



Department of Finance

Legal Affairs Division
375 Pearl Street, 30th Floor
New York, NY 10038
Tel. 212.748.7215
Fax 212.748.6981

Diana Beinart
General Counsel/Deputy
Commissioner

November 4, 2022

**Re: Request for Letter Ruling
Real Property Law §339-e
FLR-22-5024**

Dear XXXX,

This is in response to your request dated July 19, 2022, on behalf of XXXX, for a letter ruling regarding whether a homeless shelter owned and operated by a nonprofit entity is eligible for the Real Property Tax Law (“RPTL”) 420-a exemption utilizing the leasehold condominium structure as it applies to the property located at XXXX (the “Premises”).

FACTS:

The facts that we have relied upon for this letter ruling are based on your aforementioned application and letter, (the “submission”). According to the submission, XXXX is a nonprofit corporation that provides temporary emergency housing and housing support (“Shelter”) for single adults who are referred by the New York City Department of Homeless Services (“DHS”). Per the submission, XXXX entered into a service agreement with DHS on June 2019, which awarded them a contract to perform and operate a Shelter at the Premise.¹ XXXX is the tenant of the Premises pursuant to a lease agreement with the prior owner, and the lease was assigned to the current owner on or about July 9, 2021 (“Fee Owner”).

Per the submission, XXXX and the Fee Owner have agreed to terminate the lease and enter a leasehold condominium structure. You have represented that agreement to be as follows:

The Fee Owner would enter into a ground lease (“Ground Lease”) of the Premises with an affiliate of the Fee Owner (“Affiliate”) for a term of 32 years from the formation of a leasehold condominium (“Leasehold Condominium”).

¹ DOF was not provided with this contract.

A memorandum of the Ground Lease (“Memorandum of Ground Lease”) would be recorded, showing the interest of the Fee Owner and the Affiliate.

The Affiliate’s interest in the Ground Lease would be the basis for creating the Leasehold Condominium.

The Affiliate and XXXX would file an application for a no-action letter (“No Action Letter”) with the New York State Office of the Attorney General (“AG’s Office”) permitting a Leasehold Condominium to be formed at the Premises without filing for registration pursuant to the General Business Law (“GBL”) 352-e and 359-e.

The Leasehold Condominium would be formed by recording a leasehold condominium declaration “Leasehold Condominium Declaration” and tax maps with the DOF. The Leasehold Condominium would contain two leasehold condominium units (“Leasehold Condominium Units”).

The Affiliate would convey the Leasehold Condominium Units to XXXX pursuant to a purchase and sale agreement (“Purchase and Sale Agreement”) and would record a deed (“Deed”) evidencing the conveyance. XXXX would own the Leasehold Condominium Units during the term of the Ground Lease (32 years from the creation of the Leasehold Condominium).

The Affiliate would assign its right, title, and interest in and to the Ground Lease to the board of managers of the Leasehold Condominium pursuant to an assignment and assumption of ground lease (“Assignment and Assumption of Ground Lease”).

XXXX, as the owner of the Leasehold Condominium Units, would be responsible for the payment of the real estate taxes assessed on the Leasehold Condominium Units.

XXXX, the Affiliate, and the Fee Owner would enter into a Supplemental Agreement with negotiated business points relating to the use and occupancy of the Premises.

XXXX would apply to DOF for a § 420-a Tax Exemption.

ISSUES:

May the Premises be considered “devoted exclusively to non-residential purposes” under the Condominium Act and therefore a Leasehold Condominium structure be formed?

CONCLUSION:

A nonprofit corporation that provides temporary emergency housing and housing support (“Shelter”) for single adults who are referred by the New York City Department of Homeless Services (“DHS”) qualifies as property under the Condominium Act and may be formed as a leasehold condominium.

LAW:

Article 9B of the Real Property Law (“RPL”) the “Condominium Act” governs the creation, characteristics, and management of condominiums. Specifically, § 339-e, of the RPL provides the following relevant definitions:

Subdivision 3. “Common elements” unless otherwise provided in the declaration, mean and include: (a) the land on which the building is located ...and (h) all other parts of the property necessary or convenient to the existence, maintenance and safety or normally in common use...

Subdivision 5. “Common interest” means the (i) proportionate, undivided interest in fee simple absolute, or (ii) proportionate undivided leasehold interest in the common elements appertaining to each unit, as expresses in the declaration...

Subdivision 7.” Declaration” means the instrument by which property is submitted to the provisions of this article, as hereinafter provided...

Subdivision 11. “Property” means and includes the land, the buildings and all other improvements thereon, (i) owned in fee simple absolute, or (ii) in the case of a condominium devoted exclusively to non-residential purposes, held under a lease or sublease, or separate unit leases or subleases, the unexpired term of which on the date of the recording of the declaration shall not be less than thirty years...

Subdivision 14. “Unit” means a part of the property intended for any type of use or uses, and with an exit to a public street or highway or to a common element or elements leading to a public street or highway...

Subdivision 16. “Unit owner” means the person or person owning a unit in fee simple absolute or in the case either (i) of a condominium devoted exclusively to non-residential purposes, or (ii) a qualified leasehold condominium, owing a unit held under a lease or sublease.

RPL § 339-f (1) provides that the Act “shall be applicable only to property the sole owner or all the owners of which submit the same to the provisions hereof by duly executing and recording a declaration...”

RPL § 339-g provides that “each unit, together with its common interest, shall for all purposes constitute real property.”

Finally, RPL § 339-y (1) (a) which governs taxation of condominiums, provides in pertinent part that:

With respect to all property submitted to the provision of this article...each unit and its common interest...shall be deemed to be a parcel and shall be subject to separate assessment and taxation by each assessing unit... except that the

foregoing shall not apply to a unit held under lease or sublease unless the declaration requires that the unit owner to pay all taxes attributable to his unit.

ANALYSIS:

The primary question raised is whether a leasehold condominium can be created out of the proposed use.

At issue is the Condominium Act's use of the term "non-residential purposes." According to Section 339-e (11) of the Condominium Act, the condominium must be "devoted exclusively to non-residential purposes." The Condominium Act does not define "residential" or "non-residential."

The Condominium Act defines the term Property as "the land, the building and all other improvements thereon, (i) owned in fee simple absolute, or (ii) in the case of a condominium *devoted exclusively to non-residential purposes*, held under a lease or sublease, or separate unit leases or subleases, the unexpired term or terms of which on the date of recording of the declaration shall not be less than thirty years[...]"

When the Condominium Act was amended in 1974 to include subdivision 11 the legislature's intent was clear in that the "devoted exclusively to non-residential purposes" was to allow the condominium development owner more flexibility in dedicating certain amounts of the common interest to commercial purposes. Here, the non-profit entity is dedicated to serving the unhoused population of New York City. Its use will not be to provide residences, but rather, to provide temporary emergency housing and housing support. Thus, the non-profit entity would be using the leasehold condominium for a non-residential purpose and may enter into a leasehold condominium agreement.

Notwithstanding the analysis and conclusions discussed above, the Department of Finance reserves the right to review the information submitted.

Sincerely,

Diana Beinart
General Counsel/Deputy Commissioner