

# BENCHMARK BRIEFINGS

BENCHMARK TITLE AGENCY, LLC

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WINTER 2012

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## County by County Updates:

### ■ New York City -

- I. **New Charges:** The New York City Department of Finance has established new charges which appear on the 2011/2012 NYC Department of Finance tax system. The three new charges are:
- The Real Property Income and Expense charge (RPIE): a penalty for failing to file the required annual Real Property Income and Expense report prior to Sept.
  - A fee for assessment protests or grievances on real property with a total assessed value of \$2,000,000 or more. (TAX COMM)
  - Hazardous Violation Re-inspection: this charge is applied when a hazardous condition is not corrected or when the building department receives no response to correct the hazardous condition. (HSRD RENSP)
- II. **Lien Sale:** NYC has given the 90 day notice of its intention to sell tax and water liens. The notice states that if the property owner does not pay or resolve the debt by May 17, 2012, the City will sell the lien. If the lien is sold, the property owner will owe the amount of the lien plus 5% surcharge, accrued interest and administrative fees.
- III. **Real Estate Taxes:** The Department of Finance has announced the following new tax rates for the 2nd half, 3rd and 4th quarters. Class 1: 18.205, Class 2: 13.433, Class 3: 12.473, Class 4: 10.152. Grace dates remain the same. Properties (including houses, businesses, condos, coops, etc.) with an assessed value of less than \$250,000 enjoy a 15 day grace period. Properties with an assessed value of \$250,000 or more, payment is due by January 2nd.

- **Dutchess County** - Village of Wappingers Falls - The building department has imposed the following charges for searching their records: Refinance - fee is \$75.00 per search; Purchase - fee is 1/10th of 1% of the purchase price.
- **Rockland County** - Clerk Paul Piperato announced that his office has added "PropertyCheck" to his databases to help protect county residents from potential property and mortgage fraud. (Similar to NYC's property check program) PropertyCheck is a 24/7 service that allows residents to sign up on the county clerk's website ([www.rocklandcountyclerk.com](http://www.rocklandcountyclerk.com)) to receive automated email notifications whenever a property transaction has been recorded with their name. The purchase, installation and use of the PropertyCheck software are free to residents.

### ■ Westchester County -

- I. **New Rochelle:** The City of New Rochelle has increased the Refuse Tax from \$66/unit to \$223/unit. Qualifying seniors remain at \$30/unit. This is an increase of 330%. This increase is reflected on the 2012 City Tax bill due January 2012.

## County by County Updates continued:

### ■ Westchester County continued -

- II. **Tuckahoe:** The Village of Tuckahoe has imposed the following fees to obtain copies of records in the building department. Single family residential certificate of occupancy - \$50.00 per copy; multiple family certificate of occupancy - \$100.00 per copy; commercial/industrial - properties \$200.00 per copy; certificate of compliance/completion - \$25.00 per copy. Alternatively, a FOIL request can be submitted to obtain certificates of occupancy - this process can take up to 30 days to obtain the requested copies. However, the charge is only \$.25 per page copied.
- III. **Port Chester** - There are serious delays in obtaining municipal department searches in the Village of Port Chester. Presently searches take 8 weeks to complete. As a result, the Board of Trustees of the Village of Port Chester has approved the imposition of a fee for an expedited search of their building department records, effective February 7, 2012. The Village of Port Chester building department will now accommodate search companies on an expedited basis for an ADDITIONAL FEE OF \$200.00. The payment of the additional fee will provide municipal department searches in two weeks, as opposed to the present standard 8 week turnaround. When ordering titles for property in the Village of Port Chester, please let us know if you would like the search in this expedited manner. If you elect the expedited search option, please be sure to advise the lender to reflect this charge in the Good Faith estimate well before closing.
- IV. **Westchester County Recordings:** Beginning 2/10/12, the Westchester County Clerk will send only an email notification to the submitter when a recording package is rejected for a financial reason. The Clerk has advised "In addition, the package will return to your PREP package grid where you can view and print the rejection letter if necessary. In an effort to save paper and postage, we will no longer be mailing out financial rejection letters when there is no need to mail back a rejected payment (such as an unsigned check)."
- V. **Electronic Filing is Expanding in Westchester:** As of January 17, 2012, the following case types **must** be commenced electronically via the NYSCEF System in Westchester County: Article 75 (arbitration); Commercial, including Commercial Division; Consumer Credit Transactions; Contract; Foreclosure (residential and non-residential, mortgage and non-mortgage); Tax Certiorari; and Tort. In addition, Small Claims Assessment Review actions **may** be commenced electronically via the NYSCEF System. The following case types are **not eligible** for electronic filing: Article 78; Election Law; Matrimonial; Mental Hygiene (including Article 81). The system provides online access to all public documents filed in the case from any location with an internet connection. Visit [www.nycourts.gov/efile](http://www.nycourts.gov/efile) to file electronically or visit [www.WestchesterClerk.com](http://www.WestchesterClerk.com) for more information about the expansion of electronic filing in Westchester County including the schedule of NYSCEF Training Classes which provide 2 CLE credits at no cost.

