

Condominium Unit Real Estate Tax Assessment Problems

John E. Davidian

Follow this and additional works at: <https://scholarship.law.stjohns.edu/lawreview>

This Symposium is brought to you for free and open access by the Journals at St. John's Law Scholarship Repository. It has been accepted for inclusion in St. John's Law Review by an authorized editor of St. John's Law Scholarship Repository. For more information, please contact selbyc@stjohns.edu.

CONDOMINIUM UNIT REAL ESTATE TAX ASSESSMENT PROBLEMS

To meet ever-increasing demands for public services, local governments have relied upon taxation of real property as a primary source of revenue.¹ Since most realty is subject to these exactments,² the number of individuals affected is substantial. The statutory framework for realty taxation³ has been complicated by the emergence of the condominium form of property ownership. Usually, a condominium owner holds title to his particular apartment or unit in fee simple.⁴ In addition, he has an undivided interest in "the land and all other parts of the building held for the common use or benefit of the unit owners."⁵ Although the form which the condominium assumes may be residential or commercial, freehold or leasehold, the individual holders possess real property interests subject to taxation.⁶

The condominium presents taxing authorities with a two-phase assessment problem. The value of the overall property must first be appraised, a task made difficult by the scarcity of relevant market data. Once the assessed value is determined, the tax liability must be equitably apportioned among the unit holders. Should the authorities fail to make fair assessments, the unit holders must, in turn, choose the most effective means of mounting a tax protest.

CONDOMINIUM APPRAISAL

Taxation of condominiums must begin with an appraisal of the property.⁷ There are various methods of evaluation for tax assessment

¹ In New York City, for example, the tentative assessments of the city's taxable real estate for 1974 total \$40.1 billion. The tax is computed at \$6.89 per \$100 of assessed valuation. N.Y. Times, Feb. 5, 1974, at 41, col. 8.

² See, e.g., N.Y. REAL PROP. TAX LAW § 300 (McKinney 1972).

³ See *id.* § 100 *et seq.*

⁴ See Note, *Condominium and Cooperative Housing: Taxation by State and Federal Governments*, 21 U. FLA. L. REV. 529 (1969).

⁵ *Id.*

⁶ See N.Y. REAL PROP. LAW § 339-g (McKinney 1968). A leasehold results when the condominium developer leases the land on which the project is to exist. The individual holders can obtain no greater interest in their units than that which the developer can convey. See Tourtelot, *Separate Assessment of Condominiums*, 14 HASTINGS L.J. 289 (1963) [hereinafter cited as Tourtelot].

⁷ In New York, all property is to be assessed at its "full value." N.Y. REAL PROP. TAX LAW § 306 (McKinney 1972). However, use of the term "full value" is somewhat misleading. Although no assessment may exceed the property's "full value," an assessment calculated at a uniform percentage of this figure is permissible. See *Connolly v. Board of Assessors*, 32 App. Div. 2d 106, 108, 300 N.Y.S.2d 192, 195 (2d Dep't 1969).

The appraisal procedure is somewhat complicated by the requirement that the land and improvements be separately appraised. See N.Y. REAL PROP. TAX LAW § 502(3) (McKinney 1972). It is apparent, however, that only the total assessed valuation of the

purposes, but primary emphasis is placed on market value.⁸ Exclusive reliance on market value is not currently feasible, however, since the number of condominium units on the market is relatively small.⁹ As a consequence, appraisers have been forced to base their assessments upon values of non-condominium properties deemed to most closely resemble the property being appraised.¹⁰

Since the condominium possesses characteristics of both outright and leasehold ownership, comparisons of this sort present basic conceptual difficulties. For example, in evaluating residential condominiums, some assessors believe that greatest accuracy is achieved through comparisons of each unit to a similar single family residence.¹¹ Others feel that the value can best be ascertained, at least in the case of high-rise condominiums, by comparing the entire property to an apartment building of similar structure.¹² The practicalities involved frequently dictate the use of the latter method. When one considers the number of units being proposed in certain condominium projects, a unit-by-unit approach, although possibly the most accurate, is clearly unfeasible.¹³

Comparison to physically similar structures, however, does not necessarily provide suitable results. The sponsor of a successful condominium project may realize 50 percent more in revenue by selling individual units than he would have had he sold the building as a whole.¹⁴ A comparison approach disregards any resultant increase in value when an existing structure is converted to a condominium. De-

property is significant since only that figure can be subjected to judicial review upon a tax protest. *Id.*

⁸ See *People ex rel. Parklin Operating Corp. v. Muller*, 287 N.Y. 126, 129, 38 N.E.2d 465, 466 (1941); Note, *Taxation — Valuation of Real Estate for Tax Purposes*, 18 N.Y.U.L. REV. 102 (1940).

