

# TO REAL ESTATE LAWS

## EVERYONE NEEDS TO KNOW

written by **andrew m. lieb, esq., mph**



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**N**ow that 2015 is here, and the high season for rentals and occupancy is fast approaching, everyone on the East End should know the top changes from the past year in real estate laws that affect property owners and tenants in our community. This is not a list about the best events from 2014, but, instead, a list that highlights the new legal landscape that you face in 2015.

### **National Flood Insurance Program Reformed**

In recent years, flood insurance premium rates have skyrocketed. The Homeowner Flood Insurance Affordability Act of 2014 mitigates some of those rate increases while continuing the program's goal of eliminating subsidies and applying true actuarial risk in setting policy premiums. Most importantly, the new law ends the effectuation of a debilitating rule that previously resulted in the setting of new insurance rate premiums as a result

of a real estate transaction. As a result of the prior rule, purchasers were left uncertain about what their insurance bill could become right after the purchase. Now, home purchasers can continue to be grandfathered under the prior owner's policy premium amount and a degree of certainty now exists concerning transactions involving property requiring flood insurance.

### **New York Estate and Gift Tax Reforms**

New York has increased its estate tax exemption and will continue to increase this exemption through 2019, at which time it will be equal in amount to the Federal exemption. Through March 31, 2015, the exemption for an individual is \$2,062,500 in New York. Then, for the next year the exemption is \$3,125,000. However, New York has also imposed a 3-year look-back on gifts made prior to death where the value of the property gifted is now included into the total value of the decedent's assets when calculating estate tax. Additionally, the new law provides a cliff

CONTINUED ON PAGE 24



CONTINUED FROM PAGE 23

where an estate that is valued at more than 105% of the exemption amount limit (i.e., \$2,165,625) will be taxed on the entirety of the estate, not just the amount over the exemption amount limit. As a result, those with estates over \$2,062,500 should consider estate tax planning.

#### **New York Leases Required to Have Sprinkler System Notice**

This one is particularly timely, given the surge in summer rental interest on the East End. Residential leases in New York must now provide notice whether the property has a fire safety sprinkler system, by way of precise statutory language with bold font. As a result, landlords should have their leases redrafted prior to offering new rentals or renewing old leases in 2015. Additionally, cooperative apartments will have to rewrite all of their proprietary leases to comply with this mandate.

#### **Foreclosure Updates: Conferences, Service Members and Phantom Income**

- The foreclosure settlement conference program had its sunset provision (i.e., when the program ends) extended for an additional 5 years with respect to residential home loans. These conferences utilize court-appointed referees to ensure that lenders negotiate in good faith with mortgagors with a goal of modifying the mortgage in order to avoid foreclosure. Effective December 1, 2014, these conferences also became available to homeowners seeking exit strategies through either a short sale or a deed-in-lieu of foreclosure, in addition to mortgage modifications.
- The Federal Foreclosure Relief for Servicemembers Act of 2014 extends

through “2015 the one-year period after a service member’s military service during which: (1) a court may stay proceedings to enforce an obligation on real ... property owned by the service member before such military service; and (2) any sale, foreclosure, or seizure of such property shall be invalid without a court order or waiver agreement signed by the service member” as per the Library of Congress Summary.

- The tax exemption available to underwater homeowners who earn phantom income (i.e., cancellation of debt income), which arises when a debt is forgiven incident to a short sale or a deed-in-lieu of foreclosure, was extended through 2014, but not into 2015. Be WARNED, in 2015 it is uncertain whether homeowners who are forgiven on a portion of their debt in a foreclosure, modification, short sale or deed-in-lieu of foreclosure will receive a corresponding income tax bill resulting from the cancellation of debt.

#### **New York Real Estate Brokerage Rebates**

Brokers can now issue rebates to attract new customers and clients. To illustrate, a buyer’s agent can now offer a portion of their commission received by way of a co-brokerage agreement from the seller’s agent to incentivize a buyer to work with the buyer’s agent. This new law applies to all those working with a broker and the broker can even share a commission received by one-side of the deal with the other transacting party. When working with a broker, ask if they offer a rebate. ■

*Andrew M. Lieb, Esq., MPH, is the managing attorney of Lieb at Law P.C. and is a contributing writer for “Behind the Hedges: Inside Hamptons Real Estate.”*