
Valtech News and Reviews

1. Mortgage Recording Tax Increase

The \$.05 per \$100 increase in the mortgage recording tax rates in the City of New York and in Dutchess, Nassau, Orange, Putnam, Rockland, Suffolk and Westchester counties has been signed into law and is effective on June 1, 2005. The effective date of the increase was initially April 14, but the date was extended. The existing and new mortgage tax rates are set forth on an Exhibit to this Bulletin.

For all closings taking place on and after Monday, May 16, the increased mortgage tax rates must be collected. Invoices prepared for closings on or after Monday, May 16 will reflect the computation of mortgage recording tax at the new rates.

Under New York's Condominium Act, at Real Property Law Section 339-ee(2), a mortgage tax credit may be taken on a sponsor's conveyance of a condominium unit if certain requirements are met. The mortgage tax credit affidavit, submitted to the recording office to reduce the amount of mortgage tax payable in connection with the mortgage executed on the first sale of a unit closing on or after May 16, is to reflect the rates effective June 1.

2. Bankruptcy

A husband and wife owning property as tenants by the entirety entered into a contract of sale three days prior to the husband filing a Chapter 7 Bankruptcy. The Trustee did not assume the contract, which was therefore deemed rejected, and the Trustee contracted to sell the property to other purchasers. He commenced an adversary proceeding against the wife seeking authority under Code Section 363(h) ("Use, sale or lease of property") to sell the property free and clear of her interest. The United States Bankruptcy Court for the Southern District of New York granted the Trustee's motion to sell the wife's interest in the property under Bankruptcy Code Section 363(h) and, in doing so, also denied the initial contract vendees' motion for permission to intervene. Since the obligations of the Debtor's wife under the contract, and her rights in the property, were not "severable" from those of her husband, the vendees' contract rights were not enforceable; they were unsecured creditors with only a claim for damages against the estate. The Court noted that the vendees would have had a right to pay the contract price and take title from the Trustee if they were in possession of the property under Code Section 365(i). *O'Connell, as Trustee, vs. Prakope*, decided December 2, 2004, is reported at 317 B.R. 593.

3. Condominiums

The Supreme Court, Westchester County, denied a motion for summary judgment declaring that parking spaces at a condominium were limited common elements that could not be rented or sold to persons not residing at the condominium. The Appellate Division, Second Department, affirmed, holding that the Board of Managers did not establish, as a matter of law, that this was prohibited by the condominium's governing documents or rules. *Board of Managers of Stewart Place Condominium v. Bragato*, decided February 28, 2005, is reported at 789 N.Y.S. 2d 907.

4. Condemnation

Notwithstanding that property being condemned by the Queens West Development Corporation was zoned for industrial use, the owners of certain of the parcels being condemned sought to have their awards determined based on residential use under a redevelopment plan. The Supreme Court, Queens County, granted the motions of the condemnor to exclude evidence of the value of the property under a theory of residential use. According to the Court, "a condemnee may not receive an enhanced value for its property where the enhancement is due to the property's inclusion within a redevelopment plan". *Matter of Queens West Development Corp. v. Hunters Point Waterfront Development Land Use Improvement Project* was reported in the New York Law Journal on March 16, 2005.

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5. Cooperatives

The contract of sale for a cooperative unit conditioned closing on the approval of the transfer by the cooperative corporation. The corporation approved the transaction, but it required the purchasers to escrow the equivalent of eighteen months of maintenance charges for a period of no less than eighteen months. The purchasers canceled the contract due to the failure of the corporation to unconditionally approve their application and sued for a return of their down-payment. The Supreme Court, Queens County, granted the plaintiffs' motion for summary judgement, ordered the down-payment to be returned, and declared that the contract was null and void. The requirement of an escrow was an "unforeseen and onerous condition" which "effectively eviscerated the corporation's consent". *Sit v. Schnaps* was reported in the New York Law Journal on February 23, 2005.

6. Real Estate Taxes/Bellmore School District (Nassau County)

The Town of Hempstead, on behalf of the Bellmore School District, has issued supplemental school tax bills to correct the undercharging of school taxes for 2004-2005. These supplemental amounts are payable without interest until May 10, 2005. }

7. Mortgage Foreclosure

The Supreme Court, Nassau County, denied a motion to confirm a foreclosure sale and granted the motion of the owner of the home being foreclosed to void the sale, finding that the defendant was allowed by representatives of the lender to believe that the foreclosure sale would be canceled or postponed pending modification of the mortgage loan. The Court relied, in part, on the notes of telephone calls and other conversations with the mortgagor kept by the lender's representatives. The mortgagor claimed that she did not receive the package of loan modification documents that was sent to her. *Fleet Bank v. Galati* was reported in the New York Law Journal on March 23, 2005.