



Governor Hochul vetos legislation that would increase real estate taxes on condominiums and cooperatives - by Michael Schroder

February 14, 2023 - Long Island



Michael Schroder

On December 22, 2022, governor Hochul vetoed Senate Bill S5946B, which passed both the Assembly and the Senate by votes of 143-3 and 38-25 respectively. The bill would have changed the valuation methodology mandated by state law for new condominiums and cooperatives in the state, except for one- to three- story condo/coops in New York City and Nassau County.

The statutes, Real Property Tax Law § 581(a) and Real Property Law § 339(y)(a), require that valuation of condo/coops be based on the building as a single entity, not the combined sales price of each unit. The assessor is limited to an income approach valuation, treating the building as a rental apartment. The rental value of each unit is estimated along with a net income stream to determine investment value. This valuation methodology, utilized solely for assessment purposes, establishes a value lower than the combined sales price of each unit in the condo/coop.

The main critique of the current law is that single-family homes are taxed based on market value, while condo/coops receive a deep discount in taxes as compared to homes of similar value.

This differential treatment is the result of assessment practices of the 1960's & 70's, when many apartment buildings in New York City were being converted. Developers noted that selling individual units in apartment buildings created greater value than operating the building as a rental apartment.

Public offering plans state the total price for the sale of all units. When noted by local assessors, it was evident that the total sales prices for buildings undergoing condo/coop conversions far exceeded existing assessments of the building. Assessment increases followed, bringing dramatic increases in property taxes solely due to the change in ownership. Several court challenges ensued.

Increased taxes impacted tenants and buyers alike who had not contemplated tax increases due solely to conversions. The State Legislature stepped in and enacted the statutes which mandated that the mere change in ownership was not a legitimate reason to increase taxes. Real Property Tax Law Section 581(2)(a) states that the assessor “....shall compute an assessment which would be placed on such parcel were the parcel not owned or leased by a cooperative corporation or on a condominium basis, which value shall be known as the restricted assessed.” This language has been widely interpreted by the Courts to require that assessors value condo/coops as if still rental apartments.

The bill vetoed by the governor would have allowed municipalities to ignore the restriction on assessment for newly constructed condominiums and cooperatives. Each taxing jurisdiction would decide independently if it wished to retain the restriction on assessments. Experience shows that most municipalities throughout the state would adopt the new law and end restricted assessments.

There are meaningful arguments on both sides of this debate, but the governor has been focused on building more affordable housing, which is the basis for her veto. She notes that many first-time home buyers can afford condo/coops. Higher taxes under the bill would make those communities less desirable to potential first-time home buyers and fewer units of housing being built. The

governor's veto message states "At a time when New York State is in the midst of a statewide housing crisis, this would be an unacceptable outcome."

The governor's perspective on this bill reflects a sensitivity to how taxes affect sales price and carrying costs as well as real estate development. There is little land left to build tracts of single-family homes in the metropolitan area. Sustaining cities throughout the state requires new housing units in or close to downtowns. Building condo/coops are more cost effective than building single-family homes in new subdivisions. Demands on municipal infrastructure (new roads, multiple water and sewer lines) required by new sub-divisions are less for condo/coops.

The state's aging baby boomer demographic needs to find affordable housing to replace single-family homes. Many wish to stay local in retirement – taking equity from their homes and investing in smaller less expensive residential units not requiring the cost and effort for required maintenance needed for older homes.

Internal governance by boards of directors or managers maintains the physical appearance of condo/coops communities. House rules, sometimes onerous, guarantees uniformity in building appearance and landscaping. Over time, condo/coops will look as good as the day they were constructed, a positive impact in every community.

Municipal interests promoting this legislation are well organized. They just need to convince the governor to change her veto or wait for the next administration. Condo/coop associations must be vigilant in maintaining their tax status, as current practices may also be at risk as many in the Legislature feel that condo/coops have an unfair tax advantage.

Michael Schroder is a partner at Schroder & Strom, LLP. Mineola, NY.

New York Real Estate Journal - 17 Accord Park Drive #207, Norwell MA 02061 - (781) 878-4540