⁹ See Hilton, *The Appraisal of Condominiums for Assessment Purposes*, REAL ESTATE APPRAISER, July, 1967, at 2, 8 [hereinafter cited as Hilton]; Smith, *Appraisal of Condominiums*, REAL ESTATE APPRAISER, Sept., 1964, at 2, 8.

¹⁰ Hilton, *supra* note 9, at 8.

¹¹ *Id.*

¹² See Peacock, *The Appraisal Processes and the Condominium*, 32 APPRAISAL J. 345, 347 (1964).

¹³ One can envision the problems inherent in a unit-by-unit approach by considering the Parkchester complex which was projected to include 12,271 condominium units. N.Y. Times, Nov. 18, 1973, § 3, at 5, col. 3.

¹⁴ Clearly, this may vary with each project. It is interesting to note that the Parkchester complex was purchased for \$90 million and is expected to be sold in condominium form for an aggregate price of \$270 million. This increase in value upon conversion led Parkchester's current owner to boast, "I buy wholesale and sell retail." *Id.*

These conversion profits have also led to interest in possible joint ventures between developers and the owners of rental buildings. See 2 CONDOMINIUM REP., Feb., 1974, at 2, 3.

spite the shortcomings of the comparison approach, it does supply a reasonable starting point for valuation.

When faced with limited data concerning market value, assessors may consider other acceptable approaches to supplement the results achieved by the comparison method. Basically these include the income capitalization, reproduction costs less depreciation, and cost methods.¹⁵ Income capitalization, as applied to a condominium, entails computation of the net rentals of a comparable structure used for rental purposes. The value of the property is determined by capitalizing the rentals at the competitive rate for money under similar risk situations.¹⁶ The reproduction cost less depreciation method assigns a value to the property based on the current market price to reacquire the land and improvements. The figure thus obtained is then reduced by any loss of value to the improvements caused by depreciation.¹⁷ The cost approach may take one of two forms:¹⁸ 1) an assessment of the property at the cost of its construction, or 2) an equation of value to the buyer's acquisition price.¹⁹ Of the two, the latter appears more reliable since it is based on an actual sale and is therefore more reflective of market value.²⁰

¹⁵ See Note, *Taxation — Valuation of Real Estate for Tax Purposes*, 18 N.Y.U.L. REV. 102, 105 (1940).

¹⁶ *Id.* at 107. This approach is considered the most suitable for appraising condominiums in Peacock, *The Appraisal Processes and the Condominium*, 32 APPRAISAL J. 345, 347 (1964).

For an example of income capitalization as applied to commercial, non-condominium property see *Mid-Island Shopping Plaza, Inc. v. Podeyn*, 25 Misc. 2d 972, 204 N.Y.S.2d 11 (Sup. Ct. Nassau County 1960), *aff'd mem.*, 14 App. Div. 2d 571, 218 N.Y.S.2d 249 (2d Dep't), *aff'd mem.*, 10 N.Y.2d 966, 180 N.E.2d 63, 224 N.Y.S.2d 283 (1961).

¹⁷ See Note, *Taxation — Valuation of Real Estate for Tax Purposes*, 18 N.Y.U.L. REV. 102, 106 (1940). Since no property is deemed to be worth more than the cost to replace it, the resultant value under this method is considered to be the upper limit for any assessment. See *People ex rel. Lehigh Valley Ry. v. Harris*, 168 Misc. 685, 689, 6 N.Y.S.2d 794, 798 (Sup. Ct. Seneca County 1938), *aff'd mem.*, 257 App. Div. 912, 12 N.Y.S.2d 1011 (4th Dep't), *aff'd mem.*, 281 N.Y. 786, 24 N.E.2d 476 (1939).

