

Processes to Ensure that Developers Pay Property Taxes on New Condominium Developments Prior to Occupancy

Date:	May 28, 2014
To:	Government Management Committee
From:	Treasurer
Wards:	All
Reference Number:	P:\2014\Internal Services\rev\gm14016rev (AFS19416)

SUMMARY

As requested by Government Management Committee, this report reviews the current processes that are in place to ensure that outstanding property taxes on new condominium developments are paid before the condominium units are occupied or conveyed. This is to ensure that new unit owners do not assume property tax liabilities that are the responsibility of the developer. The report also reviews if any additional processes or options are available to the City to better ensure that developers pay the property taxes associated with new condominium developments prior to occupancy.

RECOMMENDATIONS

The Treasurer recommends that:

1. The Government Management Committee receive this report for information.

Financial Impact

There are no financial implications arising from the recommendations in this report.

The Deputy City Manager and Chief Financial Officer has reviewed this report and agrees with the financial impact information.

DECISION HISTORY

At its meeting held on April 7, 2014, in its consideration of Item GM29.1: *Apportionment of Property Taxes – April 7, 2014 Hearing*, the Government Management Committee requested the Treasurer to report back on the current processes that are in place, through the City's planning and/or development approvals process or other means, to ensure that outstanding property taxes on new condominium developments are paid in full before the condominium units are occupied or conveyed, such that new unit owners do not assume property tax liabilities that are the responsibility of the developer, and what additional processes or options are available to the City to better ensure that developers pay the property taxes associated with new condominium developments prior to occupancy. The report and committee decision document can be accessed by the following links:

<http://www.toronto.ca/legdocs/mmis/2014/gm/bgrd/backgroundfile-67630.pdf>

<http://app.toronto.ca/tmmis/viewPublishedReport.do?function=getMinutesReport&meetingId=7866>

ISSUE BACKGROUND

Annually, municipalities prepare and issue tax bills in accordance with information provided by the Municipal Property Assessment Corporation (MPAC) on the annual assessment roll. In December of each year, MPAC provides municipalities with an assessment roll containing property assessment data. The municipalities use the assessment roll data to calculate the following year's property taxes.

If, during the year (i.e., after the assessment roll is provided to municipalities), a property is severed and split into two (2) or more parcels of land (e.g., when a single property is redeveloped into condominiums/townhouses/new homes), MPAC should update the following year's assessment roll to capture the newly created parcels of land including any new property owner information. By their nature, the timing of redevelopments and changes in ownership are unpredictable. When MPAC delays in updating the following year's assessment roll with the correct land parcels, taxes are levied against properties that no longer exist and the tax bills for that year are sent to the wrong assessed owner (usually the developer).

Pursuant to section 322 of the *City of Toronto Act, 2006* (COTA), concerned developers may contact the City to request that any unpaid taxes be reallocated (i.e. apportioned) from the original property and divided amongst the newly created properties. In other instances, the Treasurer must initiate the process to resolve any unpaid taxes on properties that no longer exist due to re-development or severances. This process of redistributing taxes following the severance or re-development of a property is referred to as "the apportionment of taxes". The apportionment process does not change the total amount of taxes charged, but rather divides the taxes on the original property between the newly created properties. Accrued interest and penalty charges are not apportioned but are written off in accordance with Council's approved policy.

The apportionment process is used as a means to collect property taxes where properties have property tax arrears and accrued interest and penalty charges arising from the time prior to the apportionment process. In some cases the Treasurer initiates applications as a

means of collecting outstanding taxes. Council has previously provided authority to write off the accrued interest and penalty charges when property taxes are apportioned. In other cases, the tax arrears may arise from unpaid taxes attributable to a land development (severance or condominium development), where timing delays from MPAC in returning newly separately assessed parcels has resulted in the city billing taxes to the developer when they have already transferred the units to the new owners. The tax arrears may also be the result of new owners not being aware that under the agreement of purchase and sale they are responsible for the taxes.

COMMENTS

The City's Planning Division approval process for new condominium development ensures that new unit owners do not assume property tax liabilities that are the responsibility of the developer. The Planning Division has published what is referred to as the Toronto Development Guide, which outlines the processes and procedures for new condominium development within the City of Toronto. Within this guide, conditions are listed which must be satisfied before the City will release the draft plan of condominium for registration at the Land Title Office. The condition which must be satisfied in relation to property taxation is Condition No. 2 in both instances of standard and common element condominiums. Condition 2 was expanded / enhanced on April 3, 2013 to require the owner to not only provide proof that taxes are paid in full at time of registration, but also that the owner provide confirmation that there are no outstanding City initiated assessment and tax appeals against the property. Condition No. 2 reads as follows:

"The Owner shall provide to the Director of Community Planning, confirmation that the taxes have been paid in full (statement of tax account) and that there are no outstanding City initiated assessment or tax appeals made pursuant to section 40 of the *Assessment Act* or provisions of the *City of Toronto Act, 2006*. In the event that there is an outstanding City initiated assessment or tax appeal, the Owner shall enter into a financially secured agreement with the City satisfactory to the City Solicitor to secure payment of property taxes in the event the City is successful with the appeal."

