FEDERAL STANDARD ABSTRACT
TITLE NEWS

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Adverse Possession

Owner of beach front property brought action against his neighbor to declare title by adverse possession to boardwalk and bulkhead located between their properties. The boardwalk and the bulkhead had been built by the plaintiff's predecessor in title on a strip of land which, unbeknown to him and his neighbor, was actually on the neighbor's property. Over the years, it appears that plaintiff prohibited access to the public in general but allowed access to the defendant-neighbor. Defendant defended the action alleging, among other things, that the plaintiff's use and possession of the strip of land could not have been hostile and exclusive to her because she did not know that the boardwalk and the bulkhead were located on her property.

The Court of Appeals ruled for plaintiff. Defendant's allegation implied that she believed that the boardwalk and bulkhead belonged to plaintiff. The elements of hostility and exclusivity are satisfied if the defendant did not claim any rights on the property during the required 10 year period. Notably, the Court applied the law in existence prior to the 2008 statutory amendment because the improvements were built between 1963 and 1984. Title by adverse possession would have vested in 1994 at the latest, under the pre-2008 statute. *Estate of Becker v. Murtagh*, 2012 WL 1080325 (NY Court of Appeals, 4/03/2012).

Lateral Support and Excavator Strict Liability in New York City

The New York City Administrative Code, Section 27-1031 imposes strict liability for damages to buildings in other lots on anyone who conducts excavation work in excess of ten feet below the curb level. Generally, removing dirt from one's own parcel without securing the adjoining land can cause the adjoining land to collapse jeopardizing adjoining structures.

Nevertheless, the provision of the NYC Administrative Code is unusual. Under the common law, New York property owners enjoy an easement for lateral support. If the neighbor removes the lateral support, he is liable for the collapse of the adjoining land. However, the law is also clear that the easement only covers land and not buildings. A man may sue his neighbor for damages to his land, but not for damages caused to any buildings on the land. In that respect, the NYC Administrative Code is unusual: by what authority can a municipality enact a statute that changes the common law rule?

The Court of Appeals noted that this particular provision in the NYC Admin. Code had its origin in state law. Its earliest version appeared in the New York Constitution and a later version in a state statute. The Court ruled that, even though this provision may now be embodied in a municipal code, it has the force of state law. The Court cited other instances were municipal statutes were held to have the force of state law. *Yenem Corp. v. 281 Broadway Holdings*, 18 N.Y.3d 481 (2012).

Real Estate Broker Licensing for LLC

The plaintiff entered into a contract with an LLC for certain services designed to let plaintiff acquire certain real estate. The details of the agreement were not recited by the court, other than it appears to have included the brokering of real property.

The principal of the LLC was a licensed real estate broker, but the LLC itself was not licensed to provide brokering services. The plaintiff brought an action against the LLC and others to declare, among other things, that the LLC was not entitled to compensation for the brokering of real property because it was not licensed to act as a broker. The court ruled for the plaintiff. *Lings Prop. LLC v. Bode*, 2012 WL 1320235.

Delivery of Deed to Agent

A deed is valid from the time it is delivered, not from the time it is recorded. Two siblings had an arrangement by which one held title to property subject to the other's option to purchase. Where the option is exercised and the title owner delivers a deed to the parties' joint attorney, the transfer of the property was deemed to have occurred, even though the deed was not recorded. *Saline v. Saline*, 2012 WL 1415213 (2nd Dept., 2012)

Initialing Power of Attorney with "X"

The question often comes up when reviewing powers of attorney: If the principal marked an "X" instead of initialing next to the grant of specific powers, are the powers given? The applicable rule is straightforward: A person can adopt a personal mark, such as an "X," to use instead of initials. The only requirement is that she be consistent. So the principal can choose whether to use initials or use a personal mark. If she uses both, however, a court is likely to rule that the initials are valid but the mark is not. In re Marriott, 86 A.D. 943 (4th Dept., 2011).