¹⁸ See Note, *Taxation — Valuation of Real Estate for Tax Purposes*, 18 N.Y.U.L. REV. 102, 106 (1940).

¹⁹ *Id.* When considering acquisition costs in conversion situations, the assessor should note any discounts given prior lessees who are purchasing their units. Where similar units are sold at full sales price, the discounted prices are not indicative of value and should be adjusted upward. For an example of the use of discounts to spur the sale of cooperative apartments see *Richards v. Kaskel*, 32 N.Y.2d 524, 300 N.E.2d 388, 347 N.Y.S.2d 1 (1973). There, discounts rose to 30% of the list price in the original plan.

²⁰ Despite the fact that acquisition cost may more closely approximate market value, the construction cost method is still of substantial importance. For example, since property need not be valued at "full value," see note 7 *supra*, some localities value property on the basis of a prior year's construction costs. In Nassau County, New York, values for improved property are calculated by determining what the cost to buy the land and build the structure would have been in 1938. This method has been approved in *Connolly v. Board of Assessors*, 32 App. Div. 2d 106, 300 N.Y.S.2d 192 (2d Dep't 1969).

It should be apparent from this brief discussion that no absolute rules are available to guide condominium appraisals. As the market for condominiums expands, difficulties in appraising such properties will decrease accordingly. Until that point is reached, the results of the various available approaches should all be considered by taxing authorities to arrive at an equitable assessment.

APPORTIONMENT OF TAX LIABILITY

FHA Influence

Once the assessed value is determined, the resulting tax liability must be apportioned among the unit holders. There are, in theory, three methods by which this can be accomplished. The property can be assessed as a whole, with one tax bill for the entire project submitted to the condominium's board of managers.²¹ The tax burden would then be distributed among the unit owners pursuant to the bylaws. Alternatively, the units may be valued individually along with their corresponding share in the common elements.²² Here, each unit owner receives a separate tax assessment. Finally, the assessors can value the property in its entirety and apportion the result among each of the individual unit holders. As in the second approach, there is a separate tax bill and tax liability for each unit.²³

Difficulty in choosing a method of tax apportionment has been substantially diminished by the National Housing Act of 1961.²⁴ To spur construction of suitable housing for low to moderate income families, the Act authorized the Federal Housing Administration (FHA) to insure the payment of mortgages on condominium apartments.²⁵ As a result, the FHA proposed a model statute to serve as a guideline to states in enactment of condominium legislation.²⁶

Within its model, the FHA expressed its opinion as to the proper method of tax apportionment:

²¹ See Tourtelot, *supra* note 6, at 290. This is the approach applicable to cooperatives. There, the lessee remits his share of the taxes to the management as a portion of his periodic rent. See 4A R. POWELL, *THE LAW OF REAL PROPERTY* ¶ 633.17(1) (rev. ed. 1972).

²² See Tourtelot, *supra* note 6, at 290.

²³ This was the method adopted by the first jurisdiction to place emphasis on condominium construction, Puerto Rico. See Kerr, *Condominium — Statutory Implementation*, 38 ST. JOHN'S L. REV. 1, 38 (1963). It is currently being used in New York City and Nassau County, New York, among other areas.

²⁴ Act of June 30, 1961, Pub. L. No. 87-70, 75 Stat. 149.

²⁵ 12 U.S.C. § 1715y(c) (1970).

²⁶ U.S. FEDERAL HOUSING ADMINISTRATION, DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT, MODEL STATUTE FOR CREATION OF APARTMENT OWNERSHIP, FORM NO. 3285 (1962), reprinted in P. ROHAN & M. RESKIN, *CONDOMINIUM LAW AND PRACTICE* APP. B-3 (1973) [hereinafter cited as ROHAN & RESKIN].