Condition 2 ensures that a developer has paid their taxes in full up to the date of condominium registration. However, due to many variables involved with the assessment and taxation of new condominium developments, and the unpredictability of the timing of ownership changes and registration dates, it is extremely difficult to ensure with certainty that all new condominium owners will not be faced with tax liability of previous owners. In order to mitigate the frequency of this situation occurring:

1. Revenue Services undertakes various activities in an effort to collect the unpaid taxes from the original property owner. These activities include the mailing of collection letters and overdue notices, mailing notices advising of pending bailiff action, and mailing demand letters from the City Solicitor's Office.
2. The Municipal Property Assessment Corporation (MPAC) has recently improved the timeliness of its assessment process with respect to new condominiums, thus mitigating the potential for new condominium owners to become faced with property tax liabilities that are the responsibility of the developer. These changes in the assessment process are discussed below.

Role of the Municipal Property Assessment Corporation

Condominium developers enter into agreements of purchase and sale long before the building is completed and often before construction has even started. The purchase agreements will often require the purchaser to take possession of the "unit-to-be" or proposed unit once it is ready for occupancy prior to the registration of the condominium plan. Consequently, the condominium development is to be assessed to the developer owner, prior to registration, on the original pre-development roll number.

From the actual date of occupancy, to the date that the plan is registered and a deed to the unit is delivered to the purchaser, the developer is entitled to charge an occupancy fee. The occupancy fee consists of three (3) amounts calculated monthly: interest on the unpaid portion of the purchase price; a reasonable estimate of municipal taxes for the unit; and the projected common expense contribution for the units. Once a deed for the unit is delivered to the purchaser, the developer must refund any amount by which the municipal tax, paid by the purchaser, exceeds the amount actually assessed. The developer is also entitled to request an additional payment from the purchaser if the amount of taxes which the purchaser paid was insufficient. Subsections 80(4) and (9) of the *Condominium Act, 1998* permits such practice.

In the last two (2) years, MPAC has been working closely with developers so that condominium building information is received during the construction stage in order for MPAC to produce timely assessment values and separately assess each of the individual condominium units. These values are then used by the developer on closing in the statement of adjustments to adjust for realty taxes. MPAC's current key performance indicator for new condominium development targets that newly constructed condominium units will be separately assessed within six (6) months from the date of occupancy or date of registration of the condominium plan, whichever occurs first.

Options Available for New Unit Owners

New unit owners of condominiums have several mechanisms in place to protect them or assist them in cases where they may be assuming the property tax liability of the previous owner/developer. As part of the real estate transaction, a statement of adjustments is prepared by the Solicitor on closing and adjusts costs such as property taxes, electricity or gas bills at a per diem rate up to the closing date, which is the date that the title passes to the purchaser. In these cases, getting the matter resolved may simply involve contacting

the solicitor involved with the purchase and sale to discuss or possibly amend the statement of adjustments depending on the situation.

Another option available to new unit owners is to purchase Title Insurance on closing, in order to cover any tax liability that exists on the property for any time period prior to purchase date.

Additionally, if taxes are to be apportioned, affected property owners are sent Notices of Hearing to advise them of the recommended apportioned tax amount for which they will be responsible if approved. Owners are also given the opportunity to meet with staff from Revenue Services to discuss any concerns prior to attending the apportionment hearing.

Options Available for the City

Over the past few months, both the City and MPAC have reviewed and enhanced their processes to help ensure that new condominium owners are not faced with tax liability of previous owners.

Standard Condition No. 2 for the registration of condominiums ensures that taxes are paid up to date upon registration, and the more recent amendment to the Condition in April 2013 requires the Owner to provide confirmation that there are no outstanding City initiated assessment or tax appeals made pursuant to section 40 of the *Assessment Act* or the provisions of the *City of Toronto Act, 2006*.

Additionally, MPAC's recent approach to working closely with developers in order to produce more timely assessment values, also mitigates the potential for new condominium owners to become faced with property tax liabilities that are the responsibility of the developer.

A continuous effort will be made to regularly review and improve processes that are in place, as well as to review any processes that may be in place in surrounding municipalities, to ensure that the best and most efficient processes are being utilized.

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SIGNATURE

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