

Did You Know?

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LAWS OF INTEREST TO REAL PROPERTY PRACTITIONERS - PASSED DURING THE 1997 LEGISLATIVE SESSION AND SIGNED BY N.Y. GOVERNOR GEORGE PATAKI

Condominiums - Debt for Capital Improvement

Chapter 498, Laws of 1997, adds a new section (RPL, Sec. 339-jj) which allows a condominium Board of Managers to incur debt for capital improvement purposes with the consent of a majority of the common interest of the unit owners, after the expiration of five years from the conveyance of the first condominium unit.

No lien is created on the condominium common elements, as the same is owned in fractional units by the various unit owners. However, to secure the repayment of such debt, the Board is empowered to assign rights in future income and common charges; and to create a security interest, assign, pledge or mortgage or otherwise encumber real or personal property which it owns. All common charges shall be constitute trust funds for the repayment of such debt.

Became effective August 26, 1997.

Condominiums - Mortgage Priority

Real Property Law Section 339-z was amended by Chapter 349 of the Laws of 1997, so as to add

mortgages held by the New York City Housing Development Authority; and the department of housing, preservation and development of a city having a population of more than one million; to the liens which are superior to condominium liens for common charges.

Became effective August 5, 1997.

Condominiums - Service of Process

Chapter 346 of the Laws of 1997, amended Real Property Law, Section 339-n so as to provide that a Declaration of Condominium may provide for the designation of the Secretary of State to receive process served upon the condominium or its Board of Managers; and to provide the name and post office address to whom the Secretary of State shall mail a copy of such process. Deleted from such section, is the provision for the designation of a person, and their residential or business address within the city, town or village and county in which the condominium is located.

Section 339-s additionally amended, now provides for the filing of declarations and amendments thereto with the Department of State, in addition to the county clerk's offices.

These amendments became effective August 6, 1997.

Co-operative Apartments

Real Property Tax Law, as amended by Chapter 171 adds co-operative apartments to the category of residential homes which may benefit from tax exemptions provided that the local municipal governing body enacts enabling legislation. The amount of tax upon which such exemption shall operate, shall be computed by taking that portion of the real estate owned by the co-operative corporation and dividing it by the proportional relationship which the shares of stock owned by such tenant-stockholder bears to the total shares of stock of such corporation. Such exemption shall be credited by the co-operative corporation against the amount of such taxes otherwise payable by or chargeable to such tenant-stockholder. Section 458 was amended by adding a new subdivision 8; and Section 458-a was amended by adding a new subdivision 6.

Became effective July 3, 1997.

Credit Line Mortgages

Section 590-9 of the Banking Law was amended so as to decrease the minimum amount required for a line of credit secured by a junior lien mortgage from \$7,500.00 to \$2,500.00.

Became effective May 30, 1997.

Foreclosure - Payment of Taxes & Liens

R.P.A.P.L. Section 1354(2) as amended by Chapters 232 and 854 of the Laws of 1997, now provides that a referee appointed by a final judgment of foreclosure and sale, shall pay out of the proceeds of a sale, all taxes, assessments, and water rates which are liens upon the property sole; and redeem the property sold from any sales for unpaid taxes, assessments or water rates which have not become absolute. It is believed that this section shall govern in the absence of explicit contrary provision in the judgment.

The provisions previously applicable only to New York City and Buffalo (as being cities of over 1,000,000 population), is now extended to cities of a population of over 300,000, which additionally requires that the referee shall pay out of proceeds any liens or encumbrances placed by a city agency upon the real property which have priority over the foreclosed mortgage. An example of these, in addition to taxes, assessments and water charges, would be parking violations; emergency repair liens; housing violations; and the like.

Became effective July 21, 1997.

Lifetime Trusts

Chapter 139 of Laws of 1997, creates a Lifetime Trust by the addition of new Sec. 1-2.20 to the Estates, Powers & Trusts Law. It is defined as an express trust, created other than by Will; and does not include a trust for the benefit of creditors; a resulting or constructive trust; a business trust (where certificates of beneficial interest are issued to beneficiaries); an investment or voting trust; a trust created by court judgment; a liquidation or reorganization trust; or a trust created for the sole purpose of paying

dividends, interest, salaries, pensions or profits.

Additional new sections provide that every estate in property may be disposed of by such a trust (Sec. 7-1.14); that it is irrevocable unless there is an express contrary provision, and can be made revocable or amended by specific reference in a Will (Sec. 7-1.15); and is makeable by any person over the age of 18 (Sec. 7-1.13). Such a trust need be signed only by the Settlor, whose signature must be acknowledged as for a recorded instrument; or formalized by the signature of two witnesses, as required for a Will. (Sec. 7-1.16).

Merger

Sec. 7-1.1 was amended so as to eliminate the merger doctrine in New York, which operates to invalidate a trust where the donor, is also the sole trustee and beneficiary. Bear in mind, that this doctrine which has had such effect on innumerable Florida trusts which are formatted in this manner, will continue to be so operative on these Florida trusts executed prior to 6-25-1997, the effective date of this law.

Mortgage Satisfaction

Chapt. 71, Laws of 1997, was enacted amending Real Property Law, Section 321(5)(a), to add voluntary administrators to the category of parties, including administrators and executors, who may execute discharges of mortgages.

