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CLIENT ADVISORY

NOVEMBER 2019

LIMITED LIABILITY COMPANIES PURCHASING AND SELLING RESIDENTIAL REAL ESTATE MUST NOW DISCLOSE THE NAMES OF ALL THEIR OWNERS

Owners of real estate in New York have often taken title to their properties in the name of a limited liability company (LLC). Among the advantages of taking title in this fashion was the ability to protect the identity of the ultimate owner or owners of the property from disclosure, because New York LLCs were not required to identify their ultimate ownership in any publicly filed documents.

Recent amendments to New York's tax laws and regulations, however, have changed the rules. The property tax forms that must be filed in any transaction involving a deed for residential real estate containing a one- to four-family dwelling unit now require that where an LLC is either the transferor or transferee, the names and business addresses of the ultimate owner or owners of the LLC must be provided. Title companies that handle the filing of transfer tax forms are also applying the new disclosures to individual cooperative and condominium units where the seller or purchaser is an LLC. Moreover, an LLC cannot avoid meaningful disclosure through the device of having the LLC owned by a corporation or another LLC, because the forms require that the disclosures continue through all levels of ownership until reaching the natural persons who are the ultimate beneficial owners of 100% of the entity.

In the past, a taxpayer identification number only had to be provided for the LLC and its members. For properties in New York City, the New York City Department of Finance has taken the position that the taxpayer identification number or Social Security number must now be provided for the LLC itself, all of its members, and if any member of the LLC is itself an LLC or other business entity, for each of the shareholders, directors, officers, members, managers, and/or partners of the LLC or other entity. There have been reports of ACRIS's rejecting transfer submissions that omit this information. Prospective purchasers or sellers who are concerned about the implementation or effects of these new disclosure requirements should discuss them with their counsel, well in advance of the scheduled closing of any transaction.

REAL PROPERTY LAW PROVISION ALLOWING COURT-ORDERED ACCESS TO NEIGHBORING PROPERTY APPLIES TO CONDO UNITS

In order to build a structure on a parcel of property, or made repairs to an existing structure, the property owner will often need access to a neighboring property. If the neighbor refuses to allow access, it may be difficult or impossible for the construction or repair work to be performed. To address this situation, Section 881 of the New York Real Property Actions and Proceedings Law (RPAPL) allows a property owner to bring a legal proceeding seeking court-ordered access to the neighboring property. The court is authorized to grant the needed access upon terms it finds to be equitable, which may include the payment of a reasonable license fee to the neighboring owner.

Suppose the two parcels involved are not neighboring lots or buildings, but adjoining condominium units in the same building? The answer is that RPAPL 881 still applies, according to the court's decision in **Voron v. Board of Managers of Newswalk Condominium, 63 Misc. 3d 1001 (Sup. Ct. Kings Co. Apr. 26, 2019)**. The petitioners in this case, who own Unit 515 at their condominium building, sought access to Unit 415, immediately below their unit, so that they could perform plumbing work in Unit 515. Petitioners

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asserted that to perform the work, their contractor needed to reach the subfloor under their unit, which is a general common element of the Condominium but can only be accessed from the apartment below. Despite this claim of necessity, the owners of Unit 415 refused to provide access. Petitioners asked the Board of Managers to secure them access to Unit 415, but the managing agent advised that the Board would not get involved in a dispute between shareholders. Petitioners then sued the Board and the owners of Unit 415. The Unit 415 owners moved to dismiss the case, arguing that they had no obligation to allow access.

The court found that it was presented with an issue that no previous decision addressed: whether RPAPL 881 applies to adjoining condominium units. The court reviewed the language of the statute, which applies "[w]hen an owner or lessee seeks to make improvements or repairs to real property so situated that such improvements or repairs cannot be made by the owner or lessee without entering the premises of an adjoining owner or lessee, and permission so to enter has been refused …." It held that "[b]ased on the plain language of the statute, RPAPL 881 applies to any 'real property,' which includes condominium units."

Turning to the specific access request before it, the court quoted prior precedent that "[a] proceeding pursuant to RPAPL 881 is addressed to the sound discretion of the court … which must apply a reasonableness standard in balancing the potential hardship to the applicant if the petition is not granted against the inconvenience to the adjoining owner if it is granted." Here, the owners of Unit 515 established that access to Unit 415 was necessary for them to perform their repairs, and they were requesting access for only the limited period of time needed to accomplish those repairs.

Accordingly, the court allowed the Unit 515 owners to access Unit 415 for a maximum of 10 consecutive days, provided that they paid the Unit 415 owners a license fee of $100 per day. In addition, the Unit 515 owners were required to maintain a comprehensive liability policy covering the work to be performed in an amount not less than $1 million, with the Unit 415 owners named as additional insureds, and to indemnify the Unit 515 owners for any personal injury or property damage caused by the work.

COURT GRANTS SUMMARY JUDGMENT DISMISSING CLAIM OF FORGERY WITHOUT NEED FOR DISCOVERY

A lender, which had relied upon a notarized and duly recorded deed, was sued by an individual who claimed that she was the true owner and that deed conveying the property, bearing her signature, was a forgery. The defendant lender argued that to raise a genuine issue contesting the authenticity of a signature, something beyond a bald allegation of forgery is required. The lender cited a New York rule of evidence providing that the "certification of the acknowledgment or proof of a writing, except a will, in the manner prescribed by law for taking and certifying the acknowledgment or proof of a conveyance of real property within the state is *prima facie* evidence that it was executed by the person who purported to do so."

The court held that to overcome this presumption of due execution, plaintiff was required to respond with "evidence adduced to show that the subject instrument was not duly executed." Moreover, the presumption of due execution cannot be "overthrown upon evidence of a doubtful character, such as the unsupported testimony of interested witnesses, nor upon a bare preponderance of the evidence, but only upon proof so clear and convincing as to amount to a moral certainty." The lender argued that plaintiff's affidavit on its own was insufficient to rebut the validity of her signature on the notarized and publically recorded deed. In addition, plaintiff's signature on another legal document was sworn to before the same notary and on the exact same day as the deed. Accordingly, the court granted the defendant lender's motion to dismiss the action, as a matter of law, because the plaintiff had failed to rebut the presumption of due execution. **Alleyne v. Rutland Development Group Inc., Index No. 505513/2019 (Sup. Ct. Kings Co. Oct. 16, 2019)**. Ganfer Shore Leeds & Zauderer LLP represented the successful defendant lender in this case.