

ASSESSING CONDOMINIUM UNITS IN NEW YORK STATE – A BRIEF SUMMARY

The real property taxation of condominiums in New York State is governed by Section 339-y of the Real Property Law and its equally worded Section 581 of the New York Real Property Law. The condominium tax law was enacted in the early 1960s as part the New York Condominium Act.

Section 339-y-1(b) of the New York Condominium Act provides that the aggregate of the real property tax assessments on the units in a condominium plus the common facilities may not exceed the total valuation of the entire condominium property if the entire condominium property was assessed as an individual parcel.

In the case of Marks, Rothman and Neulander et al v. Board of Assessors, 58 A.D.2d 812, 396 N.Y.S.2d 267, condominium unit owners in Nassau County, New York alleged that their units were not being assessed pursuant to Section 339-y-1. After a lower court ruled that the Tax Law (which provides for assessment on the basis of full or market value) takes precedence over Section 339-y-1(b) of the Condominium Act, the Appellate Division reversed the lower court and directed that the entire condominium property must be assessed in accordance with Section 339-y-1(b). The Court stated it was not improper for the State Legislature to encourage condominium ownership by taxing condominium properties like units in a cooperative, rather than taxing the units at full value like other real property.

The law as interpreted by the New York courts requires tax assessors to value a condominium property as a whole and then to allocate values to each unit within the condominium with the assessments of all units combined not exceeding the assessed value of the condominium property as a whole.

Assessors have been faced with the task of valuing an entire condominium property as if it was a rental property – as the courts have stated, even though the property may never have been a rental property, and then allocating an assessed value to each unit in the condominium. Litigation has often resulted when (i) condominium owners disagree with the total amount of the assessments on all units, i.e. when the value of all units exceeds what the owners believe is the value of the entire condominium property as a rental property, or (ii) some individual units are not valued fairly in relation to the assessed value of the other units in the condominium.

Some assessors, without looking at the value of the individual units in relation to one another, use the percentage interest in the common elements assigned to each unit when the condominium was created. However, it should be understood that the percentage interest in the common elements is intended to reflect what portion of the condominium's operating costs should be paid by each particular unit and may not accurately reflect the value of the units in relation to one another or the entire condominium. This common element percentage is often based on the square foot area of the unit in relation to the square foot area of all units, but other factors are also considered, such as the common element space that is exclusive to the unit, e.g. parking spaces, size of balcony and storage area, and shared utilities, etc. which may not be directly related to the size of the units. Another factor that may contribute to the value of a unit is the location of unit within the condominium, e.g. the view from the unit. All of these

factors can be relevant in determining the value of a unit in comparison to the value of other units in the condominium.

Other assessors, especially in condominiums where unit sales are frequent, assess the units at a specific percentage of the market value based on the sales prices of units sold, e.g. 60%. 65%. 70% – another example of an improper assessment practice, but obviously easy to implement and often not contested by the condominiums board of managers or by the owners of the units.

Assessing condominium units is often a difficult undertaking. In most cases there are few, if any, comparables or other market data to help value the entire condominium property. Assessors are often forced to rely on the projected capitalization of income as if the property was a rental property, although the property was likely never a rental property, and then establishing the assessed value of the individual units in relation to one another.

When the assessed value of all the units in a condominium exceeds the value of entire condominium property as a rental property, or when the assessed value of the units is based solely on the percentages of the units in the common elements of the condominium without taking into account other relative factors, or when units of the same size and similar location are not valued equally or close to equally, the assessments are not made in a manner required by the law.

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