

THE TITLE *examiner*



An Informational Newsletter Provided Courtesy of Ticor Title Insurance Company

From the Editor

Welcome to the Summer 2005 issue of The Title Examiner, a newsletter for Ticor's Northern New York operations and its valued customers. I am pleased to begin this issue by reporting that most of our customers have experienced a very busy late Spring and Summer. Even without the previous high volume of residential mortgage refinancing business, all our offices have experienced a significant level of residential buy-sell transactions, and most of our areas in Northern New York have seen significant increases in commercial sales and refinances. I believe we continue to meet our customers' service expectations. Our office staffs are cross-trained to cover several functions so our employees could enjoy well-deserved vacation time.

We begin this issue with Kelly Bradley's article on a recent Internal Revenue Procedure ruling involving tax deferred exchanges on personal residences. Many of our customers and their clients have taken advantage of Kelly's services in this area. Also, our prolific Gil Hoffman has provided a brief article on a recent Onondaga Indian land claim affecting several central New York counties. Gil will keep us all updated as that litigation progresses and how those decisions will affect your clients and our title underwriting practice. I again invite any of our readers to submit an article of interest, either on a legal topic or about unusual hobbies they have, trips they have taken, etc.

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Revenue Procedure 2005-14: Combine IRC §121 and IRC §1031 to Save Taxes

By Kelly A. Bradley, Esq.

Until recently, a taxpayer that converted a personal residence to an investment property or vice versa, had to choose between using IRC §121 (exclusion of gain on the sale of a principal residence) or IRC §1031 (non-recognition of gain in like-kind exchange). However, with the issuance of Revenue Procedure 2005-14 (1/27/2005, corrected 2/3/2005), taxpayers can combine the benefits of both code sections, as long as the requirements of both sections can be separately met.

The following example will be used throughout the article for illustration purposes:

Joan buys a house for \$210,000 and uses it as her principal residence from 2000-2004. From 2004 until 2006 Joan rents the house and claims depreciation deductions of \$20,000.

In 2006, Joan exchanges her current property (relinquished property) for \$470,000 and purchases a new rental property (replacement property) for \$460,000. Joan walks away with \$10,000 cash. Joan's adjusted cost basis is \$190,000 (\$210,000 purchase price - \$20,000



depreciation taken) and her realized gain is \$280,000 (\$470,000 sales price - \$190,000 adjusted cost basis).

Step 1: Determine if the property qualifies for IRC §121.

IRC §121 allows a taxpayer to exclude from income a gain up to \$250,000 (\$500,000 if married, filing jointly) resulting from the sale of a principal residence as long as the taxpayer has lived in the property for at least 2 of the last 5 years as a principal residence.

Effective October 22, 2004, IRC §121 was amended to provide, that taxpayers who acquired property in a IRC §1031 exchange, must hold the property for 5 years from the acquisi-

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tion date before being able to apply IRC §121.

Joan's property qualifies for IRC §121 because she has lived in the property as her personal residence for at least 2 years during the 5-year period prior to the exchange.

Step 2: Determine if the property qualifies for IRC §1031.

IRC §1031 allows the deferral of capital gain realized by exchanging property held for productive use in a trade or business or for investment for like-kind property to be held for productive use in a trade or business or for investment. To the extent that the taxpayer also receives cash or other non like-kind property (boot), gain must be recognized.

Joan's property qualifies for §1031 because it was used as an investment property for the periods 2004-2006.

Step 3: Apply IRC §121 before IRC §1031.

If the taxpayer meets the requirements of both IRC §121 and IRC §1031, the taxpayer must apply IRC §121 to the gain realized before applying IRC §1031.

Joan will apply IRC §121 first to exclude \$250,000 of the 280,000 of gain.

Step 4: Apply IRC §1031 to gain attributable to depreciation.

Although IRC §121 does not exclude depreciation recapture after May 6, 1997, this amount may be deferred by utilizing IRC §1031.

Joan may defer the remaining \$30,000 of gain, including the \$20,000 of gain due to depreciation using IRC §1031.

Step 5: Apply IRC §121 to gain attributable to boot.

Boot, which is taxable under IRC §1031, will only be taken into account to the extent the boot exceeds the gain excluded under IRC §121.

Although Joan received \$10,000 in cash boot in this example, she is not required to recognize gain because the boot does not exceed the \$250,000 of gain excluded under IRC §121.

Step 6: Increase basis of replacement property by gain recognized under IRC §121.

Normally, in an IRC §1031 exchange, the taxpayer gets a carryover basis. However, by combining IRC §121 and IRC §1031 the basis of the replacement property is increased by the gain recognized under IRC §121.

Joan's basis in the Replacement Property is \$430,000 (\$190,000 carry-over basis from Relinquished Property + \$250,000 gain excluded under IRC §121 - \$10,000 cash boot received).

The Revenue Procedure provides six examples of how IRC §121 and IRC §1031 can be combined and applied to a single exchange of property. As it's a rare occurrence for the IRS to teach us how to save taxes, it's important for tax advisors to familiarize themselves with this much welcome guidance.

