ILLINOIS STATE BAR ASSOCIATION

SEPTEMBER 2022 VOL 68 NO. 3

Real Property

The newsletter of the Illinois State Bar Association's Section on Real Estate Law

Case Summary: *Marol State, LLC v. Everlane, Inc.*

BY DANIEL HUNTLEY

In *Marol State, LLC v. Everlane, Inc., No. 21 C 4286, 2022 WL 1746856 (N.D. Ill. May 31, 2022)*, the U.S. District Court of Northern Illinois, Eastern Division, addressed a matter of first impression under Illinois law, when it considered whether a landlord, having sold a commercial real estate building, was still entitled to recover from a defaulting former tenant the difference between the lease's future rental income stream and the property's reasonable rental value.

In October 2019, Marol State and Everlane entered into a commercial lease agreement pursuant to which Everlane was to commence rent payments no later than September 2020. Everlane's commercial lease agreement contained a contractual provision permitting Marol State to seek,

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The Condo Act and Mortgage Foreclosure: Section 9(g)(4) and the *Sylva* Case

BY MARK R. ROSENBAUM

As an attorney who represents condominium associations as a substantial part of his practice, I have had to live with the First District Appellate Court's confusing decisions about the provisions of the Illinois Condominium Property Act (the "Act")[1] at subsections 9(g)(3), (4), and (5).[2] This situation extends to various divisions of the First District disagreeing with each other about the interpretation of some of these subsections and making clear guidance in interpreting these subsections difficult, if not impossible, for attorneys who practice in this area. However, this article will focus on one particular case, involving the interpretation of 9(g)(4): *Sylva, LLC v. Baldwin Court Condominium Association, Inc.*.[3]

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in addition to other remedies available to it, the difference between the rent provided for under the lease and the reasonable rental value of the leased space over the lease term.

Due to the coronavirus pandemic, Everlane ultimately never opened its store in Marol State's building, and did not make any rent payments. Marol State terminated Everlane's lease in May 2021, and sold the building shortly thereafter. Subsequent to the sale of the building, Marol State filed suit against Everlane seeking the difference between the rent provided for under the lease and the reasonable rental value of the leased space. Both parties eventually moved for partial summary judgments on their claims.

In considering whether Marol State could seek the rent differential between the contracted for rent and the reasonable rental value of the leased space, the court noted that a contracting party is not entitled to a windfall or double recovery for the same injury. Similarly, the sales price of Marol State's building would take into account the expected future income from rentals. However, the court reasoned, Marol State would not be compensated from the building sale for the amount of rent above the expected future income from rentals because the building sales price would incorporate only the reasonable value of the rental income, but not any contracted for rent above the reasonable value of the rental income.

While the court did not have sufficient undisputed facts to decide whether the contracted for rent payable by Everlane was above or below the reasonable value of the rental income, it denied Everlane's motion for partial summary judgment because of the identified factual dispute. ■

The Condo Act and Mortgage Foreclosure: Section 9(g)(4) and the *Sylva* Case

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Background

Subsections 9(g)(3), (4), and (5) of the Act address the rights of condominium associations when a condominium unit goes into foreclosure (or related procedures-like deed in lieu of foreclosure) and is sold at a foreclosure sale. These sections of the Act were essentially remedial legislation to address what was, for many years, a substantial ongoing problem for condominium associations. My recollection of the mortgage foreclosure laws of 35 years ago is that, under the then-existing foreclosure act, a mortgagee or other party foreclosing on a condominium unit (the "mortgagee") did not have to pay assessments to the association until the foreclosure sale was confirmed. The mortgagee would, therefore, go through the entire foreclosure process, including purchasing the unit at the foreclosure sale, but stop short of getting the sale confirmed. The mortgagee would then market the unit and attempt to sell it to a third party. That sale process could take months or years before a firm sale contract was in place. Only once the mortgagee had a firm contract for the sale of the unit to the third party would the mortgagee go to court to get the sale confirmed. The mortgagee would then rush to get the sale confirmed, get the sheriff's deed, and then turn around and sell the unit to the third party, thus only owing the association assessments for the period between the date of confirmation and the date of the closing of the sale, which period was sometimes, mere days. Thus, months or longer went by where the association was not receiving any payment for assessments from the unit owner being foreclosed out (after all, if that owner had money, that owner would not been in foreclosure) and the bank or other foreclosing party did not have an obligation to pay assessments to the association. This process caused associations to lose the ability to collect what was often a large amount of assessment revenue, to the

Real Property

This is the newsletter of the ISBA's Section on Real Estate Law. Section newsletters are free to section members and published at least four times per year. Section membership dues are $30 per year. To subscribe, visit www.isba.org/sections or call 217-525-1760.

