



## **First American Title Insurance Company of New York CURRENT DEVELOPMENTS**

**Mortgage Recording Tax** - New York State's Department of Taxation and Finance has issued an Advisory Opinion on the application of the mortgage recording tax to a mortgage being made to the Power Authority of the State of New York ("NYPA") and private lenders, as co-mortgagees. The mortgage secures obligations to NYPA under a "Tolling Agreement", requiring the sale to NYPA of all power generated by the power plant being constructed on the mortgaged property, and loans being made by private lenders for the development and construction of the plant. According to the Department, "the recording of a mortgage on Petitioner's power plant, given to private lenders and NYPA, as co-mortgagees, is exempt" from the mortgage recording tax. "Where the mortgagor or mortgagee is New York State or any of its agencies, instrumentalities, or political subdivisions, the recording of a mortgage is exempt to the extent that the New York State entity is immune from taxation". Advisory Opinion TSB-A-09(3)R, dated August 18, 2009, is posted at [http://www.tax.state.ny.us/pdf/advisory\\_opinions/mortgage/a09\\_3r.pdf](http://www.tax.state.ny.us/pdf/advisory_opinions/mortgage/a09_3r.pdf)

**Mortgage Recording Tax** – New York State's Department of Taxation and Finance has issued an Advisory Opinion on the application of the mortgage recording tax to a second mortgage (the "CDC Mortgage") being made to a certified development corporation (a "CDC"), a local development corporation incorporated under Section 1411 of New York's Not-For-Profit Corporation Law ("NPCL"). Since the funding for that loan will be available after the mortgage is executed, Petitioner, a private lender, which also will be the first mortgagee, will fund the CDC loan, taking an assignment of the CDC Mortgage. On receipt of funding, the CDC will repay Petitioner, and the CDC Mortgage, with the related notes, will either be re-assigned to the CDC or the CDC loan will be satisfied, with a new loan being made by the CDC. According to the Department, mortgage recording tax is not to be imposed on the CDC Mortgage provided that the CDC, as mortgagee, records the mortgage; under NPCL Section 1411(f) "[t]he income and operations of a corporation incorporated or reincorporated under this section shall be exempt from taxation". Further, neither the assignment to Petitioner nor the assignment to the CDC will be subject to tax. Advisory Opinion TSB-A-92(2)R, dated August 4, 2009, is posted at [http://www.tax.state.ny.us/pdf/advisory\\_opinions/mortgage/a09\\_2r.pdf](http://www.tax.state.ny.us/pdf/advisory_opinions/mortgage/a09_2r.pdf)

**Mortgage Recording Tax/City of Yonkers and Greene County** – The City of Yonkers has enacted legislation which extends the application of its portion of the mortgage recording tax, which is \$.50 for each \$100.00 of principal indebtedness secured. The total mortgage recording tax imposed on the recording of a mortgage

on property located in the City of Yonkers will therefore continue to be \$1.80 for each \$100.00 of principal indebtedness secured.

Greene County has elected to impose a County recording tax of \$.50 for each \$100.00 secured by a mortgage on property located in that County effective as to mortgages recorded on and after October 1, 2009. The total mortgage tax imposed on the recording of a mortgage on property located in Greene County will, as of October 1, be \$1.25 for each \$100.00 of principal indebtedness secured.

See [http://www.tax.state.ny.us/pdf/memos/mortgage/m09\\_2r.pdf](http://www.tax.state.ny.us/pdf/memos/mortgage/m09_2r.pdf), as to the City of Yonkers and [http://www.tax.state.ny.us/pdf/memos/mortgage/m09\\_3r.pdf](http://www.tax.state.ny.us/pdf/memos/mortgage/m09_3r.pdf), as to Greene County.

An updated Form MT-15 ("Mortgage Recording Tax Return") reflecting the increase in the mortgage tax rate in Greene County, will be posted to the New York State Department of Taxation and Finance's web site ([www.nystax.gov](http://www.nystax.gov)) on or about October 1, 2009. Form MT-15 is used to compute the mortgage recording tax due when the mortgaged real property is located in more than one locality, and the localities where the property is located impose the mortgage recording tax at different rates.

Mortgage Recording Tax/New York State Transfer Tax – The New York State Department of Taxation and Finance has announced that the interest rate to be charged for the period October 1, 2009 - December 31, 2009 on late payments and assessments of mortgage recording tax and the State's Real Estate Transfer Tax will be 8% per annum, compounded daily. The interest rate to be paid on refunds of those taxes will be 3% per annum, compounded daily. The interest rates are published at <http://www.tax.state.ny.us/press/2009/int0809.htm>.

