

NY COURTS NEWSLETTER

ISSUE NO. 2 NOVEMBER 2009

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.

Mortgage Backed Securities:

Neither the Class Action Fairness Act of 2005, 28 U.S.C. §§ 1332(d) ("CAFA"), nor the Truth-in-Lending Act, 15 U.S.C. § 1601 *et seq.* ("TILA") provided federal subject matter jurisdiction in an action seeking declaratory judgment that Pooling and Servicing Agreements (PSAs) require Countrywide Financial Corp. to purchase any loans it modifies at a price equal to the unpaid principal and accrued interest. The court held, "It is tempting to find federal jurisdiction every time a multi-billion dollar case with national implications arrives at the doorstep of a federal court. The jurisdiction of the federal district courts, however, is left to Congress, not to the discretion of the courts themselves. In this case, Congress passed two statutes within a year of each other to address the mortgage crisis. In neither of these statutes did Congress federalize the case before this Court." [Greenwich Fin. Servs. Distressed Mortg. Fund 3, LLC v. Countrywide Fin. Corp., 2009 U.S. Dist. LEXIS 72885](#)

Questions? Contact:

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What's new?

Litigation Resource Center Launched – New Web Community for Litigators

The Litigation Resource Center, a new Web community designed for litigators, contains links to news and content of interest to all litigators and showcases litigation-related tools and products. For your convenience, you can now link to the NY Court Newsletter through the Litigation Resource Center under the Product Update segment.

<http://law.lexisnexis.com/practiceareas/LitigationResourceCenter>

New York Employment Law

The following represents some of the new topics and recent developments in New York employment law discussed in the latest update:

New York WARN: Chapter 1 discusses the New York WARN Act. This newly enacted legislation requires employers with 50 or more employees to give at least 90 days advance written notice to the affected employees, the representatives of the affected employees, the New York State Department of Labor, and the local workforce boards, of a "mass layoff," "relocation," "employment loss," or "plant closing."

Covenants Not To Solicit Fellow Employees To Leave: Chapter 4 adds new section, Covenants Not To Solicit Fellow Employees to Leave, discussing case law holding that it is a violation of a non-solicitation of employees agreement where a former employee provides names of former co-workers to a new employer who then actively solicits these individuals.

Privacy of Employee Social Security Numbers and Other Data: Chapter 11 adds a new section on privacy of employee social security numbers and other data.

Disparate Impact

See Chapter 24 for a discussion on the Supreme Court holding in [Ricci v. DeStefano, 129 S. Ct. 2658](#). In *Ricci* a 5-4 majority of the United States Supreme Court held that a city improperly discarded an examination to achieve a more desirable racial distribution of promotion-eligible candidates, since there was no strong showing that the examination was deficient and that discarding the examination was necessary to avoid disparate impact.

New York Employment Law

Bergman on New York Mortgage Foreclosures

Recent updates include new commentary, chapter revisions, and a new subdivision entitled *Upon the Death of a Party*, covering the steps to be taken if a party or prospective party in a foreclosure action dies. Also included are a variety of new forms dealing with mortgage drafting and its relationship to foreclosure, usury, receiverships in foreclosure actions and settlements.

Bergman on New York Mortgage Foreclosures

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Did you know...

Did you know... In 2009, the New York State Legislature passed sweeping amendments to the General Obligations Law governing Powers of Attorney. Effective September 1, 2009 a new power of attorney law made up of several new and amended sections of the New York's General Obligations Law came into effect. The new statutory scheme differs in many ways from the old power of attorney statute, although the statutory short form as modified survives as the centerpiece of the statutory scheme. The new provisions, including a new Statutory Major Gift Rider form, apply to all powers of attorney executed on or after the effective date. The new provisions do not affect the validity of existing powers of attorney, although certain provisions of the new law do apply to pre-September 1, 2009 powers of attorney. A complete discussion of the amendments and full text of the [Power of Attorney Legislation for New York](#) are available in pamphlet and pdf form from our bookstore.

[Power of Attorney Legislation for New York \(pdf\)](#) or [Power of Attorney Legislation for New York \(pamphlet\)](#)

Did you know... that the Martin Act differs from other state securities laws in several significant ways? Most notably, instead of regulating securities offerings through registration and qualification requirements and processes, the Martin Act (Chapter 20, Article 23-A of the General Business Law) deals with offerings by focusing on regulation of the brokers-dealers who engage in the offer and sale of the securities, and imposing an extraordinarily broad antifraud prohibition enforceable exclusively by the Attorney General. The Martin Act is also unique among state securities laws in its particular statutory focus on real estate related offerings and transactions. The latest release of [White, New York Business Entities](#) features a completely revised chapter on N.Y. state securities regulation (See Chapter 10).

[White, New York Business Entities](#)

Research Tips

Get the Information You Need in the Detail You Want from LexisNexis Matthew Bender

Whether your task is to research the development of the law, review how to handle a specific task, or find a quick answer to a perplexing question, you can get what you need from LexisNexis Matthew Bender.

Need to know how the law evolved into what it is today? Consult one of the [premier treatises](#) on New York law:

Weinstein, Korn and Miller, New York Civil Litigation: CPLR
Warren's Heaton on Surrogates' Courts
Warren's Negligence in the New York Courts
Warren's Weed New York Real Property
White, New York Business Entities
New York Civil Practice: Matrimonial Actions
New York Civil Practice: Family Court Proceedings
New York Criminal Practice

These eight products, recently completely revitalized by leading practitioners and reorganized for ease of use, are frequently cited by New York Courts. Organized to track the most significant statutes in the practice area, getting to the information you need is as easy as finding the statutory section you're researching. Don't know the statutory section? Peruse the Table of Contents, Table of Cases, Table of Statutes or the Index. If you're researching on line, you can also use a word search.

Need to know how to do something for the first time or need a reminder of how to proceed? Reach for a [Matthew Bender Practice Guide](#) to find checklists, forms and research aids. The Guides are organized by task, allowing you to go directly to your area of interest. Of course, there are Tables and an Index, as well as an on line word searches, to help you find what you need. Here's a list of the Practice Guides:

New York Practice Guide: Probate and Estate Administration
New York Practice Guide: Negligence
New York Practice Guide: Real Estate
New York Practice Guide: Business and Commercial
New York Practice Guide: Matrimonial Actions
New York Practice Guide: Domestic Relations

Need to know the answer this minute and quickly find more information and forms later? Grab a [LexisNexis® AnswerGuide™](#) and find your answer, and much more: checklists to ensure you haven't missed anything, cross-references to treatise discussion to broaden your knowledge of the area, and targeted forms references to take you right to the form you need to accomplish your goal. Topical organization, detailed chapter synopses, Tables and comprehensive Indexes guide you directly to the answer you need. Written by experienced practitioners who are out there every day dealing with the same issues you face, these [AnswerGuides](#) compliment the [New York Colorbooks](#):

[New York Colorbooks](#)

NY CLPR: Redbook
NY CLPR: Redbook
NY Surrogate's Court: Greenbook
NY CLPR: Redbook
NY Landlord-Tenant Law: Tanbook
NY Real Property Law: Bluebook
NY Corporation Law: Whitebook
NY Family Law Statutes: Yellowbook
NY Family Law Statutes: Yellowbook

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LexisNexis® AnswerGuide™ New York Real Property
LexisNexis® AnswerGuide™ New York Real Property
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LexisNexis® AnswerGuide™ New York Matrimonial Actions
LexisNexis® AnswerGuide™ New York Family Court Proceedings

NY Crim. Statutes and Rules: Graybook LexisNexis® AnswerGuide™ New York Criminal Procedure