Kelly A. Bradley, Esq., Assistant Vice President of Investment Property Exchange Services, Inc. ("IPX") is a member of the New York State Bar and has been involved in both tax and real estate law for several years. Prior to joining the Northeast Division of IPX, Kelly served as a Transaction Supervisor and Assistant Vice President for the National Reverse and Improvement Exchange Division of IPX. In addition, Kelly has previously worked as a tax consultant for a Big 6 public accounting firm and practiced real estate law with a Central New York law firm. In May 2004, Kelly was awarded the Certified Exchange Specialist (CES®)



Seated: David Mineo, Iris Montes
Standing from left: Royston Mendonza, Howard Kleiman, Paul Kullman, Anthony Burrows

**The Buffalo Office of the
Northeast Claims
Center has moved.**

Formerly located within the Tigor Buffalo office at 420 Main St., the Claims Center is now in the Main Place Tower. David Mineo, Sr. Claims Counsel and manager of the office stated, "The move was necessitated by a growing staff due to increased responsibilities."

Their contact information is:
Fidelity National Financial,
350 Main Street, Suite 1550,
Buffalo, NY 14202.
716.362.0440.

The office handles claims for all five FNF underwriters; Tigor Title Insurance, Chicago Title Insurance, Security Union Title Insurance, Alamo Title Insurance, and Fidelity National Title Insurance. Geographically, the office handles claims for New York, Vermont, New Hampshire, Maine, and Massachusetts, as well as all Canadian claims.

In addition to Mineo, the staff consists of four claims attorneys, Paul Kullman, Howard Kleiman, Anthony Burrows and Royston Mendonza. They are supported by Claims Assistant Iris Montes, who recently celebrated her 25th year anniversary with FNF.

David can be reached at
david.mineo@fnf.com

Meet Our Employees

*"Hard work spotlights the character of people: some turn up their sleeves, some turn up their noses, and some don't turn up at all."
Sam Ewig*

Fortunately for us, these employees did turn up, and kept coming back for twenty some years!



Pictured to the left are our Rochester office employees, Cassie Borden, Title Supervisor, 20 years; Debbie Caufield, Title Technician, 24 years; and Sue Fabian, Accounting Administrator, 22 years.

Also from the Rochester District in the Lyons office—Linda Miller, Title Technician, 21 years.

Our Syracuse District is represented by the following employees with 20 plus years:

Tim Goodman, Title Supervisor, 23 years; and Gil Hoffman, Underwriting Counsel, 20 years.

Pictured to the right are Buffalo employees Maryeileen Kennedy, Title Supervisor, 22 years; Karen Wojcik, Abstract Typist, 22 years; and Donna Aleksa, Title Technician, 24 years. Janice McLean, Title Clerk, 24 years, and Cece Guerin, Title Technician, 22 years, were not available for the photograph.



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In this issue we are featuring 11 more of our loyal employees who have between 20 and 25 years of employment with Ticor. We truly value their dedication and loyalty and we welcome any comments you have regarding any of our employees and how they may have assisted you and your staff in your practice.

By now many of you have seen your young children begin a new school year wearing new school clothes and an excited smile. Our college age children are eager to take the next step in their adult lives and we scramble to cover the cost of tuition, room, board and books. How do families with more than one child in college manage this financial strain? And how many of you are looking forward to an invitation to Grandparents Day at school? Make the time... your clients will understand and respect your priorities.

Finally, who can whisper a complaint about the beautiful Summer we had? We hope you all took enough time to relax with your friends and family. If you didn't, don't let Fall pass by without getting away from the office. In light of what Hurricane Katrina has brought many Americans, none of us can complain about our weather or our jobs- we have jobs to go to so work with enthusiasm and energy. Remember to offer assistance to those victims (see page 4 for some options). Enjoy our late Summer days, and keep healthy.

*Peter J. Battaglia
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Onondaga Indian Land Claim Update

By Gilbert M. Hoffman, District Counsel, Syracuse

On March 11th of this year, the Onondaga Indian Nation filed suit in Federal District Court in Syracuse, claiming ownership of a strip of land in central New York from Canada to the Pennsylvania line, varying in width from about 10 to 40 miles.

The suit affects property in the counties of Jefferson, Lewis, Oswego, Onondaga, Cayuga, Madison, Cortland, Tioga, Tompkins and Broome. The complaint was amended on August 1st, following decisions adverse to Indian interests in *City of Sherrill, New York v. Oneida In-*

dian Nation of New York, and in Cayuga Indian Nation of New York v. George Pataki, et al. Answers in the Onondaga suit are due on September 15th.

Pending further developments, Ticor Title underwriting practices relative to this claim are the same as for the other upstate New York Indian claims.

For an Onondaga Indian claim area map or further information, you may contact me at :

(315) 474-1273 or hoffmang@ticortitle.com.

NOTICE: MORTGAGE TAX RATE INCREASE IN WYOMING COUNTY



Effective October 1, 2005

On Tuesday, August 16, 2005, the Wyoming County Board of Supervisors enacted Local Law No. 2, Year 2005, Imposing A County Recording Tax On Obligations Secured By A Mortgage On Real Property.

The Mortgage Recording Tax Fees will be as follows:

- | | |
|--------------------------|-----|
| • Basic Tax | 50% |
| • Additional Tax | 25% |
| • Special Additional Tax | 25% |
| • County Line Tax | 25% |

Total Mortgage Tax to be collected at time of recording:
1 1/4%

Documents received on or after October 1, 2005 without correct fees will be returned.

Remember to support relief efforts for victims of Hurricane Katrina. Here are two of many options:

- The New York Bar Foundation
"Hurricane Katrina Relief Fund"
One Elk Street
Albany NY 12207
- American Red Cross
1-800-435-7669
<http://www.redcross.org>



420 Main St., Suite 200
Buffalo NY 14202
www.nyticor.com

The Title Examiner is a periodic newsletter of Ticor Title Insurance. Please let us know if you would like to see a particular topic addressed in a future issue or if you have any questions regarding an article.

