



First American Title Insurance Company of New York
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UNDERWRITING BULLETIN

TO: ALL NEW YORK STATE AGENTS

CC: HELEN POWELL

FROM: JOHN CRUZ, MICHAEL ALFIERI & JAMES THANASULES

RE: BULK SALES COOPS & CONDOS – NYC TRANSFER TAXES

DATE: January 26, 2004

Please review the annexed memorandum containing some guidelines regarding transfer taxes and bulk sales of condominium units and cooperative apartments.

Please feel free to call us with any questions or comments.



**To: Counsel and Agency
From: Michael J. Beres
Senior Underwriting Counsel
Dated: January 23, 2004**

**Re: New York City Real Property Transfer Tax (“RPTT”)
Bulk Sales of Cooperative Apartments and Condominium Units**

The RPTT is generally applied to the transfer of a one-to-three family dwelling, an individual residential condominium unit and an individual residential cooperative apartment at the rate of 1% when consideration is \$500,000.00 or less, and at the rate of 1.425% when consideration is more than \$500,000.00. These rates of tax are often identified as the “residential” rates. The transfer of other property is taxed at the so-called “commercial” rates of 1.425% when consideration is \$500,000.00 or less, and 2.625% when consideration is above that amount.

Determining which tax rates to apply can be confusing when multiple residential condominium units are being conveyed by separate deeds from the same grantor to the same grantee, or when the same transferor is transferring more than one cooperative apartment unit to the same transferee. In such instances, the parties to the transaction are often surprised at closing, or after closing when they receive a notice of an audit, when they first become aware that the residential tax rates do not apply, and the transfer tax payable to the City of New York is substantially greater than the amount anticipated. This is because the City’s Department of Finance deems multiple unit transfers as bulk sales and applies its commercial transfer tax rates. The transferor and transferee both have RPTT liability for an underpayment of tax, and for any resulting interest and penalties.

The Rules of the City of New York on “Imposition” of the RPTT deal with the transfer of multiple cooperative units by a single transferor to a single transferee. An illustration in 19 RCNY Section 23-03 (h)(8) indicates that the 2.625% commercial rate applies in such an instance, and consideration includes a portion of the outstanding balance of the underlying mortgage on the cooperative corporation’s property allocated based on the transferor’s percentage ownership interest in the cooperative corporation.

Under 19 RCNY Section 23-03 (h)(6) a proportionate amount of the cooperative corporation underlying mortgage attributable to the shares of stock in the cooperative corporation being transferred is included in taxable consideration on the initial transfer of shares of cooperative stock by the sponsor or on the subsequent transfer of shares of stock attributable to a unit that is not an individual residential unit. For the transfer of multiple cooperative units, the Department of Finance has determined that the transfer of multiple cooperative units is not the transfer of an “individual” residential unit and therefore consideration for a unit sale includes a portion of the building’s mortgage debt.

The Rules do not, however, set forth the rate to be applied when multiple condominium units are being conveyed between the same parties.

Department of Finance Memorandum 00-6 issued June 19, 2000, titled “Real Property Transfer Tax on Bulk Sales of Cooperative Apartments and Residential Condominium Units”, confirms that commercial transfer tax rates will be applied to the entire, aggregated amount of consideration on the bulk sale of cooperative units. The Memorandum further advises that while commercial rates will be applied to the bulk sale of condominium units, the rates will be separately applied to the consideration allocated for each deed, provided that the units are conveyed by separate deeds.

The Memorandum provides that the “Department will accept the taxpayer’s apportionment of the consideration for the bulk sale to each deed provided the apportionment reasonably reflects the relative values of the units transferred”.

These standards in the Memorandum were clarified in a Letter Ruling of the Department of Finance dated May 23, 2003 (FLR-034801-021). The hypothetical facts set forth in that ruling are that a seller contracts to sell two units to a single buyer under two independent contracts of sale. The larger unit, a family dwelling, is to sell for \$2,500,000.00 and the smaller unit, a maid’s quarters, is under contract for \$100,000.00. The units are on separate floors and are not connected.