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detriment of those unit owners who paid their assessments.

The Act, at subsections 9(g)(3), (4), and (5) put in place a new regime where the party buying at the foreclosure sale (usually the foreclosing lender) had to start paying assessments to the condominium association starting the first day of the month after the date of the foreclosure sale, even though the sale had yet to be confirmed. These subsections also put in place a right of the condominium associations to a "superlien" of up to six months of unpaid common expenses. Although those subsections do not ordinarily prevent an association from suffering some loss of revenue when a unit goes into foreclosure, they do help to put the unit back on the "books" of the association sooner rather than later and do give the association some portion of the revenue that it typically loses when a unit goes into foreclosure.

Section 9(g)(4): The 'Superlien'

Subsection 9(g)(4) created the six-month superlien. This subsection states in part that:

The purchaser of a condominium unit at a judicial foreclosure sale, other than a mortgagee, who takes possession of a condominium unit pursuant to a court order or a purchaser who acquires title from a mortgagee shall have the duty to pay the proportionate share, if any, of the common expenses for the unit which would have become due in the absence of any assessment acceleration during the six months immediately preceding institution of an action to enforce the collection of assessments, and which remain unpaid by the owner during whose possession the assessments accrued.

This subsection does a number of following things:

1. It creates a six-month superlien in favor of the association.
2. It absolves the foreclosing mortgagee from having to pay the amount of that superlien to the association (unless the mortgagee has actually taken possession of the unit, which in residential situations almost never occurs).
3. It makes the superlien immediately payable on the happening of one of two events: a. The purchase of the unit by a third party directly at the foreclosure sale, or b. The purchase of the unit from the foreclosing mortgagee after the mortgagee has had the sale confirmed and taken title. In either case, the purchaser is the one who owes the superlien amount to the association.
4. It requires the association to perfect the superlien by having to take steps to institute an action to enforce the collection of assessments.
5. It creates a measuring period for the superlien so that the six months of unpaid common expenses are those expenses which have accrued during the six months preceding the institution of the action, and which have not otherwise been paid. As to this last item, if the prior owner only owed, say, four months of assessments and other charges at the time of institution of an action to collect, then the association's superlien is limited to only those four months.

I have found it to be true that in the ordinary course, a unit owner falls behind in the payment of assessments even sooner than the owner falls behind in payments to his or her mortgagee. As a result, in many, if not most, situations, an association will have issued a 30-day demand for unpaid assessments and other charges and then filed suit under the eviction law to collect these unpaid assessments and other charges well before a foreclosure action goes to judgment and, in fact, often before a foreclosure action is even filed.

The *Sylva* and *Shannon* Court Cases

Based upon the holding in *Shannon Court Condo. Ass'n v. Armada Express, Inc.,*[4] if the association has filed an eviction case or other action against the owner in arrears to collect unpaid assessments and other charges, such an action meets the requirement of subsection 9(g)(4) that there be "institution of an action to enforce the collection of assessments" and that the six-month period is measured by starting with the date of filing of that action and counting backwards for the six months preceding the date of such filing. The appellate court in *Shannon Court* also held that unpaid attorneys' fees incurred (regardless of when paid) by an association during the six-month period prior to the filing of the collection action could also be recovered, since those attorneys' fees were common expenses pursuant to the provisions of Act, section 9.2(b).[5]

However, it sometimes happens that an association does not file the required action and, in the meantime, a foreclosure action has been instituted. This could be because the unit owner does not fall into arrears with the association until well after the foreclosure is filed, or for any number of other reasons. The question then becomes: What actions, if any, can an association take to perfect its subsection 9(g)(4) superlien, other than instituting a collection action against the owner in arrears?

The leading case in answer to that question is the case of *Sylva*. I believe the appellate court got that decision wrong, and the association's right to a superlien should have been denied. The decision has badly skewed the process of perfecting an association's superlien.

