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Real Estate Law: Tax-exempt commercial leasehold condominiums take hold on Long Island - by Judy Lynn Simoncic and Nathan Jones

November 19, 2019 - Front Section



Tax-exempt commercial leasehold condominiums on Long Island require navigation of additional regulations.

The New York State Condominium Act (Real Property Law Article 9-B) permits tax-exempt organizations to acquire commercial real estate through long-term leases instead of fee ownership and still be eligible for tax exemption under Real Property Tax Law § 420-a.

To be eligible for tax exemption, the leasehold condominium must, at a minimum, (a) be at least a 30-year lease; (b) be exclusively for non-residential use; (c) include more than one condominium unit, and (d) require unit owner(s) to pay all property taxes. If these criteria are met, the unit owner (lessee) is the owner of real property for that unit, with its common elements, including the underlying land. Of course, tax exemption entitlement under § 420-a necessarily requires that the owner be organized for an exempt purpose and the property be actually used for an exempt purpose.

Tax-exempt leasehold condominiums have been successfully utilized throughout NYC, where the Department of Finance has recognized their legality in letter opinions. In recent years, not-for-profit organizations traditionally located in NYC have begun expanding to surrounding areas, such as Nassau County.

While the Condominium Act requirements are the same throughout NYS, additional challenges must be navigated to be successfully implemented in Nassau County. For example, in Nassau County, taxable status is determined on a specific calendar date each year (i.e., the taxable status date). Therefore, timing is critical to securing an exemption. Also, creation of condominium units in Nassau County requires compliance with additional regulations, including subdivision approval from the local municipality and/or the Nassau County Planning Commission, depending upon the location of the property. Thus, it is important to work closely with the local municipality and the respective taxing authority to successfully achieve tax exempt status using the leasehold condominium

framework.

In sum, tax-exempt leasehold condominiums can provide significant benefits for both not-for-profits and property owners, but additional factors and regulations outside New York City require local expertise to successfully navigate these waters.

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