

NY COURTS NEWSLETTER

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This newsletter is intended to provide you with meaningful and timely information on industry trends, hot topics, best practices and how to leverage the LexisNexis services to meet your unique needs.

Hot Topics

Keep pace with developments in New York statutes, regulations, court decisions, administrative rulings, and other news with our NY Courts Newsletter.

From our monthly Matthew Bender® Publication [Environmental Law in New York](#):

May 2009: "**Researching Past Uses of New York Industrial Sites.**" To defend claims, conduct due diligence, or identify potentially responsible parties for natural resource damages cost allocations, demand is high in NY for knowledge of past uses of industrial sites, and this article discusses some of the key records that are available to environmental practitioners through diligent research. (Each issue of Environmental Law in NY also features National Developments, NY Newsnotes, Upcoming Events, and Worth Reading, a bibliography of new articles and other publications of interest.)

June 2009: "**Analysis on the Use of Brownfield Tax Credits by Not-For-Profit Organizations,**" focuses on the provisions of New York's Brownfield Law governing the Brownfield Tax Credit and its application to the development of projects by not-for-profit developers, and highlights the changes implemented by the 2008 amendments to the Brownfield Law. The article also provides a brief summary of the Brownfield Real Property Tax Credit.

In [Warren's Weed New York Real Property](#), a new subsection has been added to Chapter 96, Mortgage Foreclosure (§ 96.18[4]), setting forth new requirements in certain foreclosure proceedings that the Legislature has added in view of the current mortgage foreclosure crisis, including RPAPL sec. 1304, 1302, and CLPR 3408, requiring the service of a pre-action notice, pleading requirements and mandatory court conferences, respectively.

In [NY Criminal Practice](#), section 68.22 was added, entitled Residential Mortgage Fraud, to include coverage of the new NY CLS Penal Law article 187, which creates the crime of residential mortgage fraud.

What's new?

[New York Civil Practice: CPLR \(Weinstein, Korn and Miller\)](#)

3101.52c Timing of Expert Disclosure (new trend in case law): New section added to address two recent, seemingly conflicting, trends in case law concerning the timing of expert exchanges. Some judicial districts and local courts have promulgated strict deadlines for expert exchange, while appellate courts have generally attempted to strike a balance, differentiating between late exchanges that are both willful and prejudicial, and those where relief can be fashioned to eliminate, or minimize, prejudice to the recipient of the late exchange. This new section explains the trends and discusses strategies for dealing with them.

3126.05a Substantial Compliance, Even if Late, May Excuse Disclosure Default (new section – different approaches reflected in case law): While courts will not encourage either belated or incomplete disclosure, some courts may be forgiving if the offending party provides disclosure that is substantially complete, even if late. This section discusses decisions that offer some guidance regarding just how forgiving a court may be.

Emerging Issues:

"Emerging Issues Analysis" ("EIA"), found on Lexis.com, consist of articles on recent court decisions, new legislation, or a topic of interest to civil practitioners. The Analysis is intended to reflect the change in law or practice as a result of the decision, legislation, or development, and includes practical advice, not merely a summary of the opinion or legislation. For example:

[Bisceglie on Electronic Discovery, Evidence and Claims in New York](#): This emerging issue commentary summarizes legal developments in New York related to electronically stored information or "electronic discovery". This commentary emphasizes New York state law in this emerging area, referencing federal precedent only as necessary to guide state practice, and treats ESI evidentiary issues and new substantive claims that merit the practitioner's attention.

[Wechsler on The New York Rules of Professional Conduct](#): The Administrative Board of the Courts announced the adoption of Part 1200, Rules of Professional Conduct, effective April 1, 2009. The new Rules supersede existing Part 1200, Disciplinary Rules of the Code of Professional Responsibility and reflect the most fundamental change in the entire history of regulation of lawyers in New York State.

