

Did You Know?

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LAWS OF INTEREST TO REAL PROPERTY PRACTITIONERS - PASSED DURING THE 1996 LEGISLATIVE SESSION AND SIGNED BY N.Y. GOVERNOR GEORGE PATAKI

Capital Gains Tax

As you all know, the Capital Gains Tax was repealed effective 6-15-1996. However, the "so-called" "Mansion Tax", payable by purchasers on sales of residential property of over \$1,000,000.00, remains in effect.

Credit Line Mortgages - Recording Tax

Existing law provides that when a credit line mortgage affecting real property principally improved by a one-to-six family residence is recorded, the mortgage recording tax is computed and paid based on the maximum principal amount secured by the mortgage. Once such tax is paid, no further tax is payable for such mortgage until (1) an instrument is recorded increasing the principal amount secured; or (2) the residential real property is sold or transferred to an unrelated person or entity, subject to such mortgage. (See regulations 20 NYCRR Part 647.)

Chapters 489 and 490 of the Laws of 1996, amend Tax Law Sec. 253-b, so as to extend this favorable tax treatment to all other credit line mortgages on non-residential property, securing an indebtedness of less than \$3 million. For the purpose of determining whether the \$3 million threshold has been reached, all

the maximum principal indebtedness secured by separate non-residential credit line mortgages must be aggregated under certain circumstances. These situations are: a. Where separate non-residential credit line mortgages form part of the same or related transactions; and b. Have the same or related mortgagors. For the purpose of determining whether the aggregation rule applies, there shall be a presumption that all mortgages offered for recording within a period of twelve consecutive months, having the same or related mortgagors, are part of a related transaction. This presumption may be rebutted only with "clear and convincing" evidence to the contrary.

The phrase: "related mortgagors" shall include, but not be limited to the following relationships: a. Members of a family; b. a shareholder of a corporation in which more than 50% of the value of outstanding stock is owned or controlled by such shareholder; c. Similarly, as to a partner and a partnership; d. Similarly as to a beneficiary of a trust in which more than 50% of the beneficial interest is owned or controlled by such beneficiary; e. A grantor of a trust, and such trust. [See Technical Services Bureau Memo: # 96-(6)-R.]

This law became effective November 6, 1996.

Estates, Powers & Trusts

Surrogates Court Procedure Act, Sec. 2225, has been amended by Chapt. 89 of the Laws of 1996, so as to provide that in any proceeding where a devisee, legatee or beneficiary of a will or trust is entitled to money or property upon the occurrence of a specified event, the Court as an incident to such determination, may also be asked to determine that such person(s) is (are) dead; or that no such person(s) exist. The Court may make such determination where such person has not been heard from for three (3) years since the death of the decedent, or the occurrence of the specified event. The Court, in such instance, may presume that such person predeceased the decedent, or has died before the occurrence of such event.

the purpose of this section, a "specified event" shall be the time specified in the will or lifetime trust, for the determination of the identity of devisee, legatee, beneficiary or members of a class thereof, entitled to share in the estate or trust property.

This amendment shall take immediate effect as to the estates of all persons dying after May 21, 1996.

Lien Priority - Reverse Mortgages

Secs. 280(5) and 180-a(5), as amended by Chapt. 33, Laws of 1996, provides that the priority of a reverse mortgage, including the lien for all principal, interest, fees, costs, shared appreciation, and other charges, [added] shall date from the recording of such mortgage, irrespective of the date of any advance of the reverse mortgage loan proceeds, or the date by which an authorized lender shall be entitled to shared appreciative or accrued but unpaid interest, etc.

This Law became effective April 2, 1996.

Lender Disclosure

Sec. 254-c was added by Chapt. 80 of the Laws of 1996, provides that any lender who requires a prospective residential borrower (1-6 family) to bear the cost of any appraisal or credit report as a condition of processing such a loan application, shall provide the same to a borrower at no additional cost.

Became effective May 14, 1996.

Limited Liability Companies

Limited Liability Company Law Sec. 417(1)(c) was added by Chapt. 147, Laws of 1996, to provide that an "operating agreement" may be entered into by the prospective participants before, at, or within 90 days of the filing of the Articles of Organization. Such agreement shall become effective upon the formation of the Limited Liability Company, or at such later time as provided for in the Agreement; but in no event prior to the formation of such company.

Chapt. 89 Laws of 1996, became effective June 18, 1996.