The Ruling concludes that commercial transfer tax rates will apply to a transfer of either condominium units or cooperative apartments, notwithstanding their residential use. For condominium units, the higher commercial rate of 2.625% would apply to the transfer of the dwelling in question since its purchase price is in excess of \$500,000.00. The lower commercial rate, or 1.425% would apply to the transfer of the maids quarters; the purchaser price for that unit is \$500,000.00 or less.

If cooperative apartments were being transferred, the higher commercial transfer tax rate of 2.625% will apply to the aggregate consideration for the transfers. In addition, consideration will include a proportionate share of the underlying mortgage and no continuing lien deduction as to that mortgage debt would be applied.

New York City Administrative Code Section 11-2102 provides that on the transfer of a individual residential condominium unit or an individual residential cooperative apartment (or a one-to-three family house or an interest in any such dwelling) consideration may, with certain exceptions, exclude the “amount of any mortgage or other lien or encumbrance...that existed before the delivery of the deed or the transfer [which] remains thereon after the date of delivery of the deed or the transfer”. The transfer of multiple units not being deemed a transfer of an individual unit, no continuing lien deduction would be available.

According to the Department of Finance, the rules under which a residential unit can be subject to the commercial RPTT rate may also apply to the transfer between the same parties of a residential unit and either a garage or parking space unit or a storage unit. However, in a 1999 Letter Ruling, the Department of Finance determined that the residential rates would apply on the transfer between the same parties of a residential unit

and a parking space unit. The consideration for the transfer of each parking space unit was under \$25,000.00, and therefore not taxable, and the conveyance of a parking space was not contingent on its being transferred to a residential unit purchaser. The Ruling also noted that the residential unit and the parking space were different types of property. It is not certain how the Department of Finance would apply this holding in the event that the consideration for a parking space is above the threshold amount for tax.

There are limited ways to avoid application of the commercial rates when multiple units are being transferred by separate contracts between the same parties. First, according to the Letter Ruling of May 23, 2003, the lower, residential rates may apply, and the transfer of units or apartments not be treated as a single transaction, if “facts and circumstances indicate that the transfer of multiple condominium or cooperative units are independently negotiated and are unrelated”. This will not be possible to establish in most circumstances. Whether the closings take of the units take place on the same day or on separate days is immaterial in determining if the transfers are unrelated.

Another approach is to combine the units into a single unit prior to closing. Finance Memorandum 00-6 provides that if the units are adjacent and have been physically combined into a single residence prior to their transfer, the lower, residential rates would apply. According to the Memorandum, “the Department will examine all of the applicable facts and circumstances in determining whether two or more apartments or units have been physically combined. The issuance of a revised Certificate of Occupancy, a *letter of completion* from the Buildings Department or a revised tax lot designation reflecting the joining of two or more apartments or units will be acceptable evidence of such a combination. However, the absence of any of these documents will not be conclusive”. (Emphasis added)

The letter of completion referred to may issue under the Building Department’s Technical Policy and Procedure Notice #3/97. That Notice eliminates for all multiple dwellings the requirement that a certificate of occupancy be amended when apartments are combined to create larger dwelling units. An Alteration Type II application is required and, after filing of a completion sign-off by a Professional Engineer or a Registered Architect, the Building Department will issue a letter of completion. The letter of completion will state that the “Department of Buildings does not require a new or amended certificate of occupancy for combining these apartments”.

The Technical Policy and Procedure Notice sets forth certain requirements. The combining of apartments must result in no greater number or zoning room, each new room must comply with natural light and air requirements, egress is not to be altered, and the second kitchen must be eliminated, In addition, when condominium units are being combined, a new tentative tax lot number for the combined unit must be obtained from the Department of Finance before the Alteration Type II Application is filed.

The Department of Finance has applied the residential transfer tax rates if the units have been combined in compliance with Notice #3/97. The Department requires that an affidavit of the owner of the unit accompany the NYC - RPT stating that (i) the transfer involves two

or more units that have been combined into a single unit, (ii) the second kitchen has been eliminated, (iii) the combination of units has been approved by the Department of Buildings, and (iii) the combination of the units was approved under Building Department's Technical Policy and Procedure Notice #3/97. An affidavit of an architect certifying that the units were combined and that there is one kitchen is also required.