In *Sylva*, the Baldwin Court Condominium Association had not filed a court case against the foreclosed owner before the unit was sold at a foreclosure sale. When Sylva bought the unit at the foreclosure sale, the association demanded that Sylva pay a superlien amount equal to six months of assessments, which was then paid by Sylva under protest. Sylva then filed suit to recover its payment. Sylva won in the trial court and Baldwin Court appealed. The question presented on appeal, according to the appellate court was: Whether Sylva, as the purchaser, was required to pay the superlien if the association had not filed suit against the foreclosed owner to collect unpaid assessments.[6]

The association had recorded a lien on the unit (although the timing of the recording was not stated in the opinion) and had "sent notice to the prior unit owner."[7] The purchaser had also received notice as a result of the foreclosing attorney including the language of subsection 9(g)(5) in the notice of sale of the unit, which language is required by law.[8] Subsection 9(g)(5) states, in relevant part: "The notice of sale of a condominium unit under subsection (c) of Section 15-1507 of the Code of Civil Procedure shall state that the purchaser of the unit other than a mortgagee shall pay the assessments and legal fees required by subdivisions (g)(1) and (g)(4) of Section 9 of this Act." (Note: The court in *Countrylane Condominium Association v Barghouthi*[9] found that the failure of the foreclosing attorney to include the Subsection 9(g)(5) language prevented the association from claiming a superlien, even though the association had no control over the foreclosing attorney's preparation of the Notice of Sale).

The court, citing the above partial language of subsection 9(g)(4), found that that subsection said nothing about filing an action against the foreclosed owner. Rather, the action mentioned in the statute should be an action against the foreclosure sale purchaser, since it is the purchaser who owes the superlien, and the six months assessments are those that come due during the six months prior to the filing of the action against the purchaser.[10] The court then held that the association was not required under subsection 9(g)(4) to have filed suit against the foreclosed owner in order to be entitled to the superlien.[11] Thus, the phrase "institution of an action to enforce the collection of assessments" referred to the action of an association suing the foreclosure sale purchaser. In *Sylva,* no suit had been needed since Sylva paid upon demand. But, the threat of suit was enough to meet the statutory requirement.

What is odd about the court's determination that the action referred to in the statute is an action against the purchaser, is that the court never quoted or in any way mentioned the last sentence of subsection 9(g)(4). That sentence states: "If the outstanding assessments are paid at any time during any action to enforce the collection of assessments, the purchaser shall have no obligation to pay any assessments which accrued before he or she acquired title."

If the *Sylva* court is correct that the action referred to in subsection 9(g)(4) is the association's action against the purchaser, then the last sentence can be interpreted as saying: "If the purchaser is sued by the association for unpaid assessments for the six-month period preceding the lawsuit against the purchaser, and those assessments are paid, then the purchaser does not have to pay them." If this interpretation is correct, then the *Sylva* court's position makes little sense. If the foreclosed owner is never sued, then unless that owner makes an almost gratuitous payment of assessments, the foreclosed owner will never pay any of the six months of assessments. Who, after all, under *Sylva*, will pay the assessments unless it is the purchaser being sued? But, if the purchaser is paying the assessments, then why does the statute have to say that the purchaser is relieved of the obligation to pay? Isn't that circular reasoning: If the purchaser makes payment of any of the six months of assessments, then the purchaser no longer has an obligation to pay those assessments to that extent.

But, if the *Sylva* court is wrong, and the person against whom suit is instituted is the foreclosed owner, then this last sentence makes sense. It is saying that if the association has sued the foreclosed owner and the association gets paid some or all of the six months of assessments at any time by the foreclosed owner, the purchaser's superlien obligation to the association is reduced to that extent.

To give a concrete example: Assume that an owner owes four months of assessments to the association. Assume the association sues the owner for those four months of assessments. Assume the unit goes into foreclosure and the unit gets sold at the foreclosure sale to a third-party buyer. Under *Shannon*, the third-party buyer owes the four months of assessments (and any attorneys' fees and late charges) incurred prior to the filing of the suit. The association then, after the sale, collects 2 more months of assessments from the foreclosed owner. The last sentence serves to reduce the amount of the superlien by the amount of that 2 months payment, and the third-party buyer would either not have to pay to that extent, or would get a refund of its payment of the 2 months. The last sentence stops the association from getting a double payment (one from the prior owner (who actually incurred the assessment charge) and one from the third party buyer (who would otherwise have to pay the four months that were due during the six-month period prior to the filing of the association's suit).