**Representing:** Chicago Title Insurance Company, Commonwealth Land Title Insurance Company, Fidelity National Title Insurance Company, First American Title Insurance Company, Stewart Title Insurance Company and Westcor Land Title Insurance Company

## Recent Articles, Decisions, Legislation and Opinions of Interest:

- **Adverse Possession/Trespass:** The Fourth Department recently opined that a trespass to land held by adverse possession can trigger an award of punitive damages. West, et al. vs. Hogan, et al., 88 AD3d 1247 (Oct. 7, 2011)([http://www.nycourts.gov/reporter/3dseries/2011/2011\\_07086.htm](http://www.nycourts.gov/reporter/3dseries/2011/2011_07086.htm))
- **Ethics Opinion:** The Professional Ethics Committee of the New York State Bar Association recently issued Opinion 882, which opinion modifies Opinion 817. Opinion 882 deals with a lawyer's participation in a real estate transaction which include both a "seller's concession" and an equivalent "gross-up" in the sales price. The opinion concludes "that an attorney may ethically participate in a real estate transaction where the sales price is grossed-up by an amount equal to a corresponding seller's concession if the amount of the gross-up and the amount of the seller's concession are expressly and meaningfully disclosed in all documents that state the sales price, including but not limited to the contract of sale, the HUD-1 Settlement Statement, and all other documents that the attorneys prepare, review or approve." See: [http://www.nysba.org/AM/Template.cfm?Section=Ethics\\_Opinions&ContentID=55697&template=/CM/ContentDisplay.cfm](http://www.nysba.org/AM/Template.cfm?Section=Ethics_Opinions&ContentID=55697&template=/CM/ContentDisplay.cfm)
- **Ethics Opinion:** Westchester County Bar Association issued an opinion on Multiple Representation of a Title Company and a Party to a Real Estate Transaction, in the March 2010 issue of the WCBA Newsletter. A supplemental opinion was published in the January 2012 edition of the Westchester County Bar Association's newsletter. The January 2012 opinion concludes: "As the discussion in the WCBA opinion indicates, such a situation falls afoul of several disciplinary rules and a succession of opinions relating to multidisciplinary practice as well as conflicts of interest, all of which preclude a person who is acting as an agent for a title insurance company from also acting as an attorney for the underlying real estate transaction." For the full opinion see: <http://wcbany.affiniscape.com/associations/9830/files/2012-01-NL.pdf>
- **MERS:** US Senator Corker has introduced SB 1834 – "Residential Mortgage Market Privatization and Standardization Act of 2011". The bill, among other aims, proposes to create a MERS 2.0 federalized land title registry for the transfer of mortgages outside of the local county recorders offices using the current MERS model as a guide for the FHFA.
- **MERS:** New York AG Eric Schneiderman has filed suit against several of the nation's largest banks, charging that the creation and use of the private national Mortgage Electronic Registry System has resulted in "a wide range of deceptive and fraudulent foreclosure filings in New York state and federal courts, harming homeowners and undermining the integrity of the judicial foreclosure process." In broad terms, the suit alleges that the banks used MERS as a front for millions of home loans that made it easy to securitize those mortgages. The AG further alleges that MERS has fraudulently identified itself as the plaintiff in foreclosure actions although it lacked the documentation to claim ownership of the loans in question. The lawsuit seeks "a declaration that the alleged practices violate the law, as well as injunctive relief, damages for harmed homeowners, and civil penalties" — which could be a very big bill indeed for the Defendants.