Each apartment and its percentage of undivided interest in the common areas and facilities shall be deemed to be a parcel and shall be subject to separate assessment and taxation by each assessing unit and special district for all types of taxes authorized by law Neither the building, the property nor any of the common areas and facilities shall be deemed to be a parcel.²⁷

Currently, FHA regulations mandate that a unit be separately assessed for its mortgage to be insured.²⁸

Separate assessment, with its individualized tax billing, provides certain advantages to condominium unit owners. Taxing each residence separately limits the possibility of a tax lien and foreclosure to the individual unit for which payment has not been made.²⁹ In the case of a single tax bill, failure of any owner to pay his pro rata share of the lump-sum assessment would create a lien covering the entire property.³⁰ This could result in foreclosure unless the share was paid by other unit holders.³¹ By decreasing the degree of financial interdependence among unit owners, separate assessment minimizes risk of loss for both owners and mortgagees.³² In addition, it benefits the developer by increasing the saleability of the project.³³

Although the FHA may not have had a significant impact on the construction of moderate income condominiums,³⁴ its effect on real

²⁷ *Id.* § 22. For a detailed discussion of the model statute, including separate assessment, see Kenin, *Condominium: A Survey of Legal Problems and Proposed Legislation*, 17 U. MIAMI L. REV. 145 (1962).

²⁸ 24 C.F.R. § 234.26(d)(3) (1973).

²⁹ See Note, *Condominium and Cooperative Housing: Taxation by State and Federal Governments*, 21 U. FLA. L. REV. 529, 530 (1969).

³⁰ *Id.* See Berger, *Condominium: Shelter on a Statutory Foundation*, 63 COLUM. L. REV. 987, 1019 (1963).

³¹ See, e.g., N.Y. REAL PROP. TAX LAW § 304 (McKinney 1972).

³² See Tourtelot, *supra* note 6, at 291. Separate assessment further benefits the unit owner by insuring him that his tax payments will be deductible for federal income tax purposes. Treasury Regulations allow the deduction to the party upon whom the taxes are imposed. Treas. Reg. § 1.164-1 (1973). Of course, if the taxes were to be imposed on the board of managers and apportioned by them to the owners, the expenses could arguably be deductible by the unit owners, as such treatment is afforded cooperative holders. See INT. REV. CODE OF 1954, § 216. For an expanded discussion of the tax consequences involved in condominium ownership see Anderson, *Some Tax Aspects of the Condominium*, 1970 ILL. L.F. 220 (1970).

³³ See Berger, *Condominium: Shelter on a Statutory Foundation*, 63 COLUM. L. REV. 987, 1019 (1963). For the developer's views as to the reduced marketability of leasehold condominiums not separately assessed see Tourtelot, *supra* note 6, at 295.

It should be noted that separate assessments create disadvantages for taxing authorities. At the very least, they require that multiple parcels be added to assessment rolls as opposed to inclusion of one building. However, these clerical problems are likely to be alleviated by increased use of modern tabulating equipment. *Id.* at 293. At worst, jurisdictions could require individual unit valuations which would result in substantially increased workloads and expense for assessing agencies.

³⁴ See Harrison, *The FHA Condominium: Use as a Means of Meeting the Need for*

estate taxation is clear.³⁵ New York, for example, basically follows the FHA model.³⁶ Additionally, the New York statute specifies that the aggregate assessed values of the units and common elements may not exceed the value of the building if it were deemed a parcel subject to taxation.³⁷ This avoids exploitation of the separate assessment concept to achieve higher tax proceeds.³⁸ New York does not require separate taxation of leasehold condominiums "unless the declaration requires the unit owner to pay all taxes attributable to his unit."³⁹

Separate Assessment

As has been noted, the separate assessment approach to realty taxation requires that an individual tax bill be tendered to each condominium holder. Since a unit-by-unit assessment approach would be impracticable, some method for allocating the property's total valuation must therefore be employed to insure that each unit incurs its just tax liability. When units are valued separately at the start, apportionment techniques become relatively less important. However, even in such instances, some form of allocation is required to distribute the assessments applicable to the common elements.⁴⁰

Assessments are generally divided among unit owners on the basis

Moderate Income Housing, 11 N.Y.L.F. 458, 501 (1965), wherein the author notes that between 1961 and 1965 there were no condominiums for families of moderate incomes insured through the FHA.

³⁵ Nearly all jurisdictions currently have provisions similar to the FHA's model for separate assessment. However, variations are present among the enactments. For example, some states allow for separate assessment of leasehold and freehold interests. To avoid any complications caused by such an approach, the statutes generally provide that the interest shall be assessed as if it were a freehold. *See, e.g.*, CAL. REV. & TAX. CODE § 2188.3(b) (West 1970). Some provisions, curiously, relate only to assessments of the individual units without making reference to the owner's interest in the common elements. *See, e.g.*, VA. CODE ANN. § 55-79.14 (Repl. 1969). However, it is apparent that common elements were meant to be assessed and taxed proportionately to unit owners' interests. *See Bergin, Virginia's Horizontal Property Act: An Introductory Analysis*, 52 VA. L. REV. 961, 992 (1966).