It must be noted that the last phrase of the last sentence of subsection 9(g)(4) ("… the purchaser shall have no obligation to pay any assessments which accrued before he or she acquired title") is problematic. At least in the case of a purchaser who purchases at the foreclosure sale (as opposed to buying from the foreclosing lender), the purchaser arguably does not "acquire title" until the foreclosure sale is confirmed, which confirmation (at least in Cook County) is often a month or two after the foreclosure sale. But, if the purchaser bought at the foreclosure sale, then the purchaser would have a duty (under subsection 9(g)(3)) to pay assessments that come due as of the first day of the month after the date of the foreclosure sale. If subsection 9(g)(4) means what it says, it has the effect on a purchaser at the foreclosure sale of eliminating the 9(g)(3) obligation to pay post-sale (but pre-confirmation of sale) assessments. This seems a counterproductive result, as it puts 9(g)(3) and (4) in conflict with each other. If 9(g)(4) cannot be amended to exclude 9(g)(3) post-sale assessments from the terms of the last sentence, it might be better to read the phrase "acquired title" as including the certificate of sale obtained by the purchaser as a result of the sale 735 ILCS 5/15-1507(f). Since that certificate is deemed given upon the completion of payment of the sale bid and is in recordable form, the obligation of subsection 9(g)(3) may have to be argued to be unaffected by the foreclosure sale purchaser thus "acquiring title."

If the action under subsection 9(g)(4) can only be an action against the foreclosed owner, then *Sylva* is wrongly decided. Baldwin Court, by never filing suit against the foreclosed owner, failed to perfect its right to a superlien, and so should have lost the right to collect the superlien. That would mean that an association should always file suit against the owner whose unit is being foreclosed, if the unit is in arrears, even if that suit is not filed until after the foreclosure is filed. After all, the mere fact that a foreclosure suit has been filed does not mean that the owner is relieved of the obligation to pay assessments[12], and an association has an ongoing obligation not to forbear from the collection of assessments.[13]

The *Sylva* court, although preserving the right of the association to a superlien, failed to read the full statute. As a result, it allowed a superlien to exist where it was never properly perfected. The above question was: What actions, if any, can an association take to perfect its subsection 9(g)(4) superlien other than instituting a collection action against the owner in arrears? The proper answer, I believe, is: There is no other action that can be taken to perfect an association's right to the superlien. The *Sylva* court should have denied the association its superlien.■

1. 765 ILCS 605/1 *et seq*.---.
2. 765 ILCS 605/9(g).
3. 2018 IL App (1st) 170520.
4. 2020 IL App (1st) 192341.
5. 765 ILCS 605/9.2(b).
6. *Sylva*, 2018 IL App (1st) at ¶9.
7. *Id*. at ¶10.
8. *Id*. at ¶14.
9. 2018 IL App (3rd) 170630-U.
10. *Sylva*, supra note 6 at ¶13.
11. *Id*. at ¶ 21.
13. 765 ILCS 605/18q.765 ILCS 605/18o.

Attack on Olympus: The Rise of FIRPTA

BY DONALD HYUN KIOLBASSA & NEIL NODEN

In Greek Mythology, Mount Olympus is the home of the most important gods known as the Olympians. Zeus, Poseidon, Hera, Demeter, Hestia, Ares, Hephaestus, Hermes, Hephaestus, Artemis, Apollo, and Aphrodite all sat on top of Mount Olympus feasting, partying, and reigning over a very specific category.

Similar to a peaceful Mount Olympus environment, *during peace time*, globalization is an amazing party where countries are able to hyper specialize in specific categories on global supply chains. Just as Poseidon is the god of the sea, Taiwan is the world's leader of semiconductors. So long as there is peace on Olympus, globalization allows us to advance efficiently and effectively at breakneck speeds.

However, there are those who may wish to attack Mount Olympus. For example, the Titans were former gods, whom Zeus overthrew to gain control of Mount Olympus. These Titans wait in the wings for the opportunity to attack Mount Olympus and regain control. Should the Titans attack the Olympians, there could be a major disruption to the world (i.e. if Poseidon is busy fighting, he cannot give much attention to the sea). Similarly, should war break out between major players on the global supply chain, there would be a major disruption to the world consumption.