## Industry News:

- **New IT-2663 and IT-2664:** The 2012 Form IT-2663, Nonresident Real Property Estimated Income Tax Payment Form, and the instructions for this form have been revised. Legislation has been enacted changing the highest effective rate of income tax to 8.82%. The revised form reflects the correct applicable personal income tax rate at which taxpayers must calculate and pay their estimated tax liability on a sale or transfer of real property located in NYS occurring on or after January 1, 2012, but before January 1, 2013. Similarly, the IT-2664 is used for Cooperative transfers. Link to the new forms: [http://www.tax.ny.gov/pdf/current\\_forms/it/it2663\\_fill\\_in.pdf](http://www.tax.ny.gov/pdf/current_forms/it/it2663_fill_in.pdf) and [http://www.tax.ny.gov/pdf/current\\_forms/it/it2664\\_fill\\_in.pdf](http://www.tax.ny.gov/pdf/current_forms/it/it2664_fill_in.pdf)
- **The Steven J. Baum P.C. law firm** announced mass layoffs of employees in Amherst and Westbury following directives from Fannie Mae and Freddie Mac transferring foreclosure and bankruptcy matters from the Baum firm to other attorneys. Pillar Processing, a document processing firm based in Amherst, also announced it was closing down by February 2012. Over 675 employees will be affected.
- **Mortgage Recording Tax/New York State Transfer Tax/Additional Tax (a/k/a Mansion Tax):** The Dept. of Taxation and Finance (DTF) has added Tax guidance bulletins regarding the above noted taxes to their website. According to the DTF "[t]hese Tax Guidance Bulletins are based on the statutes, regulations, court cases, and Tax Appeal Tribunal decisions in effect on the date they are issued and [they] will be updated as changes in Tax Law or policy take effect so that they will be current when viewed on the department's web site."  
Mortgage Recording Tax bulletins: [http://www.tax.ny.gov/pubs\\_and\\_bulls/tg\\_bulletins/mortgage\\_recording\\_tax\\_bulletins\\_by\\_number.htm](http://www.tax.ny.gov/pubs_and_bulls/tg_bulletins/mortgage_recording_tax_bulletins_by_number.htm)  
Real Estate Transfer Tax and the Additional Tax bulletins: [http://www.tax.ny.gov/pubs\\_and\\_bulls/publications/real\\_estate\\_pubs.htm](http://www.tax.ny.gov/pubs_and_bulls/publications/real_estate_pubs.htm)
- **Mortgage Recording Tax/New York State Transfer Tax:** The Dept. of Taxation and Finance (DTF) has posted the interest rate to be charged on late payments and assessments of Mortgage Recording Tax and the State's Real Estate Transfer Tax for 2012. The rate will be 7.5% per annum, compounded daily. The interest rate to be paid on refunds of those taxes will be 2% per annum, compounded daily. The interest rates are published at [http://www.tax.ny.gov/pay/all/int\\_curr.htm](http://www.tax.ny.gov/pay/all/int_curr.htm)

