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Cooperatives & Condominiums Alert

MARCH 27, 2023

Avoiding pitfalls in structuring leasehold condominiums

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How a leasehold condominium can be properly created within a fee condominium to obtain a 420-a Exemption.



What's the Impact?

- / Creating a "condominium in a condominium" achieves the ownership structure required for a nonprofit to be eligible for the 420-a Exemption.
- / To utilize this structure, the initial fee condominium must contain at least three tax lots from inception.

In New York, a "[leasehold condominium](#)" structure is sometimes used to allow not-for-profit corporations (NFPs) to obtain an [exemption from real estate taxes](#) under Real Property Tax Law Section 420-a (the "420-a Exemption"). The leasehold condominium structure can vary from building to building depending on the underlying ownership of the fee, the relationship of the parties, and the use of each space in the building. In [one such structure](#), a leasehold condominium is created within an existing fee condominium, to achieve the ownership structure required for the NFP to be eligible for the 420-a Exemption. This structure is aptly called a "condominium in a condominium." In this alert, we refer to the former (i.e., the condominium created from the leasehold interest in an existing fee condominium) as the "internal condominium."

How internal condominiums are created

In one iteration, the “condominium in a condominium” structure requires the creation of a fee condominium, the lease of one (or more) fee condominium units to an NFP, and the creation by that NFP of the internal condominium based on its leasehold interest in one (or more) condominium units. In another iteration, the fee condominium unit(s) are leased to an affiliate of the fee owner who creates the internal condominium, and the leasehold units of the internal condominium are sold to an NFP. In each instance, the result is the same: the NFP will own the leasehold condominium units within the internal condominium, which is one of the eligibility requirements for the 420-a Exemption.

Requirements and thresholds

Generally, a condominium consists of at least two units. When a “condominium in a condominium” is formed, from a technical standpoint, the unit (or tax lot) on which the internal condominium is based will be “dropped” from the New York City tax map (although the unit will still exist for purposes of the function of the fee condominium—for example, for the assessment and payment of common charges). If the fee condominium initially consisted of only two units to start (say, one for retail space and one residential use), dropping one of those lots is an issue for the New York City Department of Finance (DOF) because the fee condominium would be left with only one tax lot—which, from DOF’s perspective, could invalidate the fee condominium. Recently, to avoid this situation, DOF instituted a requirement to ensure that the fee condominium always consists of at least two tax lots. In any “condominium in a condominium” structure, the initial fee condominium must contain at least three tax lots from inception, so that when the tax lot on which the internal condominium is based is “dropped” from the fee condominium, the fee condominium will always have at least two units remaining.

A practical approach

If there is a possibility of utilizing a leasehold condominium structure in your building, start with at least three units/tax lots in your fee condominium.

Our [Cooperatives & Condominiums team](#) is committed to keeping you informed about developments in leasehold condominium regulations and how these changes impact, and create opportunities for, developers and owners. To learn more about leasehold condominiums, see:

- / [DOF ruling clarifies homeless shelters qualify for 420-a tax exemption](#)
- / [The benefits of leasehold condominiums for nonprofits](#)
- / [Department of Finance confirms leasehold condominium § 420-A property tax exemption eligibility for nonprofits](#)

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