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March 15, 2013 FRIDAY'S FAST FACTS

Real Property Income & Expense Statements

Attorneys doing business in New York City may want to advise their real estate clients of a change to the City's policy on Enforcement Penalties for Failure to File Real Property Income and Expense Statements. (RPIE)

For many years the City of New York Department of Finance (DOF) has required owners of most income producing properties to file an annual RPIE form. However until recently, the DOF has not imposed a penalty for failure to file said form.

In November 2012, the DOF began issuing penalties to late (or non) filers of the RPIE and entering the charge on the tax records of the real property. Thus, making the charge a lien on the real property at the time it is entered.

This penalty creates a danger for purchasers of real property because there appears a lag time between the time the penalty was accrued and/or assessed and the time that the penalty is entered on the tax records.

We learned from the DOF that RPIE 2010 non compliance monetary penalties were billed on the November 30, 2012 Statement of Account (a two year lag from the time of the filing deadline to entry in the tax records).

Briefly stated, 11-208.1 of the New York City Administration Code section requires all owners of certain income producing properties having an assessed valuation of \$40,000.00 or more, file a Real Property Income Expense (RPIE) Statement no later than September 1st of the following year. There a special rules applicable to calendar and fiscal year federal income tax filers. The penalty imposed starts at 3% and goes up to 5% of the assessed valuation.

The DOF is working to reduce the lag time between the RPIE filing deadlines, noticing periods and the billing. The penalties for non filers, as determined by the DOF Executive Office, can be up to 3 to 5 percent of the final actual assessed value of the property (we have seen many four figure penalties entered on the tax searches).

Unfortunately, the DOF has not stated that it would accept an "innocent purchaser defense" (from buyers of real property that were unaware of the penalty) in order to strike the penalty from the tax records. Therefore, we strongly recommend that a purchaser (or his/her attorneys) ascertain prior to closing that all RPIE forms have been filed.

We will advise you immediately if the DOF changes its position or enforcement procedures regarding the RPIE.

Should you have any questions regarding this matter, please feel free to contact us.

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