## Industry News continued:

- **Offering Plans:** NY AG Eric Schneiderman announced a policy to help streamline the public offering of units in cooperatives, condominiums, homeowners associations and timeshares. The policy, which will require developers to give prospective purchasers the option of receiving plans in a searchable digital format, is part of the Attorney General's comprehensive initiative to modernize his office's real estate oversight functions and facilitate transactions in the market. The policy will become mandatory on April 1, 2012. "By allowing the distribution of offering plans in a digital format, we are increasing efficiencies in real estate transactions in a way that is beneficial for both developers and prospective purchasers," Schneiderman said in a statement. The policy is meant to be environmentally friendly by saving paper; prospective buyers can still get hard copies of documents on request. The goal of this electronic real estate filing system is "to bring residential real estate transactions in New York into the 21st century," Schneiderman said.
- **Federal Estate Tax:** Effective January 1, 2012, the federal estate tax exemption has been increased to \$5,120,000.00. The **New York estate tax** exemption remains at \$1,000,000.00
- **Short Sales:** Freddie Mac recently released Guide Bulletin #2011-23, which makes significant changes to its short sale affidavit requirements effective 1/1/12. The Guide Bulletin can be viewed at: <http://www.freddiemac.com/sell/guide/bulletins/pdf/bll1123.pdf> The "Short Payoff Requirements" are on page 3. According to the American Land Title Association, "Freddie" made three key changes: A) First, and most important, the affidavits for the first time will require only that each certification is made to "the best of each signatory's knowledge and belief." This change addresses the concern that closing agents were being asked to certify information that they did not and could not know. B) Second, each signatory will only be responsible for their individual negligent or intentional misrepresentation, not those in the certifications of any of the other signatories. With these changes, Freddie has eliminated the concern that closing agents would be jointly liable for another signatory's false certification. C) Lastly, while Freddie Mac is still requiring all signatories to sign a single affidavit, that affidavit can no longer be incorporated as an addendum to the sales contract.

## Upcoming Events:

### Benchmark Continuing Legal Education Seminar (2.0 credits):

March 20, 2012

"LLC or Corporation? What is the Entity of Choice?"

Presented by: Edward Sumber, Esq. of Sumber & Dolgetta, P.C.

### The Woman's Club of White Plains

305 Ridgeway, White Plains, NY

5:30 pm Registration ~ 6:00 pm – 8:00 pm Program

Please RSVP by March 13, 2012 as seating is limited: Fax 914-422-1550 or Email [cle@benchmarkta.com](mailto:cle@benchmarkta.com)

## BENCHMARK IS CONNECTED!

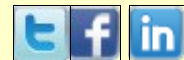
Now you can stay updated with Benchmark on a daily basis by following us on Facebook, LinkedIn and Twitter. We update information on these sites daily. Stay abreast of changes in the real estate industry by utilizing our sites!

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Website: [www.BenchmarkTA.com](http://www.BenchmarkTA.com)



## Benchmark's Corporate Social Responsibility Achievements and Goals:

Benchmark mission is not only to provide customer service which meets or exceeds a client's expectations. An integral part of our mission is to also contribute to a better society and a cleaner environment thereby making an overall positive impact. In 2011, we are pleased to say our staff did an outstanding job in giving back and meeting personal and corporate social responsibility goals.

- \* We embraced the concept of a cleaner environment by recycling all paper used in our offices and by increasing the email distribution of our title reports and correspondence.
- \* In December 2011 our staff collected diapers, baby formula and clothing for Westchester Community Opportunity Program, Inc. (WCOP) and treated the staff of WCOP to a Holiday luncheon.
- \* Throughout the year we collect gently used clothing for men, women (casual and career) and children. We donate the clothing to WCOP for distribution to needy families. If you would like to donate any clothing, let any member of our staff know and we will gladly pick it up! The donation will be made in your name.
- \* Raised \$1,500 for Thuthukani Special School, KwaZulu Natal, South Africa through staff donations and fundraisers.