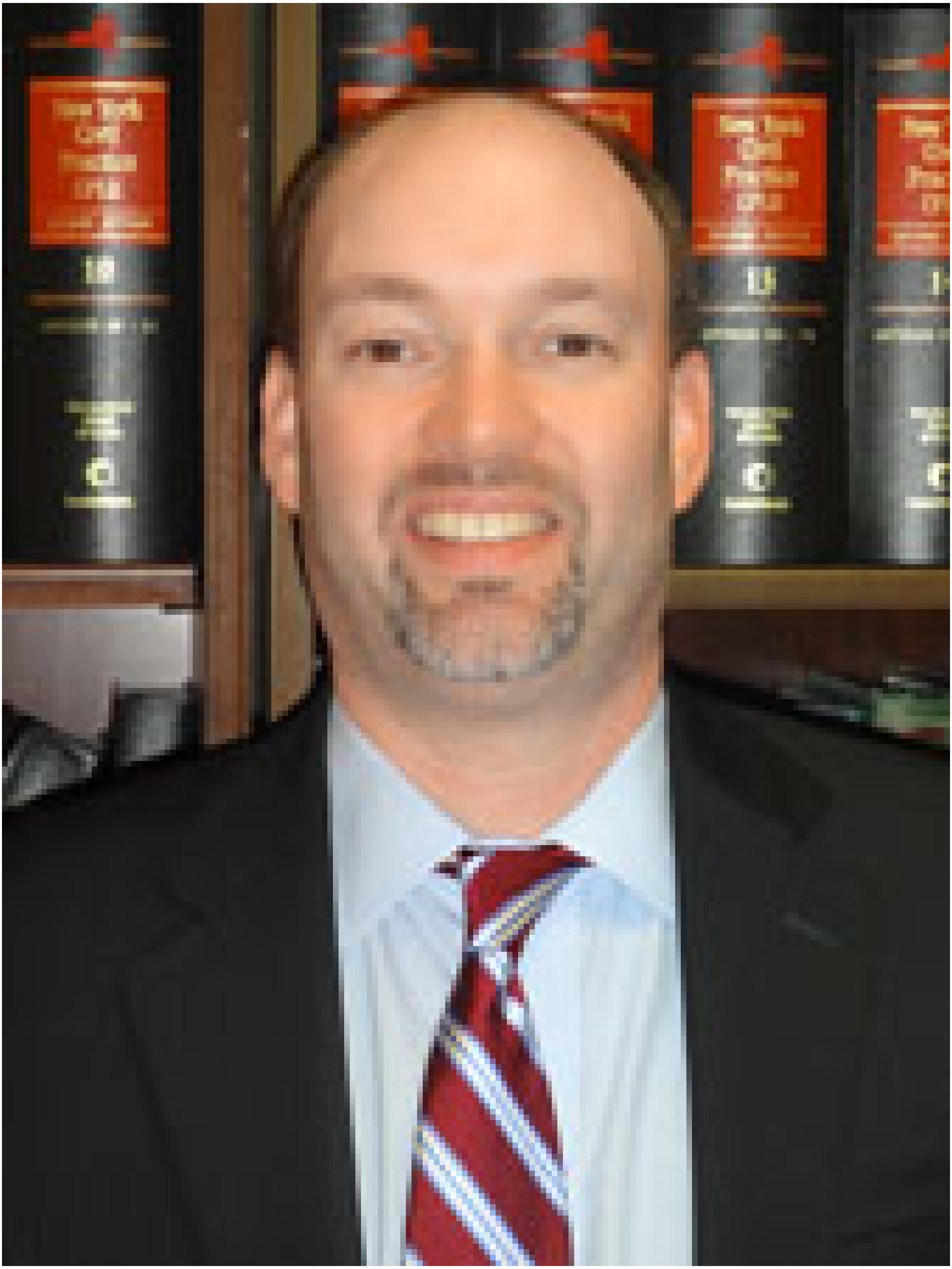
New York City taxing entire condominium and cooperative for individual renovations - by Peter Blond

May 30, 2023 - Spotlights



Imagine yourself managing, no worse, owning a New York City condominium or cooperative while one or more residential units in the building recently completed gut renovations. Now, imagine these renovations - in the aggregate - are in the tens of millions of dollars. All sounds pretty ordinary by New York City standards, right? Now imagine the New York City Department of Finance (DOF) attributing a corresponding increase to the assessed value of the entire condominium, or cooperative, based on the typical permit applications associated with gut renovations. The only problem with this hypothetical; it is not a hypothetical but rather the current modus operandi for the city assessor's office.

During a recent New York City Bar Association presentation (featuring high ranking members of the city department of finance) a committee member queried commissioner Niblack on DOF's process for handling condominium and cooperative renovations. Based on the response from commissioner Niblack's team, New York City DOF tallies the estimated aggregate cost of any projects, applies a varying percentage to determine the appropriate "physical" increase and the conclusion is added to the building's current assessed valuation.

Precedent for this valuation approach stems from New York State law that dictates the entire building should be valued when assessing a cooperative or condominium. As has also been the case for many years, cooperatives and condominiums are to be valued as if they are rental properties in New York. In theory, the building has indeed been improved and one or more units have seen their potential rental value climb, perhaps considerably, for an expensive gut renovation.

Nonetheless, the city's approach creates two significant problems for any cooperative or condominium. First, it is now guaranteed that every unit owner will be subsidizing the renovating unit owners' projects; and second, due to the nature of "physical" increases, the real estate taxes will accelerate much faster than any board's budgeting likely anticipated. By law, annual assessment increases must be phased-in or amortized over a five-year period. However, the one exception to that rule is construction/alteration work. By law, there is no phase-in or amortization of the assessment increase as would normally be the case. Accordingly, the entire building will now have to pick up the real estate tax increase attributable to the renovation work, and all upfront, and usually with only a few months of notice before the bill comes due.

It is highly doubtful that boards and/or management companies have spent any time analyzing this issue, much less successfully calculating a way to charge unsuspecting unit owners undergoing renovation work. For cooperatives, a "physical" increase is more easily discoverable as there is usually only one lot involved and the city DOF generally identifies a change due to alteration work on the annual notice of property value each January. The situation for condominiums is much more complex, as there are many lots and the city essentially spreads the "physical" increase out based on the same proportionate share by which they handle everything else for the building. It is possible impacted condominium unit owners have no idea in any given year that they have received an increase based on construction/alteration work because annual notices of property value for condo unit owners frequently fail to identify individual factors considered when promulgating the assessed value.

With the city's approach in mind, it will be interesting to see whether cooperative and condominium boards begin to restrict renovation projects or whether they will charge for the right to undergo a renovation that will result in swollen real estate taxes for all the owners. By way of example, the impact of these potential increases is frightening depending on the size of the building and the estimated cost of construction for the "physical" increase. If a Manhattan cooperative with 100 apartments undergoes several gut renovations over a two-year stretch totaling $20 million, that can easily result in an additional and immediate real estate tax liability of several hundred thousand dollars, at a minimum, for the building in question. In this example, roughly 97% of the cooperative will be involuntarily assisting to cover that new liability. Legal or not, this is the ultimate "rob Peter to pay Paul", with Paul being the city of New York.

The bottom line is New York City is charging your fellow shareholders or unit owners for your gut renovation. Whether New York City boards and managing agents continue to permit this without added fees or restrictions remains to be seen.

Peter Blond, Esq. is a partner at Brandt, Steinberg, Lewis & Blond LLP, New York, N.Y.