



# FIDELITY NATIONAL TITLE UPDATES

JULY 2006

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SPECIAL EDITION

## NYC ACRIS SYSTEM CHANGES AUGUST 1 AFFECT COOP FILINGS & 2005/2006 LEGISLATIVE SESSION PRODUCES REAL ESTATE BILLS

Effective August 1, 2006, ACRIS, New York City's automated land records system has undergone modifications. ACRIS will now show the purchase prices paid for Cooperative Apartments from July 2004 forward. The second change modifies the Document Type and Collateral Codes used to enter Coop UCC filings. On the legislative front, the legislature passed Assembly Bill 11003, which lifts the veil of secrecy from aspects of income and non income producing properties. This and other bills from the 2005/2006 Legislative Session are discussed below.

### NEW YORK CITY ACRIS SYSTEM CHANGES

As of August 1, Coop apartment purchase prices can be viewed on the ACRIS "Index" screen on the line with for the "RPTT and RETT" (tax returns) under the column titled "Doc Amount". It appears that the City took this step in response to Governor Pataki's signing Assembly Bill A11003 into law on July 26. The Bill, made "effective immediately," is discussed below. Purchasers of Coop apartments are now able to have access to the same price information previously available only to purchasers of conventional real property and condominium units.

In a second development, the UCC ACRIS index entry used also for creation of cover pages for the initial Cooperative UCC-1 with Addendum and for filing the Coop Addendum to existing UCC-1 Cooperative filings has been modified. Since the deadline for filing a Cooperative addendum to existing Coop UCC -1 statements expired July 1, it would seem that the ACRIS modification comes too late (see UCC 9-703(c)). However, in those cases where the Cooperative UCC-1 may have been extended by the filing of a conventional UCC-3 Continuation prior to July 1, the subsequent filing of the Addendum post July 1 may give the existing UCC-1 its statutory life of 50 years. In cases where the secured party failed to file a Continuation or Addendum prior to July 1, only a re-filing of a new UCC-1 with the Cooperative Addendum would seem to revive the security interest in the collateral.

### 2005/2006 LEGISLATIVE SESSION

The close of the 2005/2006 legislative session saw a number of Bills enacted by New York Legislature that impact on real property transactions.

Assembly Bill 11003 (Chapter designation pending) passed in the final days of the session will make the records for real estate in New York City more transparent. The measure allows the Commissioner of Finance to require that income and expense statements and real property transfer tax forms be filed electronically. Subdivision (c) of § 11-208.1 of the NYC Administrative Code requires owners of income producing properties to annually file with the Department of Finance income and expense information. Moreover, and in respect to income/expense statements, the measure limits the privacy provisions of the law and the Commissioner is no longer precluded from –

*. . . making known aggregate income and expense information disclosed with respect to property classified as class four as defined in article eighteen of the real property tax law without identifying information about individual leases, or making known a range as determined by the commissioner within which the income and expenses of a property classified as class two falls, . . .*

With respect to transfer tax forms, the City already requires the use of its ACRIS system to create the TP-584 and NYC RPT returns, but still allows the use of signed paper forms provided they are accompanied by an electronic ACRIS tax form which mirrors the typed or written form. Section 2 of the bill provides legislative authority for the City to mandate that the NYC RPT be filed electronically through the ACRIS system by amending NYC Adm. Code § 11-2105. Moreover, the bill throws in a new requirement that "where the commissioner of finance requires electronic filing, the return shall be signed electronically." The Bill goes on to allow the Commissioner to waive the electronic filing requirement for

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"good cause", whereby the Commissioner is permitted to direct filing in "such other manner as the Commissioner . . . may designate." For how long the Commissioner continues the current practice of transfer tax forms being executed by original signature remains to be seen, however, electronic execution of returns may be on the horizon. In another departure Section 3 of the bill amends § 11-2115 of the Code by adding a new subdivision "e" that removes the secrecy provisions of subdivision "a" for NYC RPT returns filed after January 1, 2003, further provided that "[§ 11-2115(a)] shall continue to apply to any social security account number contained in any report or return pursuant to this chapter". An obvious question is why the law does not protect the federal EIN assigned to business entities. Whether this omission leads to frauds against business entities remains to be seen. Finally, section 4 of the bill amends Code § 11-2116 to provide that "[a]ny return filed electronically shall be deemed to be filed on the date of issuance by the Commissioner of Finance of a confirmation."

Other legislation coming out of this session was Senate Bill 843 (Assembly A 8721-A), which prohibits land surveyors from altering surveys prepared by another surveyor. This Bill would bar updates of existing surveys by other than the original surveyor. The title industry opposed this measure on the grounds that it would increase closing costs to consumers, requiring surveyors to perform new surveys each time the property was sold or financed. The stated object of the bill was to prevent unscrupulous practices by some surveyors. Fortunately the Governor vetoed this measure and urged the Education Department to "ensure, through appropriate enforcement of existing professional standards, that licensed land surveyors and professional engineers do not engage in the type of misleading, confusing or unprofessional survey alterations that are the intended subject of this legislation."

Senate 6884 (Assembly A10208) amends Lien Law § Section 44-b to apply to private and public liens and eliminates, as a necessary party defendant to a lien foreclosure, the property owner after the lien has been bonded pursuant to the Lien Law. This change is long overdue. Under prior law, even when the lien was bonded, and the lien thus was transferred to the bond, the lien law continued to require that the land owner be joined in the foreclosure action. To continue to name the owner of the property, especially after a sale of the land has taken place, which is often why the owner agrees to bond the lien, imposes an unnecessary burden on the new owner to

participate in the litigation, the outcome of which can no longer result in the judicial sale of the property. Neither will the removal of the property owner from the lienor's action bar a complete adjudication of the mechanic's claim against the bond. The Title Industry has taken a position in support of the measure. The status of the bill is unknown at this time however, it was delivered to the Governor's Counsel sometime late July, and hopefully the Governor will sign it into law.

More legislative developments will be discussed in upcoming editions of this Newsletter.

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