Enter, the Russia invasion of Ukraine. When Russia invaded Ukraine the main focus, as it should be, was the humanitarian impact. War is a horrible thing, and no one should lose sight of this tragedy. However, there is a residual impact of this war that we as consumers on the global supply chain need to think about. Russia and Ukraine are both powerhouses in several categories. For example, both are top 10 producers of wheat in the world and top 25 producers of fertilizers in the world.

Removing these countries' inputs to the global supply chain will cause a huge impact to the utopia of globalization such as supply side inflation. In other words, the Titans have officially attacked Mount Olympus. If war is brought to Mount Olympus and the bridges that keep globalization start cracking, foreign investors may look to the U.S. real estate not only as a hedge against supply side inflation, but also as a place to store value.

The U.S. is a safe haven for globalization disruption, because it is guarded by moats of the Pacific and Atlantic Oceans, and the U.S. agricultural infrastructure can feed its population.

You may be asking, What in the world does this have to do with FIRPTA? Well, if foreign money starts investing in U.S. real estate, we as attorneys must offer a broader value proposition and educate ourselves on the needs of international players in real estate. I am not asking everyone to go out an learn EB5 Investor Visa law, but FIRPTA should be on all our radars.

FIPRTA stands for the "Foreign Investment In Real Property Tax Act of 1980," and is covered in Section 1445 of the Internal Revenue Code.[1] Generally, if a foreign person sells a U.S. real property interest, FIRPTA requires a withholding of 15 percent of the amount realized on the sale.[2] The duty to withhold is imposed on the buyer.[3] The *buyer* of real estate from a foreign person must transfer the funds to the IRS by the 20th day after the date of transfer[4] unless the buyer has proof that the seller has filed with the IRS a reduced withholding application prior to the date of transfer. If the seller has filed the reduced withholding application with the IRS, the buyer's attorney should instead have the funds held in escrow until the IRS has made a designation on the reduced withholding required. Due to Covid, current IRS processing times for a reduced withholding application are approximately 12 months instead of the standard 60-90 days so it is not recommended that a seller apply for a reduced withholding certificate; I know what you are thinking, Why does the Buyer have the burden?

The intent of the statute is to protect the U.S. government from loss of tax revenue. In almost all cases the withholding will be greater than the foreign sellers' tax liability, so by applying the FIRPTA withholding tax the IRS ensures that a foreign person fulfills their tax obligations before they can repatriate all the funds from the sale out of the country where they could not be taxed. The buyer is held responsible as they have control of the funds. It is the buyer's funds that are being paid to the seller. FYI, this intent and logic are parallel to the Illinois bulk sales tax[5] for those of you handling Illinois commercial real estate transactions.

So, Congress put the burden on the buyer to do due diligence on the seller. Actually this logic is really on point, but opens a buyer and the buyer's agents to extreme risk exposure. If the FIRPTA withholding applies, it is the buyer and not the seller who is at risk of significant penalties if FIRPTA is not applied correctly.

Who is a "Foreign Person?" A foreign person is someone who is not a US citizen or green card holder and does not pass the substantial presence test of the IRS.[6]

The test looks at how many days the seller has been present in the U.S. over the current and previous two tax years. The seller having a SSN does not preclude the buyer from being subject to FIRPTA. However, if the seller is on a work visa and has been present in the U.S. for at least 18 months then it is likely that they will pass the test and will not have to have funds withheld. The substantial presence test is not as straightforward as it seems and for this reason it is recommended that a tax advisor be retained whenever the seller is not a U.S. citizen or green card holder and the seller claims that they are not subject to FIRPTA withholding.

Buyer Tip: Despite the recent addition of 17(b) to the Multi-Board Residential Real Estate Contract 7.0, the buyer's attorney should specifically require an affidavit from the seller at closing that they are exempt from the FIRPTA withholding. If the seller is unable to deliver this affidavit, or the buyer has any reason to believe that the affidavit is false, the buyer's attorney should require that 15 percent of the proceeds be withheld and transferred to the IRS.

Due to the extremely high penalties involved in non-compliance, the title companies will not disburse funds directly to the IRS. Therefore, if FIRPTA does apply, the buyer's attorney must be diligent to ensure that the funds and forms are filed with the IRS in a timely manner.

