

Law Report

Community Association Issue

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BOARDS OF MANAGERS HAVE POWER TO SEEK PROPERTY TAX RELIEF

By Joanne Elliott



The Illinois Condominium Property Act empowers Boards of Managers to "seek relief from ... the assessment or levy of any tax" on behalf of all unit owners. Among other things, this means that condo Boards are authorized to hire attorneys to contest the tax assessments of each and every unit in their development. This does not mean that Board members, officers or managers can (unless they are attorneys) represent unit owners. In most cases they cannot since such activities may constitute the unauthorized practice of law.

The Act also authorizes condo Boards to charge unit owners for the costs incurred in protesting assessments. These costs may be included as common expenses of the Association.

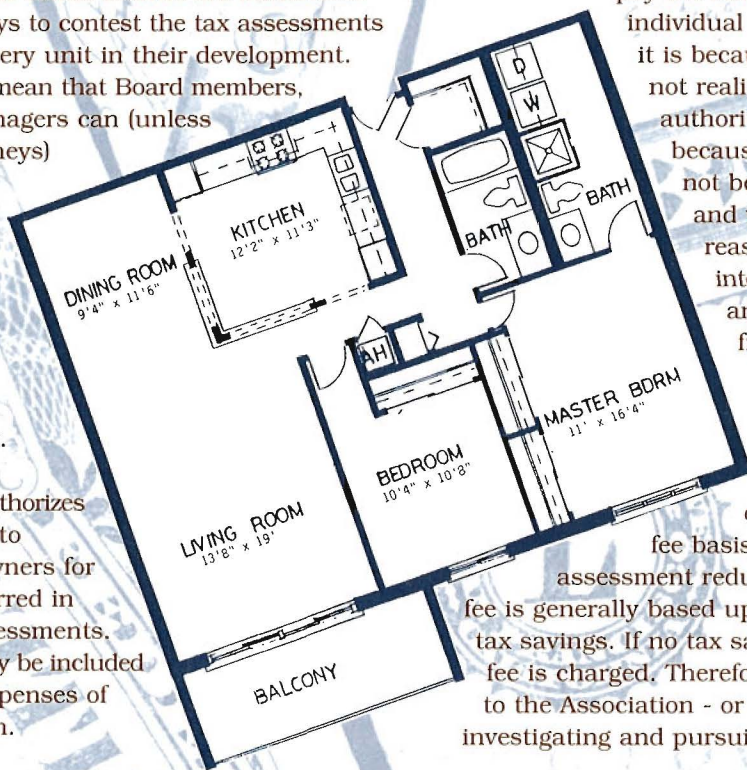
For some reason, many community associations fail to contest tax

assessments on behalf of their constituent owners. I do not understand why - given the significant tax savings which can be obtained. Perhaps it is because Associations do not

pay the real estate taxes of the individual unit owner. Perhaps it is because condo Boards do not realize they have this authority. Or, perhaps it is because board members do not believe they can fight and win. Whatever the reason, it is in the best interests of the Association and the unit owners to fight tax assessments.

Attorneys Fees

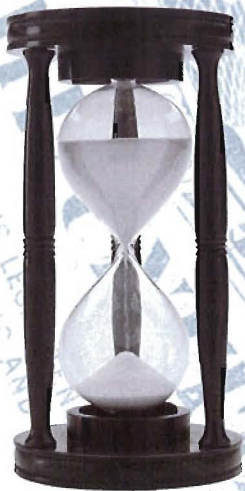
Most attorneys who handle these cases do so on a contingent fee basis. A fee is charged if an assessment reduction is obtained. The fee is generally based upon a percentage of the tax savings. If no tax savings is obtained, no fee is charged. Therefore, there is little risk to the Association - or the unit owners - in investigating and pursuing a tax reduction.



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ELLIOTT
&
ASSOCIATES
ATTORNEYS



Complaints must
be filed within
30 days
following
mailing of the
assessment notice.

A word of caution:

**Late complaints are
never accepted.**

Assessment Cycles

Condominium property is assessed on the same basis as other real property. In Cook County, all property is reassessed at least once every three years. The City of Chicago was reassessed for the 2000 tax year. The northern suburbs (north of North Avenue) were reassessed in the Summer/Fall of 2001. And the southern suburbs in 2002.

DuPage, Lake and Will Counties are reassessed on a quadrennial - four year - basis. However, in these Counties the Assessor can - and often will - reassess property in intervening years.

Even if your development is not scheduled to be reassessed presently, you can still contest the assessment now. And, if you have never contested the assessment before, it may be worthwhile to do so because assessment increases compound over time.

Time Constraints

In Cook County, property owners (and condo Boards) have two thirty day filing periods each year during which they can contest their assessments. The first opportunity is before the Assessor. The filing deadline falls on the 45th day following mailing of the assessment notice. The second opportunity is before the Board of [Tax] Appeals. The Board publishes its

filing deadlines from time to time and it is difficult to predict in advance when they will occur.

In the collar Counties, the procedures are similar. Complaints must be filed within 30 days following mailing of the assessment notice. Complaints are filed with the County Board of Review. Appeals can be taken to the State Property Tax Appeal Board but must be filed within 30 days following the decision of the Board of Review.

A word of caution: Late complaints are never accepted.

Grounds for Reduction

There are several grounds for obtaining an assessment reduction for a community association. The most common are that the Assessor's estimate of market value is excessive; that the assessment violates the principal of uniformity of assessment; and that the common areas are not assessed at the statutory level of \$1.

