



UPDATE

TO OWN ALL YOU SURVEY, SURVEY ALL YOU OWN

A survey is an essential part of the due diligence that a buyer should perform before purchasing a home. While a survey may not be cheap, it costs less than the problems it can avoid.

A survey is a purchaser's only guarantee that the seller is in possession of the property it thinks it is buying. A survey is also a purchaser's only guarantee that the property is free from encroachments. A proper survey performed under guidelines promulgated by the American Land Title Association, known as an ALTA survey, will show all structures on the property and locate them in relation to the property's zoning setbacks and boundary lines.

In locating structures in relation to zoning setbacks, a purchaser is able to see if there is room for expansion and, if so, how much. In addition, when structures are

located in relation to the property's boundaries, encroachments by you and your neighbor's structures are revealed.

A survey is especially important where fences are involved. A fence encroaching on your yard spells trouble. The other side of the fence may contain land that is supposed to be yours. If your neighbor is using that land (for example, as for a part of a driveway or a carport), it could lead to your neighbor acquiring a permanent right to the continued use of that land. This is known as an easement by prescription. Even worse, if the neighbor's use is under some claim of title, the neighbor's possession could ripen into a claim of adverse possession. This could result in title to the land on the other side of the fence vesting in your neighbor even if it is included in the metes and bounds description in your deed and

MCI Means Major Capital Improvements, And Many Complex Issues

The initial filing of an MCI application can be a deceptively simple process. However, not only is it necessary for applicants to follow the rules set forth in the Rent Stabilization Code - sometimes, it is important to know what is not necessary to be filed with DHCR.

Recently, BBW&G filed an MCI application for an Owner of a building with a number of deregulated apartments (due to legal rents that exceeded \$2,000 after a vacancy). During the processing of the application, DHCR made a Request for Additional Information, demanding that the Owner set forth the actual rents that were being charged for these deregulated apartments.

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**MCI Means Major
Capital Improvements**

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BBW&G responded that, based upon the irrelevance of the information requested and for reasons of privacy, the Owner did not wish to disclose

the rents of the deregulated tenants. (The Owner had previously submitted the actual room count for the deregulated apartments, which was necessary to calculate the proposed MCI rent increase). The Owner, by BBW&G, requested that the Division set forth its authority to require an Owner to disclose deregulated rents. BBW&G ended by stating that its seeking clarification should not result in a denial of the MCI application without further explanation from DHCR. Of course, DHCR did exactly what BBW&G re-

quested that it not do --- rejected the MCI application on default without any explanation for its demand.

BBW&G submitted a Request for Reconsideration to the DHCR MCI Bureau Chief. In **one week** (and without the necessity and expense of filing a Petition for Administrative Review), DHCR **re-opened** the MCI application. DHCR agreed that the Owner had made it clear that it never intended to default. More importantly, DHCR also agreed that the Owner had the right to maintain the privacy of the deregulated tenants by not disclosing those non-regulated rents.

It is important to respond, in full, to a DHCR Request for Information, when the Request is proper under law. However, it is also important to know what is **not** required by

the Rent Stabilization Law, and stand your ground, while making your non-defaulting intentions clear. Finally, where there is an irregularity in the manner in which your case is processed, the Request for Reconsideration route may result in a more expedient and less expensive result than the filing of a PAR.

The circumstances under which DHCR will examine a Request for Reconsideration are limited, and should be discussed with your attorneys. Also, remember that the filing of such a Request does not extend the 35 days within which a PAR must be filed.

This article was written by Martin J. Heistein, a partner in BBW&G's Administrative Law Department, who supervises the filing of all MCI's for the firm. To discuss MCI's, please contact Mr. Heistein.

BBW&G NEWS

MAY I QUOTE YOU?

Errol Brett addressed a *New York Times*' reader's inquiry in the "Q&A" column regarding a co-op shareholder's STAR Exemption seemingly being taken, in part, by the Board as an assessment. Errol described who is eligible for the STAR exemption, and how such an exemption may be used. **Mr. Brett** was also noted in *The Tower News* as having defeated a claim for breach of the warranty of quiet enjoyment made against North Shore Towers, which Errol represents.

Edward Baer's presentation at the NYS Bar Association's Annual meeting of its Real Property Section of an Owner's perspective on the landlord-tenant disputes at Ground Zero was featured in the *New York State Bar Association Newsletter*.

Sherwin Belkin was interviewed by the *Wall Street Journal* regarding how enhanced security measures in a post - 9 / 11 environment affects the rights and obligations of both



2002 ANNUAL REGISTRATION UPDATE

It's not only the Yankees and Mets that are "The Boys of Summer." No, once again it's time for owners of rent stabilized apartments to come to bat via their annual registration with the New York State Division of Housing and Community Renewal ("DHCR"). The deadline for the service and subsequent filing of the 2002 Annual Registrations with the DHCR is July 31, 2002. This article is intended to provide some basic "FAQs" about the registration process.

Q: Who is required to serve and file the annual DHCR registrations?

A: Owners of all rent stabilized and temporarily exempt apartments, which may include individual cooperative and condominium unit owners. DHCR recommends that in the interest of administrative economy, and to avoid multiple filings by individual co-op and condo unit owners, that the Cooperative Board or Condominium Association, (or the managing agent acting on its behalf) serve and file all the annual registration updates for their respective buildings.

Q: What forms are required to complete the annual registration process?

A: There are two types of forms that are needed to complete the process. First is the Annual Apartment Registration form (RR-2A [2002]) which is a three copy set, the

DHCR Copy (white), Owner Copy (blue) and Tenant Copy (yellow). The form is prepared for each of the rent stabilized units, as well as the temporarily exempt units in both New York City and the suburbs covered by the Emergency Tenant Protection Act ("ETPA"). The key date for all the information set forth in the Annual Registration Updates is April 1, 2002.

Upon completion of the Annual Registration Update, the Tenant Copy should be detached and served upon each tenant by regular mail with a certificate of mailing or via hand delivery with the tenant signing for receipt. These are the only two forms of service that the DHCR will generally accept as proof of service.

Thereafter, the second step is to prepare and complete the Annual Registration Summary for 2002 (Form RR-2S [2002]) which is a two copy set. The green sheet is the DHCR Copy and the blue sheet is the Owner Copy. Only one Summary is completed for each building that contains rent stabilized or temporarily exempt units. The summary is broken down into 21 sections, all of which must be completed.

Q: Once you have completed the Annual Registration Updates and served the rent stabilized tenant(s) with their copy and completed the Annual Summary, how do you



file with the DHCR?

A: To complete the registration process the DHCR Copy of the Annual Registration Update must be detached from the Owner's Copy. Keep all your Owner's copies for your records. It is a good practice for the Owner to attach the individual certificates of mailing to each owner's copy mailed to each tenant. Both the completed and notarized (green) Annual Summary and the (white) Annual Registration Updates must be sent to DHCR's office at: New York State Division of Housing and Community Renewal, Processing Services Unit, Hampton Plaza, 38-40 State Street, Albany, New York 12207.

Upon receipt by DHCR, the registration information you have submitted will be entered into DHCR's data system. DHCR will then forward a receipt summarizing the registrations you filed. This receipt shall serve as your proof that the registrations were filed with DHCR.

This article was written by Thomas J. Bannon, Legal Assistant in BBW&G's Administrative Law Department. To discuss the registration process, please contact