Powers of Attorney/Tax Matters - The New York State Department of Taxation and Finance has issued new forms of power of attorney that comply with the requirements of Chapter 644 of the Laws of 2008. The forms may be used in connection with tax matters before the Department and the New York City Department of Finance. POA-1 ("Power of Attorney"), POA-1-IND ("Power of Attorney for Individuals"), and instructions, and the Department's Notice (N-09-17) as to the new forms are posted at:

[http://www.tax.state.ny.us/pdf/notices/n09\\_17.pdf](http://www.tax.state.ny.us/pdf/notices/n09_17.pdf)

[http://www.tax.state.ny.us/pdf/current\\_forms/misc/poa1.pdf](http://www.tax.state.ny.us/pdf/current_forms/misc/poa1.pdf)

[http://www.tax.state.ny.us/pdf/current\\_forms/misc/poa1\\_ind.pdf](http://www.tax.state.ny.us/pdf/current_forms/misc/poa1_ind.pdf)

The State Department of Taxation and Finance and New York City's Finance Department have informally advised as follows: For the State, one of the two forms just issued by the Department, as applicable, will be required to be submitted when a Combined Real Estate Transfer Tax Return, Credit Line Mortgage Certificate, and Certification of Exemption from the Payment of Estimated Personal Income

Tax ("TP-584") is being executed by an attorney-in-fact. The City will accept a Real Property Transfer Tax Return (NYC-RPT") executed pursuant to a power of attorney which is either (i) the applicable form of power of attorney issued by the State Department of Taxation and Finance, (ii) the prior form of statutory short form of power of attorney if executed on or before August 31, 2009, (iii) the new statutory short form if executed on or after September 1, 2009, or (iv) a non-statutory power executed as required by Chapter 644 of the Laws of 2008 on or after September 1, 2009.

Title Insurance/New York Policy Endorsements – The Fairway Endorsement filed with the New York State Insurance Department by the Title Insurance Rate Service Association ("TIRSA") was withdrawn effective July 31, 2009 and can no longer accompany an Owner's Policy issued on or after that date. The Fairway Endorsement, in effect, assured the Insured that the transfer of an interest in the Insured under an Owner's Policy will not be deemed to create a new entity, which new entity would not be entitled to the benefits of the Policy. With the expansion of the definition of an "Insured" in the Conditions of the ALTA 2006 Owner's Policy to include "successors to an insured by...reorganization", this Endorsement was deemed unnecessary.

Effective August 15, 2009, a new TIRSA Mezzanine Financing Endorsement replaced the prior TIRSA Mezzanine Financing Endorsement (5/1/07). The new form tracks the text of ALTA Endorsement 16-06 (Mezzanine Financing). The prior form of the Endorsement may not accompany an Owner's Policy issued on or after August 15.

The charge for the TIRSA Mezzanine Financing Endorsement is no longer required to be computed based on the full amount of the Owner's policy of which the endorsement is a part. The amount of the coverage to be afforded under the new Endorsement will be the amount of the mezzanine loan, to be inserted in the first paragraph of the Endorsement. A rate of twenty percent of the Owner's Policy rate based on the amount of the Mezzanine Loan applies, instead of thirty percent of the Owner's rate based on the amount of the Policy. The new Mezzanine Financing Endorsement may be appended to a previously issued Owner's Policy.

The new Mezzanine Financing Endorsement is posted on First American's web site at <http://www.firstamny.com/doc/848.pdf>.

Transfer Tax/City of Peekskill – Chapter 228 of the Laws of 2009, signed into law on July 16, 2009, authorizes the City of Peekskill to enact a local law imposing a local deed transfer tax at a rate not to exceed 1% of consideration payable on the transfer of real property within the City. The City is authorized to allow a deduction for pre-existing liens and an exemption in an amount not to exceed \$100,000.00 of consideration. Conveyances made pursuant to contracts executed prior to September 1, 2007 will be exempt. See <http://assembly.state.ny.us/leg/?bn=A07252>.

**First American News/Powers of Attorney** – First American's template for the new Statutory Short Form Power of Attorney ("SSF Power") and the Statutory Major Gifts Rider, which are effective September 1, 2009, are posted to First American's web site at <http://www.firstamny.com/doc/415.pdf>.

Note that the pre-September 1 version of the SSF Power, if executed before that date, may be relied upon after September 1 if the new form SSF Power has not been executed. Information on the new form of SSF Power may be obtained on the First American web site at <http://www.firstamny.com/detail.aspx?id=203&mid=13633>.

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