm.

Title Insurance/NYS Department of Financial Services

As reported in Current Developments issued August 27, 2018, in an Article 78 proceeding brought by the New York State Land Title Association ("NYSLTA") and two title agents in New York State, the Supreme Court, New York County, issued an Order annulling Regulation 208 ("Title Insurance Rates, Expenses and Charges", codified at 11 NYCRR 228), which was adopted by New York State's Department of Financial Services ("DFS") on October 18, 2017 and effective December 18, 2017. Regulation 208 prohibits title insurance companies and their agents from incurring most marketing expenses, sets maximum permissible charges for ancillary search services when dealing with residential real property, prohibits the payment of gratuities to title closers, and prevents an in-house title closer, but not an independent closer, from being paid a fee to handle a "pick-up" of funds to pay off a lender. Matter of New York State Land Title Association, Inc. v. New York State Department of Financial Services, 2018 NY Slip Op 31465, decided July 5, 2018, can be obtained at 2018 N.Y. Misc. LEXIS 2834 and is posted at http://www.nycourts.gov/reporter/pdfs/2018/2018_31465.pdf.

In a decision dated January 15, 2019, the Appellate Division, First Department, modified the Supreme Court's ruling, denying the Petition to annul Regulation 208, except insofar as the Regulation deals with capping charges for bankruptcy and municipal searches and for so-called "Patriot" searches, and with the closer fees noted above. The case was remanded to the Supreme Court for "further proceedings consistent herewith". Matter of New York State Land Title Association, Inc. v. New York State Department of Financial Services, 2019 NY Slip Op 00245, is posted at http://www.nycourts.gov/reporter/3dseries/2019/2019_00245.htm.

Michael J. Berey
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