

220.0055 **Condominium Creation.** The filing of a tract map, the obtaining of a bond guaranteeing tax payment, and even the mapping of the individual units by the assessor do not create a condominium. Only after the conveyance of at least one unit may each condominium owned in fee be separately assessed. The same conclusion is applicable to the conversion of an apartment complex to condominiums. C 11/18/88.



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November 18, 1988

Dear M:

RE: Assessment Appeal Number 87-076 through 87-088
Kings County - November 22, 1988
700 Market Street Associates

This is in response to your letter of November 16, 1987, in which you request our opinion with respect to the following facts set forth in your letter.

The property at issue is a 219-unit residential complex. Although a condominium plan was filed on the project, no units have ever been sold. The complex is and always has been rented as apartment units. Upon filing of the condominium plan, the Kings County Assessor mapped the property as a condominium complex which means that there are now 219 individual assessor's parcels.

It is your intention to introduce evidence at the hearing that a prudent investor would, among other alternatives, look to the value of the property as an apartment complex. You have had an appraisal made treating the complex as apartments and valuing it accordingly on the cost, income and market approaches. It is your understanding that the Assessor intends to object to your introduction of any evidence that would treat the complex in any way other than individual condominium units. The Assessor's position apparently is that since he has mapped the property as a condominium project with 219 separate parcels, the property must be valued and assessed accordingly.

Based on the foregoing facts, you request our opinion whether it was proper for the Assessor to map the complex as condominiums before at least one unit was sold.

In the case of County of Los Angeles v. Hartford Accident and Indemnity Co. (1970) 3 Cal.App.3d 809, the owner of an apartment building decided to convert it from rental apartments

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to condominium units. As a condition to recording the final tract map, the owner had to comply with Bus. & Prof. Code, §§ 11601 which required a bond insuring payment of all taxes and special assessments that were a lien against the property. Defendant, as surety, delivered to the county its bond insuring payment of current taxes on the property. The owner later abandoned his plan and no condominium units were ever sold. The county sued defendant to recover on the surety contract. In reversing the trial court's judgment in favor of the county, the Court of Appeal stated beginning at page 814:

". . . Unlike a normal subdivision, however, the mere recording of the final tract map does not automatically convert the single parcel of land into as many separate condominium units as appear on the tract map. [Fn. omitted.] The reason for this is found in Civil Code section 783, which defines a condominium as an estate in real property consisting of two interests: (1) an undivided interest in common in a portion of a parcel of real property, and (2) a separate interest in space in a building on such real property. There can be no undivided interest in common (and thus by statutory definition there can be no condominium) until at least one condominium unit has been conveyed by the subdivider. . . .

"This difference between a normal subdivision and a condominium project is emphasized by the manner in which the latter is assessed. A condominium project, like a normal subdivision, is assessed as a single parcel to the record owner for the year in which the tract map is filed. Unlike a normal subdivision, however, separate assessment of individual units in the ensuing years is not automatic. As required by Revenue and Taxation Code section 2188.3, the property must first be divided into condominiums as defined by Civil code section 783. Only after the conveyance of at least one unit will each condominium owned in fee be separately assessed. If no units are ever sold, the entire condominium project will continue to be assessed as a single parcel to the record owner. . . ."

Although the Hartford case does not speak to the question of whether it is proper for the assessor to map a project as condominiums before the sale of a least one unit, the foregoing language makes it clear that a condominium project is to be assessed as a single parcel until the first unit is sold. Also, although the facts of the Hartford case involved a conversion from an apartment complex, there is nothing in the case to suggest a different result where the project is intended as a condominium project from the outset. Accordingly, we are of the opinion that there is no legal basis

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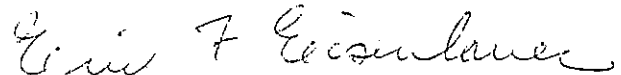
for making separate assessments of each condominium unit in this matter despite the fact that the Assessor mapped the project as condominiums. Since there can be no condominium until at least one unit is sold, it appears that mapping the project as condominiums by the Assessor was premature and without legal effect.

You also ask whether your evidence treating the facility as an apartment complex should be allowed to be introduced at the hearing.

Apparently, the basis for the Assessor's objection to this evidence is that the property is assessed as condominium units rather than as an apartment project. Since we conclude that no condominiums exist and separate assessment as such is therefore without legal basis, it follows, in our view, that your evidence of value of the complex as a single appraisal unit, i.e., an apartment project, is properly admissible. We are assuming, of course, that it is otherwise admissible which we have no reason to doubt based on the facts set forth above.

If we can be of further assistance in this matter, please let us know.

Very truly yours,



Eric F. Eisenlauer
Tax Counsel

EFE:cb
1662D

VIA FEDERAL EXPRESS

cc: Hon. George J. Misner
Kings County Assessor
(via Federal Express)
Mr. Richard H. Ochsner
Mr. Robert H. Gustafson
Mr. Verne Walton