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New N.Y.C. transfer tax return requirement

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New York City's Department of Finance recently issued a cryptic notice informing the real estate community that the city's Real Property Tax (RPT) Return must now include the identity and social security numbers (or federal tax id numbers) for every member of an entity (typically a limited liability company) that is a seller or purchaser of real property located in the city. Previously, not every member of the LLC would need to be disclosed in the RPT Return.

Curiously, the requirement only reaches the members in the top tier entity. Today's larger and middle market commercial real estate deals, however, almost always have multiple tiers of LLCs, which give flexibility in management and financing. The new rules do not reach the lower tier entities. So, for example, if "Purchaser LLC" is 100% owned by "Investor LLC," it is sufficient to simply list Investor LLC as the sole member and include only the Investor LLC's tax id number.

The new rule causes various concerns:

Why is the new rule necessary? Full member information is already required on income tax returns.

Although the member roster and tax id numbers are disclosed on the RPT Return, that information is not made publicly available on the ACRIS database. RPT Returns are, however, always part of the closing documents for a transaction and are available for inspection by the other party and title company personnel.

Concerns about identity theft have been raised. With numerous copies, PDFs and emails containing the RPT Return, the risk of theft increases dramatically.

For smaller matters, the addition of multiple tiers of LLCs to protect against these risks increases the cost of doing business in New York City without any appreciable benefit to the city. Once again it seems, larger deals with sophisticated lawyers will be able to minimize the risks but the average business person may be in for a nasty surprise.

Often the person behind an assemblage of multiple properties may want to disguise his or her identity. Careful planning will be necessary.

The new rules came into effect for transactions closing after May 18. If a buyer or seller had structured its ownership before the new rule came into effect, the LLC ownership structure would need to be amended in order to minimize the risks.

For persons who wish to conceal their identity to avoid fans (like sports stars) or kidnappers (like foreigners investing from troubled countries), minimizing the risk of having their identity revealed to others on a haphazard closing table will result in additional costs.

What about a common situation where the investor roll is not yet set at the closing table but is clarified within a few days? Will there be penalties assessed in that situation?

Perhaps these concerns will be addressed or perhaps the city will see the error of its ways in collecting duplicative identifying information. But in the meantime, purchasers and sellers of New York City real estate should be forewarned.

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