ADVANCED GOVERNMENT SOLUTIONS

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Did you know... **Magistrate Judge Issues 'Wake Up Call' Regarding Keyword Search Protocol.** The federal magistrate judge involved in a case involving alleged defects and delays in the construction of the Bronx County Hall of Justice, also known as the Bronx Criminal Court Complex, on March 19 issued a "wake up call" to attorneys in the case as well as the bar in the Southern District of New York regarding the importance of "careful thought, quality control, testing and cooperation with opposing counsel" when creating a keyword search protocol for the discovery of e-mails and other electronically stored information (William A. Gross Construction Associates Inc. v. American Manufacturers Mutual Insurance Co., No. 07 Civ. 10639, S.D. N.Y.; [2009 U.S. Dist. LEXIS 22903](#)). (From Mealey's Litigation Report: Discovery April 2009 Volume 6, Issue #7)

Did you know... In 2008, **the New York State Legislature passed sweeping amendments to Article 52 of the CPLR** in connection with restraining bank accounts, levy procedures and exempt property. The legislation amends CPLR 5222 (b), (c), (d) and (e), 5230(a), 5231(b) and adds 5205(l), (m) and (n), 5222(h), (i), and (j), 5222-a, and 5232 (e), (f) and (g). The broad purpose of the amendments is to enable judgment debtors to more easily access exempt funds in accounts in banks that have been served with restraining notices by judgment creditors. These amendments are discussed in [New York Civil Practice:CPLR \(Weinstein, Korn and Miller\)](#) ¶¶ 5205.38, 5222-a.01, 5232.23.

Questions? Contact:

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RESEARCHING A PRINT TREATISE

Use the Table of Contents: LexisNexis Matthew Bender analytical content begins with a *Publication* Table of Contents. Consult this to understand how the content is organized and to find a volume that contains the general topic you are researching. Some analytical content is organized to track the statute that is analyzed. If you know the statutory section you are interested in, you can turn directly to that chapter. If you do not know the statutory section, or if the organization does not track the statute, consult the *Volume* Table of Contents to find the chapter that discusses the topic. Finally, examine the Chapter Synopsis to find the section that most closely mirrors the topic you are researching.

Use the Index: LexisNexis Matthew Bender analytical content generally concludes with an Index. Find the topic you are researching in the Index and go to the indicated sections of the publication to find the discussion of the topic. Remember to look under not only the relevant term you are researching, but also synonyms. Sometimes it may be helpful to look for a broader – or a narrower – topic.

RESEARCHING AN ONLINE TREATISE

Frame Your Search: After selecting the source you need on lexis.com, you can search the complete source, the Table of Contents, or the online Index if available.

Develop Your Search Strategy: Identify relevant terms, their variations, and synonyms. Be aware of the necessity, proximity, and relationship of the terms to your research issue. Your first search should be structured broadly, and then results can be narrowed without additional search transactions through the "Focus" feature by adding terms to reduce your search results set. The sample search form provides tips about structuring your search, search connectors, and segment searching.

SAMPLE RESEARCH ISSUE: MUST A SHOWING OF "SPECIAL CIRCUMSTANCES" BE MADE TO OBTAIN DISCLOSURE FROM A NON-PARTY WITNESS IN A NEW YORK CIVIL LAWSUIT?

Print

Use the Table of Contents: Review the Publication Table of Contents of *New York Civil Practice: CPLR (Weinstein, Korn & Miller)* to determine that Article 31, Disclosure, is covered in Volume 6. Examine the Volume Table of Contents to Volume 6 to find that the Analysis of CPLR 3101 concerns the scope of disclosure, generally. Look at the sections in that chapter to determine that section 3101.33a explains disclosure from a non-party witness and also alerts you that a showing of special circumstances may be required in certain departments. If you are familiar with the CPLR and know that CPLR 3101 is the relevant statute, you can go directly to Volume 6 and navigate via the Table of Contents.

Use the Index: Open the Index in Volume 15 and turn to "disclosure". Next find "scope of". That reference will take you to section 3101.01. From there you can navigate in the text or via the table of contents to find the specific section addressing your issue; or, look for "special circumstances" in the Index and go directly to section 3101.33a.

Online

Frame Your Search: On lexis.com, select *New York Civil Practice: CPLR (Weinstein Korn & Miller)* by clicking on the following folders: States Legal - U.S. > New York > Search Analysis & CLE Materials > All New York Treatises & Analytical Materials.

Develop Your Search Strategy:

Enter a Full-text of source documents search **or**

Table of Contents search **or**

Index search (Expand the Index folder, click on Index, then click on the link [1 New York Civil Practice: CPLR Index](#), and enter a Full-text search (all with Terms and Connectors)

With the following search term: **special circumstances /10 disclos!**

All three searches will lead you to section 3101.33a of WKM, which explains disclosure from a non-party witness.