³⁶ N.Y. REAL PROP. LAW § 339-y (McKinney 1968), *as amended*, N.Y. SESS. LAWS [1974], ch. 1056, § 7 (McKinney), provides in pertinent part:

Each unit and its common interest, not including any personal property, shall be deemed to be a parcel and shall be subject to separate assessment and taxation by each assessing unit . . . for all types of taxes authorized by law Neither the building, the property nor any of the common elements shall be deemed to be a parcel. In no event shall the aggregate of the assessment of the units plus their common interests exceed the total valuation of the property were the property assessed as a parcel. . . .

³⁷ *Id.*

³⁸ *See Kerr, Condominium — Statutory Implementation*, 38 ST. JOHN'S L. REV. 1, 38 (1963).

³⁹ N.Y. SESS. LAWS [1974], ch. 1056, § 7 (McKinney), *amending* N.Y. REAL PROP. LAW § 339-y (McKinney 1968).

⁴⁰ *See Hilton, supra* note 9, at 7.

of their percentage interests in the common elements.⁴¹ Although, in most jurisdictions, these aliquot shares are not binding on the assessors,⁴² they are accepted due to practical considerations. Initially, since they are set forth in the condominium's declaration, these percentages are readily available to assessors.⁴³ Secondly, their use precludes tax protests based on allegations of incorrect apportionment since each taxpayer agreed to the validity of the division when he purchased his unit and is, therefore, estopped from contesting it.⁴⁴

The common interest percentages are, in almost all instances, the proportion that the value of the individual unit bears to the value of the entire property.⁴⁵ Value is generally measured by the unit's sales price.⁴⁶ These percentages, when applied to the total value being apportioned, should produce reasonably fair initial assessments since they are implicitly approved by owners who rely on their validity in the determination of their fair share of the project's common expenses and profits.⁴⁷

Utilization of sales prices provides some initial guidance as to relative value.⁴⁸ However, the usefulness of these percentages diminishes as condominiums age. Since initial purchase, it is probable that some owners will have made significant permanent improvements to their units.⁴⁹ Other owners will have made less substantial improvements, no improvement at all, or may actually have allowed their units to deteriorate in value. As a result, the percentages derived from the

⁴¹ See, e.g., Kerr, *Condominium — Statutory Implementation*, 38 ST. JOHN'S L. REV. 1, 38 (1963). This approach is currently being utilized in New York City and Nassau County, New York.

⁴² See 4A R. POWELL, *THE LAW OF REAL PROPERTY* ¶ 633.23 (rev. ed. 1972). But see Md. ANN. CODE art. 21, § 11-122 (Repl. 1973) which provides in pertinent part:

The total evaluation thus produced shall be distributed among the condominium units . . . in direct proportion to the share and interest of each unit as established in the master deed and the declaration of the property

⁴³ See, e.g., N.Y. REAL PROP. LAW § 339-n(5) (McKinney 1968).

⁴⁴ See 1 ROHAN & RESKIN § 17A.06[5].

⁴⁵ See N.Y. REAL PROP. LAW § 339-i (McKinney 1968). This statute also provides that percentages may be computed on the basis of floor space. This approach, however, is not satisfactory for taxation purposes as it fails to consider the probability that two units of equal floor space may have dissimilar values because of their different locations within the structure.

⁴⁶ See Offering Plan, *The St. Tropez Condominium* (New York, N.Y., Jan. 14, 1965), reprinted in 1A ROHAN & RESKIN app. 79.

⁴⁷ See N.Y. REAL PROP. LAW § 339-m (McKinney 1968).

⁴⁸ In a tax assessment proceeding, evidence of the price paid upon the sale of the same property within a reasonable time after the taxable status date furnishes some . . . evidence of value.

People ex rel. Four Park Ave. Corp. v. Lilly, 265 App. Div. 68, 71, 37 N.Y.S.2d 733, 738 (1st Dep't 1942).