Mechanics Liens

Lien Law Sec. 11 has been amended by Chapt. 147, Laws of 1996, to permit the service of a mechanics lien on an owner, from five (5) days prior to filing the same, to 30 days after the filing of same. This section specifies the manner in which such service may be made, in many ways similar to personal service; and the times of such service: between 9 A.M. and 4 P.M.

It became effective July 11, 1996.

Power of Attorney Form

General Obligations Law Sec. 5-1501, has been amended by Chapt. 499, Laws of 1996, and clarifies the "joint" or "separate" authority of the donees of the power to act. Authorization has been added to act with respect to retirement benefits; make gifts of up to \$10,000.00; and to manage tax and other business matters. A further distinction in the purpose of the Statutory Power of Attorney, results in the creation of distinct "Durable" and "Nondurable" forms of the power. This law sets forth the form itself.

Becomes effective January 1, 1997.

Preliminary Injunction - Issue of Fact

CPLR Rule 6312(b-2) as added by Chapt. 24, Laws of 1996, provides that even if there is an issue of fact raised by defendant as to an allegation in plaintiff's papers regarding any element required for the issuance of a preliminary injunction, that the same shall not, in and of itself, be grounds for denial of such motion. In such instance, the court shall make a determination by hearing or otherwise, whether each of the elements required for issuance of a preliminary injunction exists.

Becomes effective January 1, 1997.

Registered (Torrens) Title

Chapt. 227 Of the Laws of 1996, provides a procedure whereby this alternative recording system will be

phased out over four years.

Defining "Voluntary Instruments" as deeds, mortgages, assignments of mortgage, leases and easements, it provides that on and after January 1, 1997, none of these instruments will be filed or memorialized on any Certificate of Title in the Registrar's Office. Further, that after such date, all such instruments will be recorded in County Clerk's Offices (and in Brooklyn, Bronx, New York and Queens Counties of New York City, in the Register's Office). The first such former Registered instrument to be recorded, will be accompanied by a copy of the last Registrar's Certificate of Title.

Defining "Adverse Instruments" as any document or instrument that adversely affects, but does not convey an interest in real property, such as a mechanics' lien, judgment, lis pendens, it provides that the same may continue to be filed in the Registrar's Office, on Certificates of Title, until December 31, 1999.

The transition period will be completed on January 1, 2000, after which time, no further documents or instruments of any kind or nature will be filed in the Registrar's Office on any Certificate of Title. At such time, all open Certificates of Title, will be recorded in the County Clerks and Register's Offices.

This law becomes effective January 1, 1997.

Small Estates

Chapt. 373, Laws of 1996, amends Surrogates Court Procedure Act, Sec. 1301(1) so as to increase the gross value of a "small estate" for personal property purposes to \$20,000.00.

Became effective as to estates of decedents dying on or after August 30, 1996.

Uniform Transfers to Minors Act

Chapter 304, Laws of 1996, created the Uniform Transfers to Minors Act by amending the Estates, Powers & Trusts Act, Article 7, to add a new Part 6. This Act shall affect such transfers made on or after 1-1-1997, although there are interim procedures now in place. This is a most detailed statute, of which we have attempted only a cursory survey of same.

This statute affects transfers, if at the time of same, the transferor, minor, or the custodian, is a resident of

New York State, or the custodial property is located in New York State, even if at any future date, any of the above exist outside of the State of New York. All custodial property held pursuant to this Act, shall be held by the same custodian for the benefit of the same minor; and shall constitute but a single custodianship. Provision is made, inter alia, for the appointment of successor custodians; and the resignations of custodians.

Nomination of a custodian does not create custodial property, until the nomination instrument becomes irrevocable; or a transfer of property to the nominated custodian is complete. The transfer may be made by an irrevocable gift, or the irrevocable exercise of a power of appointment in favor of a custodian for the benefit of the minor, pursuant to Sec. 7-6.9. A transfer pursuant to this Act, shall read: John Smith, "as custodian for" Mark Smith "under the New York Uniform Transfers to Minors Act."

The custodianship shall terminate upon the transfer by the custodian to the minor or the minor's estate, upon the earlier of: the minor attaining the age of 21 years, as to transfers made by gift, power of appointment or devise (Secs. 7-6.4 and 7-6.5); or upon the minor attaining the age of 18 years or other statutory age of majority to all other transfers of property (Secs. 7-6.6 and 7-6.7); or the death of the minor.