

Ad Valorem Taxes Start to Hit Home for Owners of Condos

Lee County Appraiser Mailed out Notices

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As they say, there are two certainties in life: death and taxes. While most of us probably try not to think about the former more than we have to, the latter permeates our day-to-day existence.

Florida's Constitution prohibits income tax. Therefore, it is not surprising that taxes on real property (usually called ad valorem taxes) are the primary source of revenue for many governmental entities within the State.

Last week, Lee County Property Appraiser Ken Wilkinson mailed out over a half million tax notices, including notices for the 65,000 or so condominium units in Lee County. No one keeps track of other types of "community association units" (such as homeowners' associations), but every owner of property in the county will receive one of these notices. These notices, called "TRIM Notices" (an acronym for Truth In Millage) tell property owners how much the Property Appraiser feels the "assessed value" for their property is.

Florida law requires the property appraiser to assess property at "market value." There are several different appraisal methods of calculating market value, including replacement cost, comparison of direct sales, and the "capitalization of income" approach.

According to the Appraiser's Office, most condominium units and single family homes in Lee County are appraised based upon the "direct sales comparison approach."

Florida's Constitution was amended in 1992 and includes the "Save Our Home Amendment" (SOH). SOH means that if property is your "homestead", no matter how fast the "market value" might rise,

there is a limit of three percent, or the Consumer Price Index (whichever is lower) on any annual valuation increase. SOH does not limit tax increases, only increases in assessed (market) valuation for establishing the tax base on a piece of property. SOH was an effort to counter the deleterious effect of escalating property values in certain areas (e.g. the barrier islands) where long-time residents were being driven out, because they could no longer afford to pay their tax bills.

In condominiums, the Appraiser sends the TRIM Notice to each individual unit owner. Any unit owner may contest the valuation of their property by filing, within the deadline specified in the TRIM Notice, a petition with the Value Adjustment Board (VAB). The VAB is comprised of three members of the Lee County Commission and two members of the School Board. The VAB appoints "special masters" who hear most of the cases, and make recommendations to the VAB.

Florida law prohibits the separate taxation of condominium common elements. The legal theory is that the value of the common amenities (such as clubhouse, swimming pool, tennis courts, roadways and the like) are already included in the value of the individual units, and separate taxation of those items would constitute unlawful double taxation.

Some Property Appraisers around the State, including Lee County's, struggle with the issue of how to tax the value of "limited common elements" (for example, assigned covered parking spaces, and boat docks), since in almost every case the law precludes separate taxation of these items. Lee County's Property Appraiser often sends letters to condominium associations, asking for a list of limited common element assignees. The law does not

mandate a response from the association, although, Lee's Property Appraiser has previously taken the position that applicable provisions of the Florida Administrative Code allows the Appraiser to obtain this information through a subpoena-type legal process.

Florida law permits the condominium association, on behalf of all of the unit owners, to protest the assessed valuation of all condominium units within the project. The law requires that the association notify unit owners of its intent to contest the valuation, and allow them the opportunity to opt out. Associations wishing to contest assessed evaluations of the units in the complex must file (not mail) appropriate paperwork no later than the deadline indicated on the TRIM Notice.

The law for homeowners associations is slightly different. First, there is no statutory provision for the association representing all of the homeowners

in a tax appeal. Secondly, common areas in communities governed by homeowners associations were historically not specifically exempt from ad valorem taxation in the same manner as condominium common elements.

As mentioned in this column several weeks ago, Florida's law, as applies to taxing common areas of subdivisions, has been amended effective January 1, 2004.

Under the new law, taxes may not be assessed separately against subdivision common elements utilized exclusively for the benefit of lot owners within the subdivision, regardless of ownership. Like the condominium counterpart, and as is probably the case from a practical standpoint anyway, the individual lots are supposed to be assessed include the value of use rights in the common areas. ⚖️

Mr. Adams concentrates his practice on the law of community association law, primarily representing condominium, co-operative, and homeowners' associations and country clubs. Mr. Adams has represented more than 600 community associations and serves as managing shareholder of the Firm's Naples and Ft. Myers offices.

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