

BENCHMARK BRIEFINGS

BENCHMARK TITLE AGENCY, LLC

JEAN PARTRIDGE

FALL 2011

THOMAS DE CARO

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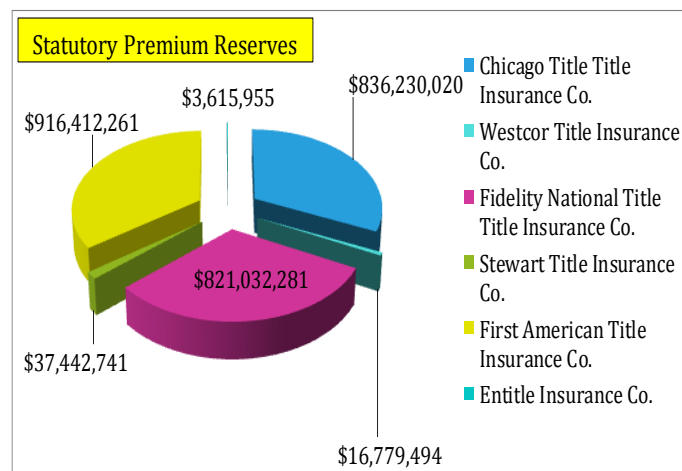
County by County Updates:

- **Albany County Clerk** - is returning home to the County Court House downtown Albany. They anticipate opening at this location on Monday, November 14th.
- **Columbia County** - The Columbia County transfer tax (currently scheduled to expire on December 31, 2011) has been extended and shall now expire and be deemed repealed on December 31, 2013. See Chapter 474 of the Laws of 2011.
- **Cortland, Erie, Essex, Orange, Onondaga and Tompkins Counties** will be participating in a pilot project for the use of an online RP-5217-PDF Form. The online form is intended to eventually replace the four (4) part paper version of this form. <http://www.orps.state.ny.us/rp5217/index.cfm>
- **County Clerk Office Closings** - due to the recent hurricanes many county clerks closed for several days. Some clerks offices have been temporarily displaced (Orange County) and have limited information available for examining. Please contact us if you need examining or recording done in the affected counties.
- **New York City** - Beginning September 6, 2011 any UCC documents submitted, which are accepted for recording will not be returned.
- **Putnam County** - Electronic cover pages for all Putnam County recordings will become mandatory January 1, 2012. All are encouraged to begin using the system now. The system is similar to ACRIS and is intuitive to use. All users must create an account. Copy to your browser to create an account: [http://www2.landaccess.com/putnam_ny_recording/CGIBIN/LANSAWEB?PROCFUN+CPGP001+CPGF001+PUT+ENG+FUNCPARMS+PGMMP\(A010\):CPGF030+COUNTYCDE\(A004\):NYPY+WRKSTNID2\(A010\):+APPCDEWK\(A0002\):LN](http://www2.landaccess.com/putnam_ny_recording/CGIBIN/LANSAWEB?PROCFUN+CPGP001+CPGF001+PUT+ENG+FUNCPARMS+PGMMP(A010):CPGF030+COUNTYCDE(A004):NYPY+WRKSTNID2(A010):+APPCDEWK(A0002):LN)
- **Westchester and Nassau County Surrogates Court** - Access to the Surrogates Court support services has been reduced. Effective June 1st access has been eliminated on Mondays and Fridays. The Court will remain open five days per week to the public and bar for necessary legal filings, emergency applications and fee collections.
- **Westchester County** - 1930 Atlas maps are now available online at the Westchester Records Online site. There is no charge to view these maps. <https://wro.westchesterclerk.com/Login/Login.aspx>
- **E - filing of Court Records:** Effective June 1st, documents filed in court cases must be filed electronically via the New York State Courts Electronic Filing (NYSCEF) system - E-Filed. This includes Lis Pendens in certain counties (e.g. Rockland). All counties will have mandatory filing for all documents in the near future. Click on the link for a list of counties: <https://iapps.courts.state.ny.us/nyscef/AuthorizedForEfil-ing#SupremeCourt>

Title Industry News:

- **ALFN Releases Standards Guide for Distressed Property Title Work** - American Legal & Financial Network (ALFN) established guidelines for title searching on distressed properties. See link: <http://www.dsnews.com/articles/print-view/alfn-releases-standards-guide-for-distressed-property-title-work-2011-09-27>
- **New Jersey Title Insurance Company** recently ceased issuing policies in New York.
- **Washington Title Insurance Company** has announced that it is relinquishing its license to issue title insurance policies in the State of New York.

If you need assistance regarding policies issued by either of the above noted companies please contact our office. The New York State Land Title Association (www.nyslta.org) has a committee working with the New York State Department of Financial Services (formerly the New York State Insurance Department) to help resolve the issues regarding insolvent title companies and prevent future ones. Jean Partridge is a member of this committee and will have up to the minute information regarding this matter. **The recent ceasing of business of title underwriters and the inevitable problems that will occur as a result further exemplifies the necessity of selecting an underwriter with substantial financial strength.** See below for recent financial strength of underwriters in New York.