Became effective May 23, 1997.

N.Y.C. Real Property Transfer Tax

The New York City Administrative Code, Sec. 11-2102 has been amended so as to provide for the deduction of the amount of mortgages which continue as liens on real property, or an interest therein, from the consideration paid for a transfer of ownership of such properties, in connection with the calculation of this Tax. This amendment deals only with one, two, and three family houses,

condominiums and co-operative residential apartments. Insofar as these types of residential improvements are concerned, the City tax law has been brought into conformity with that of the State. No change has been made in the City law to bring it into conformity with the State law, as to the taxation of commercial properties, or multiple-dwellings (four or more units). Chapt. 314 of Laws of 1997.

Became effective August 29, 1997.

N.Y. State Tax Warrants - Statute of Limitations

In April, 1988, Tax Commission Counsel issued an opinion, ruling that State Tax Warrants were and always had been governed by the common law, which allows for a 20 year life, while statutes limit the duration of a judgment to ten years. Prior to this opinion, traditional practice had limited same to ten years. This ruling which was deemed to have retroactive effect, had extreme ramifications for the title industry, especially since county clerks routinely discarded records of these warrants after ten years.

The C.P.L.R. was amended by Chapt. 176 of Laws of 1997, by adding a new Section 174-a which provides that the ten year statute of limitations whereby money judgments remained liens on real property for such ten year period, was extended to include State Tax Warrants against real property owned by taxpayers.

Became effective July 8, 1997.

Uniform Acknowledgement Forms

By Chapter 179, Laws of 1997, the current RPL Sec. 309, pluralizes the existing acknowledgement forms; and allows the use of these forms in substantial conformity as set forth in Sec. 309, until 9-1-1999. Further, the law in Sec. 2, thereof enacts as Sec. 309-a, new forms which must be used on and after 9-1-1999, but which can be currently used.

The new Sec. 309-a eliminates the separate corporate acknowledgement by defining a “person” as including “any corporation, joint stock corporation, estate, general partnership (including any registered limited liability partnership or foreign limited liability partnership), limited liability company (including a professional service limited liability company), joint venture, limited partnership, natural person, attorney-in-fact, estates, real estate investment trust, business trust or other trust, custodian, nominee or

any other individual or entity in its own or any representative capacity.” The subscribing witness acknowledge form remains , as modified. Became effective or will become effective as above noted. [The text of the new forms provided for by Section 309-a, are set forth at the end of this article.]

Wills - Objections to Probate

Chapter 87, Laws of 1997 amends the Surrogate’s Court Procedure Act, so as to repeal existing Section 1411 which regulates the filing of objections to the probate of a will and provides for a simpler, uniform and direct procedure. Persons whose interests in the estate arise as beneficiaries under the terms of the will, are not initially made parties to the court proceedings for the probate of a will. It is felt that the proponent’s petition for probate adequately protects and advances their interests in the estate passing under the will; and if no will contest results, the beneficiaries are entitled only to notice of probate under Section 1409. If a contest results, beneficiaries who have not yet appeared in the probate proceeding, must then be given notice of same by service of a citation or supplemental citation, and an opportunity to join in the probate proceedings in the court.

The citation must be submitted by the proponent of the will to the court within thirty days after the filing of objections, or if not so filed, by an objectant, or any other interested person. The citation shall be served in accordance Sections 307 and 308.

A person who has waived service or been served, and does not appears, will not be entitled to further notice. Any determination of the court as to the objections raised and agreed to by those appearing, will, nevertheless, be binding upon those not appearing; and they may be required to contribute to the settlement in the same fashion as those appearing and agreeing to the settlement.

Becomes effective January 1, 1998.

Charitable Institutions

RPTL Section 420-a as amended by Chapter 630, Laws of 1997, provides for cancellation of unpaid real property taxes affecting real property owned by charitable institutions.

Gifts to Minors

Chapter 535, Laws of 1997, converts Uniform Gifts to Minors Act into Uniform Transfer to Minors Act, validates all transfers made prior to 1-1-1997; and repeals Part 4 of the Act. Adds a new Section 7-6.22, PTL; and renumbers Sections 7-6.22 - 7-6.25, to 7-6.23 - 7-6.25.

Real Property Tax Law

Chapter 534, Laws of 1997, amends RPTL Section 421-a to extend eligibility for a real property exemption on new multiple dwelling from local taxation to construction commenced before 1-1-1999, and completed no later than 12-31-2000.

New Regular Acknowledgement

State of New York;
County of ; ss.:

On the ... day of ... in the year ... before me, the undersigned, a Notary Public in and for said State, personally appeared ... personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(es), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument. (Section 309-a(1))

New Subscribing Witness Acknowledgement

State of New York;
County of ; ss.:

On the ... day of ... in the year before me, the undersigned, a Notary Public in and for said State, personally appeared ... the subscribing witness to the foregoing instrument, with whom I am personally acquainted, who, being by me duly sworn, did depose and say that he/she/they reside(s) in ... (if the

place of residence is in a city, include the street and street number, if any, thereof); that he/she/they know(s) ... to be the individual described in and who executed the foregoing instrument; that said subscribing witness was present and said ... execute the same; and that said witness at the same time subscribed his/her/their name(s) as a witness thereto. Section 309-a(2)]