

# FEDERAL STANDARD ABSTRACT

## TITLE NEWS

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#### Taking from the Public Body

It is a well-known principle that the doctrine of adverse possession cannot be used to divest the government of its property; at least not when the property is held in its governmental capacity. For example, schools and parklands, held for public use, are deemed held in the government's public capacity and therefore cannot be acquired by adverse possession. But what about property taken for non-payment of real property taxes? Isn't it a governmental act to take property by tax deed and resell it to satisfy past taxes? In Ammirati v. Van Wincklen, 839 N.Y.S. 2d 685 (Nassau, July 11, 2007) the Supreme Court said no, "[t]hat a municipality takes land for tax collection purposes does not defeat an adverse possession claim if the subsequent purpose is merely re-sale, which is proprietary in nature and not a true governmental use."

#### B-SCAN

On October 22, the NYC Department of Buildings has launched a citywide program called B-Scan by which all new job applications will be scanned and made available on-line, with a few exceptions. This measure spells relief for closing attorneys who are usually forced

to interpret a cryptic description of a filing with the help of a faxed and distorted survey. Naturally, the new program is only prospective, which means that old filings will not be scanned. Closing attorneys may have to wait a while.

#### Section 8 Landlords in Peril

Many landlords have subscribed to the widely popular Section 8 program by which a housing authority pays most of certain residential tenants' rent payments. In a recent case the Court of Appeals, the highest court in the state, declared that landlords "are obligated to continue accepting ... section 8 rent subsidies and are not permitted to opt out of the federal section 8 rent subsidy program" and that for units on the program otherwise subject to the Rent Stabilization Code, landlords may not decline to offer lease renewals consistent with the HUD approved form of lease, which form makes acceptance of Section 8 subsidy a term of each lease signed with a Section 8 tenant. Rosario v. Diagonal Realty, LLC, 8 N.Y.3d 755, July 2, 2007. According to the Rent Stabilization Code, subject renewal leases must be on the same terms and conditions.

## **Town and City Transfer Taxes in the Hudson Valley**

The Hudson Valley Community Preservation Act of 2007, effective January 1, 2008 has given authority to towns and cities within Putnam and Westchester Counties to pass local laws creating community preservation funds to be funded by imposing taxes on real estate transfers. The transfer tax will have a maximum tax rate of 2% and provide for an exemption equal to the median sales price of residential property within the applicable town or city. For example: Residential property is purchased in a subject town for \$400,000. If the median price of residential property in that town is \$300,000, then this amount works as an exemption and only the balance of \$100,000 is subject to tax. Applying the maximum tax rate of 2%, this transaction would yield a transfer tax liability of \$2,000. This will naturally be in addition to the current state Real Estate Transfer Tax (TP-584 form), but it will be deemed to be the purchaser's

responsibility rather than the seller's. To this day, none of the subject towns and cities has passed the new tax. Practitioners should remember, though, that the Cities of Yonkers and Mount Vernon in Westchester County already have their own transfer tax with tax rates of 1.50% and 1.00%, respectively. These two current taxes, just like New York City's own, bear the name Real Property Transfer Tax (RPT) and are both paid by the seller.

Similarly, the Town of Fishkill in Dutchess County was given authority to pass its own transfer tax under Chapter 544 of the Laws of 2007. The same terms and conditions applicable to the new Putnam and Westchester transfer taxes apply. However, this tax becomes effective after the 90<sup>th</sup> day of its enactment, which was August 15<sup>th</sup> and means that the new tax in the Town of Fishkill could become effective as early as November 15<sup>th</sup>, unlike the other new taxes in Westchester and Putnam Counties which could become effective on January 1<sup>st</sup>, 2008, at the earliest.

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