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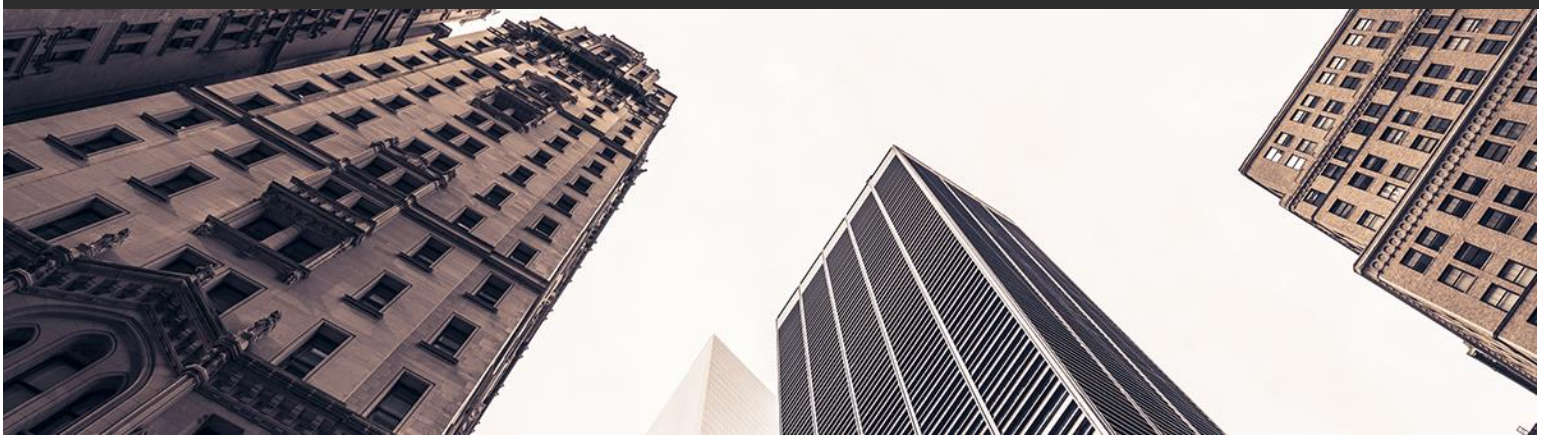

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Taxing Multiple Parcel Buildings in Florida

The desire of consumers to live, work and play in the same neighborhood has accelerated the popularity of mixed-use real estate projects, in which portions of a single building may be used for residential, commercial, office, hotel, retail and other purposes. A mixed-use project can be developed and operated by a single owner, but the value of the project can potentially be optimized when each portion of the building is owned and financed separately by a person with a special expertise in the particular use assigned to that portion of the project.

In Florida, one obstacle to the development of such mixed-use projects has been the inability or reluctance of county property appraisers to assess and tax each portion of the project separately. When all the portions of a mixed-use building share a single tax folio number, the entire building is at risk of a tax deed sale unless all the owners of the separate portions cooperate to allocate and share the annual ad valorem property tax bill. The risk is worse for a lender who finances only a portion of the mixed-use project, since the lien for unpaid Florida property taxes always ranks senior to the lien of the lender's mortgage.

Florida law previously required county property appraisers to assign separate tax folio numbers to each unit in a condominium development. The Florida condominium statute works well for separate ownership of residential condominium units located within a single building, but the statute is not easily adapted to the non-residential uses typically found in mixed-use projects. Rather, the separate ownership of portions of a mixed-use building in Florida is achieved by describing and conveying each portion by metes, bounds and elevations.

Effective with Governor Rick Scott's signature on CS/HB 7087 on March 23, 2018, new Section 193.0237 of the Florida Statutes provides that a separate tax folio number must be assigned to each portion of a building that is separately owned but does not consist solely of a single condominium, cooperative or timeshare development. Such buildings are called "multiple parcel buildings" in the new statute, and their defining characteristic is that the separately described portions of the building are located on or above the same land. The new statute applies to any multiple parcel building that is substantially completed as of Jan. 1 of the respective tax year, and it will begin applying to assessments for the year 2018.

Proponents of the new law predict that separate taxation of each portion of a mixed-use building will facilitate the development, financing and marketability of such projects by removing the risk to owners and lenders that another owner will fail to pay the property taxes on another portion. When the portions can be separately owned and operated by persons who specialize in each particular use, each portion can be valued separately and may attract a broader universe of investors, thereby enhancing marketability and value.

A useful analogy is the difference between selling pizza "by the slice" and selling the whole pie to one customer: the slice method always realizes a greater return for the pizza parlor. New Section 193.0237, by allowing for the creation of separate parcels, gives property owners flexibility to maximize the overall value of the site. And, if the market values of multiple parcel buildings increase as a result of this new law, local property tax revenues should rise proportionately. In essence, this change is a "win-win" for both property owners and the local government.

The effort to rationalize property tax folio numbers for multiple parcel buildings began in 2013 when the Miami-Dade County Property Appraiser wrestled with the statutory requirement to assign a land value to each folio: how could that happen if two portions of a building shared the same land? The answer is now found in Subsection 193.0237(2), which provides that the land under a multiple parcel building is not to be separately assessed, but its value is to be allocated among the separate portions of the building. Subsection 193.0237(3) provides that this land value must be allocated in the same proportion that the just value of each portion of the building bears to the total valuation of all the portions.

This land value allocation issue does not arise unless a multiple parcel building is located there. Accordingly, Section 193.0237 does not apply to "air rights" parcels that are not improved with a building that is substantially complete as of Jan. 1 of the respective tax year.

This legislation recognizes that a portion of a multiple parcel building can be subjected to a condominium declaration, and that the resulting condominium units will each receive a separate tax folio number. Typically, the relationship between the various portions of the multiple parcel building is governed by a recorded master declaration of covenants, easements and restrictions, rather than a condominium declaration. Subsection 193.0237(6) provides that the provisions of such a master declaration will survive a tax deed sale, in a manner similar to condominium declarations. Other provisions of the same enacting legislation (CS/HB 7087) amended Sections 197.572 and 197.573 to clarify that easements of structural support and most recorded covenants (other than past assessments) will survive tax deed sales, whether contained in a condominium declaration or in a master declaration governing a multiple parcel building.

This new property tax law will eliminate many of the uncertainties which made multiple building mixed-use developments potentially problematic for lenders and investors. The end result: it may help to spur the development of more of these projects in the future.

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