STATE OF WEST VIRGINIA
Department of Revenue
State Tax Department

Earl Ray Tomblin
Governor

Craig A. Griffith
State Tax Commissioner

July 11, 2012

TO ALL COUNTY ASSESSORS
STATE OF WEST VIRGINIA

Dear Assessors:

Re: Common Interest Communities

The West Virginia Legislature adopted the Uniform Common Interest Ownership Act into law in 1980. Recently I have received some inquiries regarding the property tax provisions of the Act. Attached for your review are guidelines on the taxation of such interests provided to me by the Tax Department's Legal Division.

Should you have questions or need additional information concerning this matter, please feel free to contact David Stiles, of the Legal Division, at 304-558-5330.

Sincerely,

Jeffrey A. Amburgey
Director
Property Tax Division

JAA/aj

Attachment

cc: David Stiles
Legal Division

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GUIDELINES FOR ASSESSORS
ON THE TAXATION OF COMMON ELEMENTS
OF COMMON INTEREST COMMUNITIES
UNDER THE
UNIFORM COMMON INTEREST OWNERSHIP ACT (UCIOA)

In 1980 the West Virginia Legislature adopted the Uniform Common Interest Ownership Act (UCIOA) into law as Chapter 36B of the West Virginia Code. The purpose of this notice is to clarify (1) how the common elements of a planned or common interest community are to be taxed, and (2) who is liable for the property taxes on the common areas of a planned or common interest community.

A. What is a common interest community?

"Common interest community" means real estate with respect to which a person, by virtue of his ownership of a unit, is obligated to pay for real estate taxes, insurance premiums, maintenance, or improvement of other real estate described in a declaration. "Ownership of a unit" does not include holding a leasehold interest of less than twenty years in a unit, including renewal options.
W. Va. Code §36B-1-103 (7)

A common interest community typically takes the form of a condominium, cooperative, leasehold common interest community, or planned community. It also includes a Homeowners' Association (HOA).

B. How is a common interest community created?

The UCIOA states that,

> A common interest community may be created ... only by recording a declaration executed in the same manner as a deed ... The declaration must be recorded in every county in which any portion of the common interest community is located and must be indexed on the grantee's index in the name of the common interest community and the association and in the grantor's index in the name of each person executing the declaration.
> ...

W. Va. Code §36B-2-101.

The declaration must contain certain information, including:

> (3) A legally sufficient description of the real estate included in the common interest community;
>
> ***

(5) ... a description of the boundaries of each unit created by the declaration ...

(6) A description of any limited common elements ... and, in a planned community, any real estate that is or must become common elements;

(7) A description of any real estate ... that may be allocated subsequently as limited common elements ...

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(11) An allocation to each unit of the allocated interests in the manner described in section 2-107.

W. Va. Code §36B-2-105.

C. How are preexisting common interest community treated under the UCIOA?

The UCIOA provides that W. Va. Code §36B-1-105, pertaining to taxation, applies to all preexisting common interest communities. See W. Va. Code §§36B-1-204 and 205.

D. What are the "common elements" of a common interest community?

After the units are identified, the bulk of the real estate in the common interest community constitutes the common elements:

"Common elements" means (i) in a condominium or cooperative, all portions of the common interest community other than the units; and (ii) in a planned community, any real estate within a planned community owned or leased by the association, other than a unit.

W. Va. Code §36B-1-103 (4).

Certain common elements may be designated in the declaration as "limited common elements." According to the UCIOA:

"Limited common element" means a portion of the common elements allocated by the declaration or by section 2-102(2) or (4) for the exclusive use or one or more but fewer than all of the units.

W. Va. Code §36B-1-103 (19).

E. How are the common elements taxed?

With respect to property taxes, W. Va. Code §36B-1-105 provides that:

In a condominium or planned community:

> If there is any unit owner other than a declarant, each unit must be separately taxed and assessed, and no separate tax or assessment may be rendered against any common elements for which a declarant has reserved no development rights.

In the jargon of the UCIOA, a "unit owner" is an owner of a physical portion of the common interest community. The "declarant" is the person or group that created the common interest community. Thus, in plain English, the statute says that, until a unit of the condominium or planned community is sold, the property is taxed as a whole; the "declarant," that is, the developer, is responsible for taxes on the property. As soon as one unit of the condominium or planned community is sold, the units making up the condominium or planned community must be taxed and assessed separately, and the common elements may not be taxed and assessed separately.

Note that this statute does not say that the common elements are not to be taxed; it merely states that they are not to be taxed separately. The definition of "common interest community" in the UCIOA presumes that the common areas will be taxed:

> "Common interest community" means real estate with respect to which a person, by virtue of his ownership of a unit, is obligated to pay for real estate taxes, insurance premiums, maintenance, or improvement of other real estate described in a declaration.

This definition presupposes that the owners of units in a common interest community are obligated to pay real estate taxes for real estate other than their own units.

F. How are property taxes on the common elements allocated?

The question then becomes, if the common elements may not be taxed or assessed separately, how they are to be assessed?

Under the UCIOA, the answer to this question should be specified in the declaration, that is, the document or instrument that creates the common interest community. According to §36B-2-107:

> (a) The declaration must allocate to each unit:
> (i) In a condominium, a fraction or percentage of undivided interests in the common elements and in the common expenses of the association.
> (ii) In a cooperative, an ownership interest in the association, a fraction or percentage of the common expenses of the association and a portion of the votes in the association; and
> (iii) In a planned community, a fraction or percentage of the common expenses of the association and a portion of the votes in the association.
>
> (b) The declaration must state the formulas used to establish allocations of interests. ...

The assessor appraises the value of the common elements, and the fraction or percentage, as set forth in the declaration, is then allocated to each individual unit owner as that owner's share of the tax liability on the common elements.

In the case of limited common elements, that is, common elements that benefit at least one, but not all, members of the community, the allocation is among those that share the benefit, rather than to all. Again, the declaration should specify the limited common elements, if any, and allocate them properly. See, W. Va. Code §36B-2-108.

Code §36B-1-204 provides that the above rule applies to preexisting common interest communities. As with any special property tax treatment, it is incumbent on the taxpayer to provide the assessor with sufficient information to properly tax and assess the property. Barring that, the value of the common elements should be allocated equally among the unit owners of the common interest community.

EXAMPLE 1: Assume a common interest community, created under the UCIOA, consisting of ten units, each having an appraised value of $250,000. The golf course and lake comprising the common elements of the common interest community have a value of $5 million. Assume that the allocation percentage in the declaration is 10% for each unit. Ten percent of the appraised value of the common elements would then be added to the appraised value of the individual units, raising their appraised value to $750,000 each. The assessment for ad valorem tax purposes would then be based on that appraised value, thus ensuring that the value of the common elements would not elude taxation. See Lake Monticello Owners' Association v. Ritter, 229 Va. 205; 327 S.E.2d 117 (1985).

EXAMPLE 2: Assume that, in the common interest community in Example 1, five of the ten units have lakefront access. In the declaration, the lakefront access is considered a "limited common element," and, accordingly, is allocated to only the five beneficiary unit owners, that is, those units with access. The additional value would then be added to the appraisal of those five units only. See Black v. Municipality of Anchorage, 187 P.3d 1096 (Alaska, 2008).

EXAMPLE 3: Assume the same common interest community as in Example 1, except that it is a preexisting common interest community, that is, it predates the adoption of the UCIOA in West Virginia. Therefore, it has no recorded declaration setting forth an allocation formula. Barring any other evidence, the value of the common elements should be allocated equally among all unit owners. The final result will be the same as in Example 1.