Conclusion

Real estate taxes are a significant expense for a unit owner. When they are fair, they help to support property values. When they are not, they become a burden. Associations can help their constituents by hiring attorneys to continually monitor assessments and contest them when the facts allow.

REDUCING ASSESSMENTS OF COMMON AREAS



**TAX
TAX**

If a community association holds legal title to common areas and facilities, its members run the risk of being taxed twice. The first tax is on the value of the home. That tax also includes the value of the common facilities since each homeowner has the right to use them. The second tax is on the common areas and is allocated among the homeowners as they must pay their pro-rata share of the association's property tax costs.

To solve this double taxation problem, the Illinois Revenue Act provides that "common areas" in a residential development shall be assessed at \$1.00 per year. Such an assessment results in virtually no real estate tax and ensures there is no double taxation.

Common areas are defined by law as "a lot, parcel, or area the beneficial use and enjoyment of which is reserved ... to the separately

owned lots, parcels, or areas within the planned development". They include:

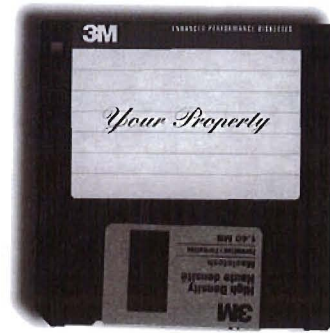
- Retention/detention basins and ponds;
- Swimming pools, tennis courts and other recreational facilities;
- Janitorial unit(s) and Management offices.

Common areas may exist in single-family home developments, townhome developments and condominium developments.

The Assessor does not automatically assess Common Areas at \$1.00. It is up to the Association to file a complaint with the assessing officials to request this treatment.

The \$1 assessment may not be permanent. The Assessor may (and often will) increase it to to market level from time to time. Once that occurs, it is up to the Association to

file a complaint and prove that a \$1 assessment should be reinstated. It is important, therefore, that the taxpayer - or its attorney - regularly monitor the assessments of common areas to make sure they haven't been increased.



We maintain a computerized data base of our client's properties. We would be happy to include your association in that database. That way, we will be responsible for monitoring the assessments of your common areas and taking action when appropriate.

YOU CAN HELP US LOWER YOUR TAXES

"The attorney and the Association should work as a team to lower assessments. Each brings something to the table. Together they can bring about effective results."

Associations can implement procedures to help their attorneys successfully fight tax assessments. What are they?

Assemble Sales Comps.

A threshold issue in most assessment contests is determining the true market value of the property. The Assessor renders his or her opinion of value based on sales information recorded in the public records. However, these records are often inaccurate and incomplete.

Associations, on the other hand, are generally aware of all sales in advance since unit owners are typically required to obtain a waiver of the Association's right of first refusal prior to closing a sale transaction.

As part of its standard operating procedure, the Association should request a copy of each

sale contract prior to issuing its right of first refusal letter. That way the Association can supply its attorney with complete documentation on all sales transactions. The attorney will then be several steps ahead of the Assessor.

Differentiate The Sales.

While the Assessor may be aware of most sale transactions, he is not likely to be aware why one unit sold at a premium (due to location, views, interior finishes, etc.) and another at a discount.

The Association, on the other hand, is probably intimately aware of these reasons. If the Association can inform its attorney of these differences, it will help the attorney to argue for a discount of "above market" sales in order to obtain a lower valuation of all units.

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Deferred Maintenance/Pending Assessments.

The Assessor will certainly not be aware of the existence of deferred maintenance and the likelihood of upcoming special assessments. However, these factors - if made known through the attorney - may justify an assessment reduction.

Identify Personal Property.

Each time an owner sells its unit, he typically sells personal property (appliances, floor and window coverings, electrical fixtures, etc.) in addition to the real estate itself.

However, since personal property is not usually paid for separately but included in the price of the real estate, it tends to inflate the reported sales price of the unit in question.

If personal property can be identified, the attorney can ascribe a value to it and argue for a downward adjustment in the reported sale price. This is a sound legal argument that usually works if sufficient documentation is available.

Assemble Complete Documents.

The attorney needs complete documentation in order to analyze and effectively contest the assessment. The Association will need to provide this information which includes: current condo declaration; list of all sales within last three years together with real estate contracts, if available; etc.

Comparable Developments.

The Association is undoubtedly familiar with comparable real estate developments in its market area. If provided with this information, the attorney can obtain sales comps which can be used to establish the market value of the units in his client's development.

The attorney and the Association should work as a team to lower assessments.

Each brings something to the table. Together they can bring about effective results.

TAX ASSESSMENT FREEZE FOR CONDOMINIUMS AND TOWNHOMES



Under Illinois Law, condominium and townhome units may be eligible for an eight-year assessment freeze if they are owner-occupied residences that have been designated as historic buildings.

Multi-family buildings of six or fewer units may also be eligible if at least one unit is owner-occupied.

To qualify, the building must be a registered historic structure (either by listing on the National Register of Historic Places or designated by an approved local historic preservation

ordinance), be owner-occupied, have at least 25% of its market value (as determined by the Assessor) spent on an approved rehabilitation project which significantly improves its condition, and be rehabilitated according to certain Federal standards.

Applications must be submitted to the Illinois Historic Preservation Agency within two years following completion of the rehabilitation project. If the project meets the requirements of Illinois Law, a Certificate of Registration will be issued and the assessment will be frozen for eight years. The valuation is then gradually brought back to market level over a period of four years.