RP-5217 transfer report can affect future real estate taxes - by John Terrana and Gabriella Botticelli

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All real estate lawyers are familiar with the RP-5217 Form. You know the one; that mandatory transfer report that must be filed before a conveyance of real property can be recorded, which lists the property information, the sale price, circumstances of the sale and identifies the buyer. Nevertheless, many might be surprised to learn that the RP-5217, a seemingly straightforward formality, can have adverse consequences for a property owner's future real estate tax bills. For this reason, buyers, brokers and real estate lawyers should pay special attention to section 15 of the Real Property Transfer Report.

Section 15 of the RP-5217 prompts practitioners to specify whether certain conditions apply to the transfer of property:

Sale is between relatives or former relatives;
Sale between related companies or partners in business;

One of the buyers is also a seller;
Buyer or seller is a government agency or lending institution;
Deed type not warranty or bargain and sale;
Sale of fractional or less than fee interest;
Significant change in property between taxable status and sale dates;
Sale of business is included in sale price;
Other unusual factors affecting sale price; and
None.

Essentially, the buyer is being asked if the sale is an arm's length transaction, i.e., a transaction wherein the seller and the buyer are unrelated and there are no unusual factors motivating either party to sell or buy.

If one of these conditions or others affecting the sale price are present, the sale is not considered "arm's length" because a circumstance of the sale has caused the sale price of the property to deviate from the true market value.

In practice, section 15 is often overlooked by many buyers and their counsel who select the "none" option even when outside factors influencing the purchase price are present. One explanation for the oversight might be that the parties and their representatives, who are not familiar with tax assessment matters, do not realize that the options provided in section 15 of the form are inexhaustive. Although the separate instructions to the RP-5217 provide parties with a more expansive list of "other unusual factors affecting sale price," it is unlikely that many consult these instructions. While certifying that no unusual factors affected the sale price might seem inconsequential in terms of filling out the form itself, the certification could undermine a future tax certiorari proceeding.

In a tax certiorari proceeding, the property owner challenges the assessment assigned to their property and has the burden of proving that their property was overvalued. Though there are multiple methods of proving value, the courts have determined that a recent "arm's length" sale of the subject property is the best evidence of its true value. For this reason, the RP-5217 can undermine a tax certiorari proceeding.

If the assessment of market value being challenged by a tax certiorari petitioner reflects a fair market value that is equal to or lower than the purchase price of the property, the petitioner's signature on the RP-5217 certifying that the transaction was arm's length undermines any argument that the property was over-assessed. For example, we recently commenced tax certiorari proceedings challenging an assessment on vacant property a client had just purchased for $2.8 million. The property was assessed at $2.5 million. After speaking with the client and doing our due diligence, we determined that the client owned adjacent property and he purchased the vacant property at a premium so he could expand his existing building on to it. Unfortunately, the RP-5217 that had been signed by the client at the closing indicated that there was nothing unusual about the sale, thereby indicating this was an arm's length transaction. While in this case we were eventually able to overcome this issue and obtain a reduction in the assessment/taxes for the client, until we were able to convince the County that the RP-5217 had been filled out incorrectly, we were unable to get a reduction in the assessment/taxes.

For this reason, it would behoove real estate purchasers and their representatives to pay attention to the RP-5217 Transfer Form before certifying that a real estate transaction is arm's length. If not, one signature on the RP-5217 could cost the client thousands of dollars paid in excess of their fair share in property taxes. In short, do not simply "check the box" without first considering the ramifications.

John Terrana, Esq. is a partner and Gabriella Botticelli, Esq. is an associate at Forchelli Deegan Terrana LLP, Uniondale, N.Y.