⁴⁹ This view in the context of condemnation awards is presented in Collins, *Eminent Domain: Its Possible Effect on the Condominium*, 14 HASTINGS L.J. 327, 329 (1963).

initial sales prices may no longer be indicative of the relative worth of the units *inter sese*.⁵⁰

A logical solution to this difficulty lies in the periodic reappraisal of each owner's share in the common elements. To be effective, however, such procedures should not require the consent of all unit owners before adjustments can be made.⁵¹ If unanimity is required, no reappraisal of interests will result since owners of improved units are unlikely to consent to procedures that will result in increased tax burdens and increased shares of common expenses.

If reappraisal is to be a viable remedy in this area, statutes should be enacted mandating periodic reviews of percentage interests.⁵² Such statutes should be agreeable to the taxing authorities since, under them, responsibility for conducting the reappraisal would rest with the condominium's board of managers.⁵³ In addition, such an enactment should satisfy most unit owners since the probability of equitable distribution of expenses would be enhanced.

TAX PROTESTS

The considerations involved in a condominium unit owner's right to protest his tax assessment are dissimilar to those affecting all other property owners. The unit owner's tax liability is, in almost all instances, based on an apportionment of the valuation of the entire property according to common interest percentages. However, he may be estopped from complaining about the percentages used for the apportionment.⁵⁴ If so, the only challengeable figure would be the valuation for the entire property in which each owner has a similar interest.⁵⁵ Consequently, questions develop as to whether owners may join together in attacking their assessments and whether the board of managers has the power to protest on behalf of all owners.⁵⁶

⁵⁰ These changes in value may have little or no effect on the valuation of the condominium property as a whole. However, the relative effect on the units may be significant and worthy of reflection in the tax assessments.

⁵¹ See 1 ROHAN & RESKIN § 6.01(4) for a discussion of the various statutes setting forth a policy of reappraisal.

⁵² A model in this regard is ALASKA STAT. § 34.07.180(b) (1971) which provides: The bylaws shall provide for a periodic reappraisal of the apartments and the common areas . . . together with a recomputation, if required, of the percentage of the individual interest of each apartment owner in the common areas. . . .

⁵³ Reliance on the board should create little opposition to such a plan since the assessors are currently relying on the percentages set forth by the sponsor in the declaration.

⁵⁴ See note 44 *supra* and accompanying text.

⁵⁵ "Accordingly, any real estate tax protest filed by a unit owner must be based largely upon the contention that the entire project is overvalued . . ." 1 ROHAN & RESKIN § 17A.06[5].

⁵⁶ See generally Note, *Condominium Class Actions*, *infra*.

In New York, protests commence by filing a complaint with the local administrative body charged with responsibility for property valuation.⁵⁷ The complaint may come from the party "whose property is assessed" or an authorized party who has knowledge of the appropriate facts.⁵⁸ Clearly, the individual unit owners are proper complainants. If the board has been provided with such authority in the bylaws or by vote of the owners, it too should be permitted to represent all the owners at this stage.⁵⁹

At the conclusion of the administrative review, any "aggrieved" party may seek redress in the courts by means of a tax certiorari proceeding.⁶⁰ At this point, it is statutorily provided that those parties similarly affected may join together in one proceeding.⁶¹ The individual owners are thereby permitted to unite their claims, thus distributing the expenses of the litigation.⁶²

It is presently uncertain whether a board of managers falls within the statutory meaning of an "aggrieved" party, since it has no responsibility for payment of the tax. In an analogous situation, a recent

⁵⁷ N.Y. REAL PROP. TAX LAW § 512(1) (McKinney 1972). At this stage, the assessment may be attacked on the grounds that it is illegal, erroneous or unequal. *Id.* The board of review can either increase, decrease, or leave unchanged the original assessment. *Id.* § 512(3).

⁵⁸ *Id.* § 512(1).

⁵⁹ It is currently the practice in New York City to allow complaints to be made by either the individual unit owner or the board of managers on behalf of the unit owners. Assistant Chief Assessor Harrington points out that if a unit owner complains, only his unit will be affected by a subsequent change in the assessed valuations. However, a complaint by the board may result in changes reaching all individual owners. Interview with J. Harrington, Assistant Chief Assessor for New York City, Feb. 5, 1974.

