

- *Chicago Title Insurance Company*
- *Commonwealth Land Title Insurance Company*
- *Fidelity National Title Insurance Company*

NYC "RPIE" TAX LIENS HIT UNSUSPECTING BUYERS OF INCOME PROPERTIES

The New York City Department of Finance ("DOF") is now entering, and collecting as a real estate tax lien, the penalties imposed on property owners who fail to file *Real Property Income and Expense Statements* ("RPIE") required by § 11-208.1 of the NYC Administrative Code. Purchasers of income producing properties who acquire title in the gap between the imposition of the penalty and its posting on the real estate tax records can become responsible for an unexpected, and sometimes significant, expense that they didn't provide for in the purchase contract.

The current lag time between the imposition of the penalty and it being entered on the tax roll creates a significant exposure to purchasers.

The City is currently billing property owners for penalties based on the failure to file the 2010 RPIE. Pursuant to § 11-208.1, owners of income producing property with an assessed valuation of more than \$40,000 are required to file annually a RPIE statement no later than September 1st of each year reporting the prior year's income and expense for the property. The RPIE statement for 2012 was due September 4th as the 1st was a Saturday and the following Monday was a legal holiday. There are special rules applicable for calendar and fiscal year federal tax filers. Information regarding the filing requirements can be found at:

<http://www.nyc.gov/html/dof/html/pdf/rpie/rpiefilinginfo.pdf>

The penalties imposed under § 11-208.1(d)(1) for failure to file when due (or by any extended due date), are calculated as a

percentage of the property's assessed valuation, as follows:

- *By September 1, a penalty not to exceed three percent;*
- *By December 31st, a penalty not to exceed four percent;*
- *By the year immediately following the year in which an owner fails to file by the thirty-first of December, a penalty not to exceed five percent;*
- *Such owner shall also be subject to a penalty of up to five percent of such assessed value in any year immediately succeeding a year in which a penalty of up to five percent could have been imposed, the penalties prescribed shall be determined by the commissioner after notice and an opportunity to be heard.*

The transfer of the penalty amount to the DOF for collection as a tax is new. The current lag time between imposition of the penalty and it being entered on the tax roll creates a significant exposure to purchasers. For example, a penalty that arose September 1, 2011 for the 2010 reporting period was not entered in DOF's records until November 30, 2012. Accordingly, contracts for the purchase of income producing properties should at the least contain a provision requiring proof that the RPIE statements have been filed for the current and previous reporting periods.

The City's DOF personnel have stated that they are working to reduce the delay in posting RPIE penalties. We will continue to monitor this situation.