



Hotsheet

Resale of Recently Constructed Houses and Condominiums

Background

In some cases, a new house or condominium will not be separately assessed before closing (this is very common in Ontario). Until the property is separately assessed, a tax certificate will show a bulk assessment of a large parcel of undeveloped land, of which each new house or unit is a part. This information is of no use in determining what the annual realty taxes will be when the house or condominium is separately assessed. The separate assessment may take place months or years after the closing of the purchase from the builder. The property may be resold (once or more) before the separate assessment takes place. Therefore, reassessment is often an issue for houses and condominiums that are “nearly new.”

When the separate assessment takes place, it is likely that the current owner of the property will be required to pay a large amount of realty taxes, calculated retroactive to the date on which the house or condominium was completed.¹ Some of these taxes may relate to a period of time when the builder owned the property, and/or to a period of time when previous owner(s) owned the property.

The Issue

How can a lawyer ensure that his or her client(s), who are purchasing the property, will be out-of-pocket only for the amount of realty taxes attributable to the period of time during which they own the property?

Information Needed

When acting for the purchaser(s) of a nearly new house or condominium, a lawyer should determine whether the property has been separately assessed. This information can be obtained from the vendor(s) or their solicitor, or by contacting the municipality. Either an unreasonably low figure for the realty taxes on the property, or a large figure representing the bulk assessment of a large parcel of land, indicates that the property has not yet been separately assessed.

If there is any doubt about the assessment status of the property, you may be able to obtain information by contacting municipal authorities. For example, in Ontario, you can access the MPAC (Municipal Property Assessment Corporation, formerly OPAC) website at www.mpac.on.ca (but keep in mind that information on the website may be out-of-date).

If you are in a high-growth area, when retained on the purchase of a nearly new house or condominium which has not yet been separately assessed, call the municipality to obtain the municipality’s non-binding “guestimate” of the annual realty taxes on the property after reassessment. If the municipality is prepared to give the “guestimate,” it can be used as the basis

for adjusting the current year's realty taxes on the Statement of Adjustments. It can also be used to calculate a holdback. If using a municipal "guestimate," or an estimate of any kind, the client should be advised that the estimated amount may be different from the annual realty taxes, as eventually determined by the separate assessment.

Possible Solutions

If the Agreement of Purchase and Sale is silent on the issue of realty taxes (other than providing for an undertaking to re-adjust), LAWPRO[®] suggests that lawyers dealing with this situation:

- (a) determine whether the solicitor for the vendor will agree to adjust realty taxes based on an estimated amount of annual taxes, based on the municipality's "guestimate" or a number agreed upon between the solicitors;
- (b) in addition to the undertaking to re-adjust, obtain the vendor(s)' specific undertaking to pay their share of the realty taxes when the separate assessment takes place, and if a large amount of money is likely to be involved, attempt to negotiate a holdback for this purpose;
- (c) obtain an assignment of the vendor's rights under any undertakings re: realty taxes given by the builder and previous owners, and obtain physical possession of these undertakings on closing;
- (d) if the vendor's solicitor will not co-operate or if only a vendor's undertaking (as in (b) above), can be obtained, have the purchaser(s) sign, before closing, an acknowledgment that you have advised them that if the vendor does not comply with his/her/its undertaking, the purchaser(s) may have to pay all the retroactive realty taxes when the property is separately assessed and then pursue the vendor (whether successfully or not) to comply with the undertaking.

If none of the above solutions can be implemented on a TitlePLUS^{®2} deal, please contact us immediately at 1-800-410-1013 or 416-598-5899.

¹ In Ontario, see Subsection 34(1), *Assessment Act*, R.S.O. 1990, chapter A-31.

² The TitlePLUS policy is underwritten by Lawyers' Professional Indemnity Company. Please refer to the policy for full details, including actual terms and conditions.

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