A copy of a form of the affidavit, a sample letter of completion, and a form of architect's affidavit are annexed to this Bulletin. (Local Law 14 of 1975 referenced allows an architect to sign off on completion of a minor alteration instead of requiring an inspection by the Building Department).

Finance Memorandum 00-6, Technical Policy and Procedure Notice #3/97, and the Letter Rulings are on the Internet at the following locations:

http://www.ci.nyc.ny.us/html/dof/pdf/00pdf/fm00_6.pdf (Memorandum)

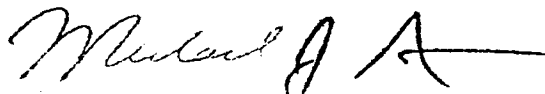
<http://www.nyc.gov/html/dob/html/tppn0397.html> (Notice)

<http://www.ci.nyc.ny.us/html/dof/pdf/02pdf/034801r.pdf> (Ruling)

<http://www.ci.nyc.ny.us/html/dof/pdf/984736r.pdf> (Ruling)

While the title policy does not insure against collection of transfer taxes, it is imperative that counsel be aware of these rules and procedures in order to ensue that proper guidance is given to our clients, and to receive adequate funds at closing to enable recording.

Please contact me if there are any questions.



cc: James Orphanides
Managers

THE CITY OF
NEW YORK

DEPARTMENT OF BUILDINGS

MANHATTAN

60 Hudson Street, 5th Floor, New York, New York 10013-3313

BRONX

1932 Arthur Avenue, Bronx, New York 10457-6306

BROOKLYN

210 Joralemon Street, Brooklyn, New York 11201-3713

QUEENS

126-06 Queens Blvd, Kew Gardens, New York 11415-1534

STATEN ISLAND

Borough Hall, St. George, New York 10301-1903

SAMPLE

PREMISES:

APPLICATION #:

BLOCK: LOT:

DEAR

PLEASE BE ADVISED THAT THE WORK RELATED TO THE ABOVE APPLICATION IS COMPLETED ACCORDING TO THE RULES AND REGULATIONS OF THE DEPARTMENT OF BUILDINGS.

IF THIS JOB WAS FILED AS DIRECTIVE 14 OF 1975, THE OWNER RETAINED A PROFESSIONAL ENGINEER OR REGISTERED ARCHITECT WHO CERTIFIED THAT HE/SHE INSPECTED THE WORK APPROVED ON THIS APPLICATION AND THAT IT COMPLIES WITH THE RULES AND REGULATIONS OF THE DEPARTMENT OF BUILDINGS.

IF THIS APPLICATION IS FILED FOR COMBINING APARTMENTS ON AN ALTERATION TYPE II, THE DEPARTMENT OF BUILDINGS DOES NOT REQUIRE A NEW OR AMENDED CERTIFICATE OF OCCUPANCY FOR COMBINING THESE APARTMENTS.

VERY TRULY YOURS,

RON LIVIAN

BOROUGH COMMISSIONER

MANHATTAN BOROUGH OFFICE

MBO 18

COMPLETED

SAMPLE

State of)
)
County of)

The undersigned being duly sworn hereby deposes and says:

1. I am the owner of [condominium] [cooperative] units _____ and _____ at _____ (the "Units");
2. I am making this affidavit as transferor in connection with the transfer of the Units to _____.
3. The Units have been combined into a single unit;
4. The second kitchen has been eliminated from the Units;
5. The combination of the Units has been approved by the New York City Department of Buildings;
6. Such approval was issued pursuant to Technical Policy and Procedure Notice #3/97 of the Department of Buildings; and
7. The letter of completion from the Department of Buildings is attached hereto,

Sworn to before me this
__ day of __, __.

Notary Public

SAMPLE

State of)
)
County of)

_____ an architect licensed in the State of New York, hereby certifies the following:

I am the architect that prepared the plans filed with the Department of Buildings and stamped by the Department of Buildings, "Acceptable for permit under directive No 14/1975" for the combination of the units _____ and _____ in the building known as _____ and located at _____

_____ into one unit. The work to combine the two units has been completed and the combined premises are one (1) residential unit. In the combined premises there is one kitchen.

The letter of completion from the Department of Buildings is attached.

Sworn to before me this _____ day of _____

Notary Public