⁶⁰ N.Y. REAL PROP. TAX LAW § 704 (McKinney 1972). Court proceedings, however, may not be validly commenced until the petitioner has exhausted all available administrative remedies. *Id.* § 706; *People ex rel. Powott Corp. v. Woodworth*, 260 App. Div. 168, 21 N.Y.S.2d 785 (4th Dep't 1940).

⁶¹ N.Y. REAL PROP. TAX LAW § 706 (McKinney 1972). Since only the valuation of the entire property is subject to attack, the joinder provision is clearly applicable because

the adjudication upon the complaint of one taxpayer necessarily determines the complaints of others, as, where in reality but a single issue is presented, so that the law being settled as to the facts of one case it is alike applicable to all other cases

People ex rel. Washington Bldg. Co. v. Feitner, 163 N.Y. 384, 386, 57 N.E. 624 (1900).

⁶² These expenses may be significant. For example, if the petitioner alleges that the property has been assessed at a higher proportionate value than other property on the same assessment roll (inequality), he may have other parcels appraised. N.Y. REAL PROP. TAX LAW §§ 706, 720(3) (McKinney 1972). Such appraisals are expensive and, along with the legal fees involved, may be prohibitive to an individual owner. *See Koeppel, Inequality in Real Property Tax Review*, 19 BUFFALO L. REV. 565, 567 (1970).

It should be noted at this point that the use of leasehold condominiums will present no further complications in the tax protest area. Lessees, obligated to pay taxes, are permitted to dispute their tax liability. *See McLean's Dep't Stores, Inc. v. Commissioner of Assessment*, 2 App. Div. 2d 98, 153 N.Y.S.2d 342 (3d Dep't 1956).

New York decision allowed a membership corporation representing all lessees of cottages in a park to so act.⁶³ Significantly, the nature and duties of the corporation were quite similar to the functions of the condominium's board.⁶⁴ The decision in this case was based in part on the "representative nature of . . . [the corporation's] relationship with the lessees."⁶⁵ It would be reasonable to expect a similar holding when a condominium is involved.

Any uncertainty on this issue can easily be removed by statutory amendment. Currently, New York does provide a board with some power to bring actions on behalf of two or more owners.⁶⁶ The legislature should take the initiative and add to this provision, as Connecticut has done, the directive that: "[s]uch association may appeal from any decision of the local board of tax review on behalf of all owners of the property. . . ."⁶⁷ Having so provided, it then becomes a matter for the unit owners, through their bylaws, to determine when the board will so act.

CONCLUSION

Statutory provisions calling for separate assessment of condominium units present a skeletal framework within which taxing authorities are to operate. If condominiums were to assume a position of relative unimportance within the sphere of real estate taxation, such provisions might be sufficient. However, the continued growth of this form of property ownership requires that state legislatures be called upon to present more specific guidance to insure that real estate tax demands on unit owners are just.

John E. Davidian

⁶³ *Onteora Club v. Board of Assessors*, 29 App. Div. 2d 251, 287 N.Y.S.2d 535 (3d Dep't 1968).

⁶⁴ Compare *id.* at 253, 287 N.Y.S.2d at 537, with the duties of the board of managers set forth in the bylaws of St. Tropez Condominium, reprinted in 1A ROHAN & RESKIN app. 92, 93.

⁶⁵ 29 App. Div. 2d at 253, 287 N.Y.S.2d at 537. The court also placed emphasis on the fact that the organization derived its interest from a contract with the lessor. Pursuant to the agreement, the organization was to collect and pay taxes on the unleased and common-use properties within the development.

From a tax standpoint, it is doubtful that any unit owner would protest the board's intervention at this point since the court is powerless to increase assessments. See *Board of Educ. v. Parsons*, 61 Misc. 2d 838, 845, 306 N.Y.S.2d 833, 841 (Sup. Ct. Wayne County 1969). However, some owners may be opposed to the litigation expenses incurred by the board which eventually will be passed on to them.

⁶⁶ N.Y. REAL PROP. LAW § 339-dd (McKinney 1968).

⁶⁷ CONN. GEN. STAT. ANN. § 47-89(b) (Supp. 1973).