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# SAFE HARBOR TITLE

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## Mortgage Foreclosures / Statute of Limitations / Reverse Mortgages

The Appellate Division, Third Department, affirmed the ruling of the Supreme Court, Ulster County, which dismissed the complaint in the foreclosure of a reverse mortgage as being barred by application of the statute of limitations. The note and mortgage both authorized the lender to require immediate payment in full on the death of the borrower, who died in 2009; therefore, “[the] cause of action was untimely because it was commenced more than six years after decedent’s death [see CPLR 213[4]. According to the Court,

*“[w]here the claim is for payment of a sum of money allegedly owed pursuant to a contract, the cause of action accrues when the party making the claim possesses a legal right to demand payment. In other words, the statute of limitations [is] triggered when the party that was owed money had the right to demand payment, not when it actually made the demand’ [citations omitted]...This rule applies even though the party that is owed money does not have knowledge of the event giving rise to a cause of action [citations omitted]”.*

The Appellate Division also ruled that enforcement of the indebtedness was not exempt from the application of the statute of limitations because the mortgage was insured by HUD.

*Bank of America, N.A. v. Gulnick, 170 AD3d 1365, 2019 NY Slip Op 01878, decided March 14, 2019.*



## Acknowledgments / Recording Act

Deeds executed before but recorded after the recording of a contract of sale with a prior contract vendee were canceled by the Supreme Court, Saratoga County. The Court directed the seller to complete the sale with the plaintiff; the purchase price paid by the grantee of the recorded deed was to be refunded. The Appellate Division, Third Department, affirmed.

The Defendants, the seller and his grantee, claimed that the grantee was a bona fide purchaser entitled to the protection of New York’s recording act because the Plaintiff’s recorded contract included an improper acknowledgement. Under Real Property Law Section 291 (“Recording of conveyances”), “[a] conveyance of real property, within the state, on being duly acknowledged by the person executing the same...may be recorded...Every such conveyance not so recorded is void as against [a bona fide purchaser].”

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# Adjoining Owners / Encroachments

The initial purchase price of \$8,000,000 under a contract for the sale of the Plaintiff's property was reduced by 10% because the adjoining owner, a Defendant, refused to remove air conditioners in its building which encroached on the airspace above the Plaintiff's building. The Supreme Court, New York County, after a non-jury trial on damages, awarded the Plaintiff damages in the amount of \$800,000. The Appellate Division, First Department, affirmed, stating that "[t]he court correctly concluded that the measure of damages was the difference between the purchase price its predecessor in interest (the seller) obtained in the initial sale agreement and the subsequent reduced purchase price."

The Appellate Division also affirmed the award of \$2.00 in nominal damages to the Defendant, which was awarded because the underpinning of the Plaintiff's building encroached on the Defendant's property. According to the Appellate Division, the Defendant "failed to demonstrate that the de minimis encroachment of the [Plaintiff's] underpinning onto its yard resulted in any injury to it, and its claim that the encroachment might diminish the value of the real property to a future developer is speculative."

*Madison 96th Associates, LLC v. 17 East 96th Owners Corp., 2019 NY Slip Op 03735, decided May 14, 2019.*

## "Acknowledgments / Recording Act" Continued from Page 1

According to the Appellate Division, the acknowledgment initially used in the contract (before a different form provided by the county clerk was substituted), was "boilerplate language that had commonly been used" prior to the enactment in 1997 of Real Property Law Section 309-a(1) ("Uniform form of certificates of acknowledgment or proof within this state"), and the acknowledgment in the recorded contract did not "undermine the viability of the contract recording." Section 309-a (1) provides that a certificate of acknowledgement "... must conform substantially with the following form...", the uniform form of acknowledgment included in the Section. "[T]he deviation in verbiage was one of form not substance..."

*Parillo v. Morehouse, 2019 NY Slip Op 05042, decided June 20, 2019.*

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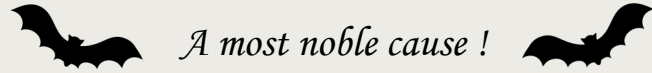


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