The seller pays for the forms to be prepared, the buyer signs the form at closing as the withholding agent, and the closing agent disburses a check payable to the IRS to the seller's tax preparer who then files the forms and sends the check on behalf of both the buyers and sellers to the IRS, providing proof of filing to both parties.

Buyer Tip: In many cases the seller or the seller's representative will put pressure on the buyer to sign a residency exception. The buyer should not sign the exception unless the buyer is absolutely sure that the seller's circumstances will not change in the two years after the closing. The residency exception excludes the sale from FIRPTA withholding on sales where the property is acquired by the buyer for use as the buyer's residence with a contract price of $300,000 or less and reduces the withholding amount to 10 percent on sales less between $300,000 and $1,000,000.[7] The buyer is taking on all the risk and, in most cases, getting nothing in return when they sign the residency affidavit. By signing the residency exception, in most cases, the buyer is giving up the right to sell the property (or rent it out for more than a short period of time) during the first two years of ownership without incurring significant IRS penalties.

Seller Tip: Talk to your client early. It does not matter if there are enough proceeds. If there are not enough proceeds to cover the required withholding the seller must do a capital call and contribute the deficiency. So sellers should be made aware upfront during attorney review when they can alter or terminate the contract.

There is war in Eastern Europe, and tensions in Asia are at relative highs. We all hope that the attack on Olympus stops at the base of the mountain. Globalization is a delicate web of supply chains. Should the Titans continue their attack on Olympus and break the chains, we may see a capital flight to the U.S... If the capital finds itself in real estate we as attorneys must understand these rules.

Something to keep in mind is that the Inflation Reduction Act includes $80 billion in funding for the IRS which will allegedly create 87,000 new revenue agents.

Whatever happens we are in for a wild ride, and we need to be there for our clients.

This material has been prepared for informational purposes only, and is not intended to provide, and should not be relied on for, tax, legal or accounting advice. You should consult your own tax, legal and accounting advisors before engaging in any transaction. ■

If you have any FIRPTA needs: Neil Noden is a Director of My Tax Advisor Online LLC and has extensive knowledge in FIRPTA withholding and tax return filings. He can be reached at (631)350-1965 or ***Neil.Noden@MyTaxAdvisorOnline.com*****.**

1. 26 U.S.C. § 1445.
2. 26 CFR § 1.1445-1.
3. 26 CFR § 1.1445-1(b).
4. 26 CFR § 1.1445-1(c)(1).
5. 35 ILCS 120/1 to 120/14 and 5/902(d); 86 Ill. Admin. Code 130.1701.
6. See the IRS website for the substantial presence test requirements.
7. 26 CFR § 1.1445-1(b)(2).

Explaining Real Estate Tax Timing in Illinois: A One-Time Solution Continues 88 Years Later

BY RICHARD LEE STAVINS

Real estate taxes in Illinois are levied annually as a percentage of the value of the real estate as of January 1 of each tax year. The tax automatically becomes a first lien on the property as of that day. 35 ILCS 200/21-75. Thus, the 2022 tax assessed on a particular parcel of real estate will depend on the parcel's value as of January 1, 2022. In most states, the 2022 tax is due in 2022; if not paid in 2022, the lien is foreclosed—but not in Illinois. Why?

In Illinois and several other states, the real estate tax is due, and does not become delinquent, until the year after the tax was assessed and became a lien. 35 ILCS 200/21-20; 35 ILCS 200/21-25. For example, the 2022 tax, which is based on the January 1, 2022, value, will not be payable until 2023, the year after the tax became a lien on the property. Further-more, the amount of that tax will not be known until well into 2023, when the government computes the tax for the prior year (2022, in this example). The real estate tax bill always goes out the year after the year being taxed. In other words, not until 2023 will the 2022 tax be known and billed for the January 1, 2022, valuation and lien.

This odd system creates a small headache whenever a parcel of real estate is sold. Logically, the seller should be responsible for the amount of the tax for the year of the sale up to the date of the closing, and the buyer should be responsible for the amount of the tax for the year of the sale after closing. This is called real estate tax proration. But, if the closing is in 2022, for example, the amount of the 2022 tax won't be known until mid-2023. Therefore, when a sale is closed in 2022, no one knows for certain the amount of the tax to be prorated. Real estate lawyers have created various devices to try to deal with this problem, none of them perfect.

