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Monday, October 16, 2006

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Tax rollback may be nullified

Government officials say lawmaker's interpretation is wrong

BY ARNOLD M. KNIGHTLY & TONY ILLIA

Condominium- and homeowners could soon be looking at bigger tax bills because a tax-relief measure passed by the 2005 Legislature might be unconstitutional.

The authors of the rollback law wanted to make the so-called "common elements" non-taxable, which would have meant homeowners associations would not have had to pay taxes on parks, tennis courts and similar community amenities. The associations could then have passed the savings on to owners.

A Sept. 21 opinion from the Legislative Counsel Bureau says, however, that the law should not be interpreted to exempt common space from taxes. Instead, it interprets SB 358 (which amended NRS 361.233) to mean that the tax burden of these community facilities will shift to individual owners. Exempting amenities from taxation in "common-

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interest communities" would, the LCB seems to say, violate the state constitution's requirement for equal taxation. It cites various rulings from the Nevada Supreme Court which said, "the Legislature is not authorized to exempt from ad valorem taxation any otherwise taxable property."

The Department of Taxation is expected to rule on the matter at its next workshop, scheduled for Oct. 20.

"A NIGHTMARE TO ADMINSTRATE"

Clark County Assessor Mark Schofield is unsurprised. "It is exactly what we thought it was going to be all along," he said. "I told the Department of Taxation that we are not making a move on this issue until we receive direction from them on how the treatment of common elements should be."

If the LCB interpretation stands, it might become a source of friction between homeowners and their associations. "Historically, the homeowners association had paid those taxes," said Bruce Hiatt, owner of Luxury Realty Group, a high-rise specialist. "But, if the individual homeowner has to pay for those common areas, then they will make huge demands on their homeowners associations to reduce fees."

Schofield said the new procedure will be a "nightmare to administrate" because the state's assessors will have to figure out which common element belongs to which unit, a direction he said will have to come from the Department of Taxation. He added that the department will also have to figure out how to untangle properties that have already been assessed, but with amenities excluded from the valuation as per the previous interpretation of SB 358.

"There is a real possibility that this law will cost more to administer than the tax revenue it could have generated," said Jeremy Aguero, principal of Applied Analysis, a Las Vegas-based business-advisory firm. "It's going to be a substantial administrative challenge to make this change, especially if it needs to happen this year."

Aguero added an afterthought: "Does the guy who owns a penthouse pay more than the guy who has a studio?"

RIPPLE EFFECT

The change could cause a ripple effect in an already sluggish housing market, making the selling of high-rise homes tougher, according to one specialist. Nevada cities and counties are probably not ready for the shift, Hiatt said, adding, "it's a financial impact on an already softening real



Taxes on "common-element" amenities at condominiums like Turnberry Place could become the responsibility of individual unit owners.

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estate industry. And the last thing you want to do is add more complexity to a buyer who is already nervous about buying."

Sen. Bob Beers (R-Las Vegas), who sponsored SB 358, said the LCB "missed the reasoning" and that, if needed, he will go to the 2007 Legislature to make the intention of the law clear.

The LCB's opinion was sought by Assemblywoman Bonnie Parnell, (D-Carson City). Saying the Senate Taxation Committee hearings were "fraught with a wide variety of inconsistent statements regarding the assessment and payment of those taxes," the LCB looked to previous Nevada Supreme Court rulings, which seem to preclude any exemptions for private property belonging to homeowners' associations.

Beers said he and other sponsors of the law intended to alleviate the additional tax burden that was created when homeowners' associations paid taxes on communal facilities. He argued that the property had already been taxed on the increased value created by parks or swimming pools within gated communities. Buyers, he continued, already are willing to pay more for exclusive access to the common elements in the communities. The law, Beers stated, was not designed to pass the tax burden on to the individual homeowners.

"Ultimately, the law overrules someone's opinion," said Beers. "If there is a conflict between the law and the LCB's opinion, then the law is what will rule. If the law is vague, we will attempt to make it clear."

LCB Director Lorne Malkiewich responded that when legislators write laws they sometimes misunderstand how it will be applied. When the law actually takes effect it can be different from what its author was thinking about.

"It's common, when there are misunderstandings in the interpretation of the law, that it gets clarified the following session," Malkiewich said. "There's enough of an issue here that Ms. Parnell needed to request an opinion and that is something we will want to clarify one way or another."

"Our opinions are just that. It's up to a court to interpret the law. If it ends up in the state Supreme Court or even the district court, that's significant," the LCB's Malkiewich concluded. "Our opinions are for guidance to legislators. This may be an area where we need further clarification."

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