

HOA Property Taxes

If a community association holds legal title to common areas and facilities, its members run the risk of being taxed twice. The first tax is on the value of a lot or home. That tax reflects the value of the common areas and facilities and the owner's right to use them. The second tax is allocated because the owner must pay a share of the association's property tax.

To avoid double taxation, community associations can follow these simple steps:

- Alerting associations that separately owned common property may be subject to inequitable taxation on common property.
- Informing associations of the steps available to resolve double taxation.
- Alerting state and local government officials to the inherent inequities of double taxation.
- Enabling those who draft association documents to avoid the pitfalls that could result in assessments to association property.

Associations—and the professionals who work for them—must work through technical and legal issues to properly assess the value of the common areas that affects property taxes.

The *ad valorem* property tax is the primary source of funding for local governments. It is based on property valuation—what a buyer will pay a seller. Determining the valuation or tax assessment of association-owned property is complicated by the easements granted to ownermembers. It is also complex because of restrictions and reservations placed on the property by deeds or other recorded documents.

An established principle of law is that the value of a property is reduced by the rights and easements carved out of it for the benefit of other properties. The value of the benefited property should reflect the existence of these rights. Association-owned property—reserved by covenant for the exclusive use and benefit of owner members—has little value for tax purposes, since many of the beneficial rights to such property have been transferred to the members' property.

Association property has limited value in the marketplace since non-owners generally may not use it. Typically, it is unacceptable as security for a loan, because foreclosure would result in ownership without beneficial use or ownership subject to beneficial use by association members.

If property taxes are imposed on association property, the community should appeal the assessed valuation based on the transfer of value to the benefited lots or homes of the association members. By doing this, the overall property taxes of the community may be lowered.

If association property is not reserved by covenant for the exclusive use and benefit of owner-members, or if such property is available to others for a fee, the local government may impose a tax assessment on the property.

Community associations faced with commonarea taxation should carefully analyze the issues before deciding to pursue a resolution. Associations with properly drafted legal documents should have the weight of case law and precedent on their side. The process may seem complex, lengthy and costly but the direct financial rewards can be substantial.

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