Source: Demotech Performance of Title Insurance Companies, 2011

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** - The Appellate Div. Second Dept. has ruled in Hartman v. Goldman (reported at 2011 WL 1733962) that pursuant to RPAPL §543, as amended, de minimus non-structural encroachments, such as the planting of foliage and shrubbery, landscaping, lawn maintenance and the installation of driveway lights, are, as a matter of law, deemed permissive and non-adverse and cannot support a claim for adverse possession.
- **Commercial Credit Line Mortgages and Mortgage Recording Tax** - Article published in the Law Journal on July 27, 2011, written by Michael J. Berey <http://www.law.com/jsp/nylj/PubArticleNY.jsp?id=1202508332073>
- **Electronic Recording** - On September 25, 2011 Senate Bill number S2373 (AN ACT to amend the state technology law and the real property law, in relation to permitting electronic recording of instruments affecting real property) was signed into law by the Governor. The bill authorizes recording officers to require that conveyances of real property presented for recording be submitted electronically, as electronic records. The bill becomes effective 365 days after signing which will provide the State Office for Technology time to promulgate necessary rules and regulations to implement the law. To view a copy of the legislation and sponsors memo click here http://assembly.state.ny.us/leg/?default_fld=%0D%0A&bn=a6870&term=&Memo=Y&Text=Y.
- **Federal Tax Liens** - US Sixth Circuit rules that US can enforce a FTL against real property held as tenant by the entirety and sell the property, as long as they split the proceeds with the other tenant by the entirety. <http://www.bna.com/us-barczyk-sixth-n12884903539/>
- **ALFN Releases Standards Guide for Distressed Property Title Work** - American Legal & Financial Network (ALFN) established guidelines for title searching on distressed properties. See link: <http://www.dsnews.com/articles/print-view/alfn-releases-standards-guide-for-distressed-property-title-work-2011-09-27>
- **Insurance Dept. Opinion** - On May 31, 2011 the NYSID opined that a residential real estate broker may not refer its clients to attorneys on an "approved" or "recommended" list if the attorneys, in turn, refer those clients to the broker's affiliate title agent. Such a quid pro quo would be a violation of Sec. 6409 (d). To view the opinion click on the link: <http://www.ins.state.ny.us/ogco2011/rg110504.htm>
- **The New York State Banking Department** - issued a General Industry Letter dated May 10, 2011 setting forth its opinion that Real Property Law Section 265-a ("Home Equity Theft Prevention") does not apply to deeds in lieu of foreclosure. The Letter is posted at <http://www.banking.state.ny.us/il110510.htm>
- **Private Transfer Fees** - Governor Cuomo also signed into law Senate Bill number S5203 (An act to amend the real property law, in relation to prohibiting private transfer fee obligations) on September 25, 2011. The legislation provides that new private transfer fee agreements will be unenforceable in New York. This legislation imposes conditions and requires strict registration and notification requirements for existing private transfer fees. This law is effective immediately. For text see: http://assembly.state.ny.us/leg/?default_fld=%0D%0A&bn=a7358&term=&Memo=Y&Text=Y

Upcoming Events:

Benchmark CLE's:

Tax Certiorari in New York State

presented by Bobbie Ann Cox, Esq.

November 16, 2011, 8:00 AM

Benchmark Title Agency

222 Bloomingdale Road

White Plains, NY

Ethics

presented by Edward Sumner and Joseph Delgetta, Esqs.

Spring, 2012 - More information to follow.

Miscellaneous Information:

New Suffolk County Village: The Village of Mastic Beach was incorporated on September 16, 2010. The village will begin issuing tax bills on 12/1/11 for the second half of the 2011/2012 tax year. The village tax period is 6/1 to 5/31 and the tax rate is 13.785 percent. Please note that in addition to the new district number (0209) parcel identification numbers may have also changed.

Notable Transactions Insured by Benchmark:

Short Sale Transaction Saved:

The call all practitioners fear... hours before a closing is scheduled your title company informs you that three substantial judgments were just docketed against the seller and the seller's attorney advises that the client does not have the funds to pay them! Purchaser's furniture is on the moving truck. The deal is dead, right? Wrong ... although the closing was adjourned for the scheduled day, we ultimately were able to get the deal closed a few days later by working closely with all parties involved in the transaction. With the Short Sale Lender's deadline to close title rapidly approaching, Benchmark and the purchaser's and seller's attorneys collectively came up with a solution: negotiate and procure partial releases (as opposed to full satisfactions) from each judgment creditor, releasing the subject premises from the lien of each judgment. This was accomplished in less than a week and the closing took place prior to the expiration of the short sale payoff letter. Benchmark was instrumental in obtaining the payoff lender's consent to the payment to the judgment creditors. Needless to say everyone was pleased with the outcome and Benchmark even gained the seller's attorney as a client! Our goal is to assist clients in resolving title issues, to come up with solutions to title defects, not merely to disclose title defects.