Why does this system exist? The methodology originated in 1934, in the depths of the Great Depression. Until 1934, real estate taxes in Illinois were payable in the year of the tax: the 1932 tax was payable in 1932; the 1933 tax was payable in 1933; and everyone thought the 1934 tax would be payable in 1934. But during the Depression, people could not afford to pay real estate taxes on their homes. Many simply stopped paying. The result was that the collection rate on the tax fell below 50 percent.

Those who did pay in 1933 were beginning to revolt, proclaiming that they had no money and were not going to pay the tax in 1934. The legislature was sympathetic and responded with what was designed to be a temporary solution. The legislature decreed that the 1934 tax did not have to be paid until 1935, effectively creating a real estate tax holiday in 1934. Taxpayers rejoiced. Governmental agencies wept.

But there's no free lunch when it comes to taxes. The tax was not repealed for 1934. It was only delayed, until 1935—that is, the 1934 tax was due in 1935. But in 1935 the 1935 tax was also due, which meant that people were expected in 1935 to pay not one but two years' taxes—the delayed 1934 tax and the on-time 1935 tax. Taxpayers rebelled. The legislature relented, requiring payment of the 1934 tax in 1935 and providing a one-year delay until 1936 to pay the 1935 tax.

What happened in 1936? Same situation. And the same solution has continued, year after year. The original one-year delay—intended to be a one-time solution—still exists today, 88 years later. Every year, the payment of that year's real estate tax is delayed for one year. In theory, someday the taxing authorities will catch up and have one year (originally intended to be 1935) where taxpayers will have to pay two years' taxes to make up for 1934, when no taxes were due.

Of course, no one any longer recalls the tax holiday of 1934. Any politician who now votes to require payment for two years' taxes in one year will effectively have voted to double the real estate tax for that one year—an extremely unlikely prospect for an elected official. So, we plod along with the 1934 problem every year. ■

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Richard Lee Stavins, a 50-year CBA member who also serves on the CBA Record's Editorial Board, is a shareholder in the firm of Robbins DiMonte, Ltd., where he concen-trates his practice in trial and appellate litigation. He acknowledges the assistance of Matthew Flamm and his co-shareholder R. Kymn Harp in reviewing this article.

In Memoriam: Amber Bishop

It is with deep sadness that we inform you of the death of our colleague and friend, Amber Bishop, who passed away on June 11, 2022. Amber had suffered with a prolonged illness and is survived by her husband, Adam Bishop, and their son, Theodore "Teddy" Bishop.

Amber was an important member of the Illinois State Bar Association, which she joined on November 2, 2012. She graduated *summa cum laude* from Western Illinois University in 2009 and earned her Juris Doctor, *magna cum laude*, from Northern Illinois University College of Law in 2012. She was a partner at the law firm of Smith Amundsen in Crystal Lake, Illinois.

Amber was dedicated to her craft and was very involved as a leader in the bar, including as a member of the ISBA's Real Estate Law Section Council. She was selected to the Illinois Super Lawyers "Rising Stars" List 5 years running, she chaired the McHenry County Bar Association Young Lawyers Group, served on the McHenry County Bar Association Board of Governors, was a member of the Commercial Banking, Collections and Bankruptcy Section Council from 2016-2022, was a member of the Business & Securities Law Section from 2014-2022, and was also a past member of the Young Lawyers Division of the ISBA. She helped promote equal access to justice and also helped attorneys in need as a donor to the Illinois Bar Foundation.

Amber was a treasure to those who knew her, and she exemplified what we all strive to be and become as attorneys. ■

Remembering Steve Bashaw

BY WILLIAM J. ANAYA

Steve Bashaw was a gentleman, a teacher, a mentor to many, an enthusiastic lawyer, a happy husband, a good father and my friend for 30 plus years. We spoke and discussed the law often and mused over the law's intended and unintended consequences to our respective clients, and to yours. He was to Illinois lawyers what Hippocrates remains to be to physicians, and what Plato and Socrates were, and remain to be, to western thought. He examined the law, the lives we and our clients live, with reference to real lives lived by good people. He was brilliant, studied and respectful. He rode a motorcycle and taught others how to ride safely. He was gregarious and thoughtful. He was a gentleman, a teacher, and a mentor to many and he will be sorely missed, but always available in locations where thoughtful lawyers work and think.

He made each of us better lawyers.■

Reminders

1. Remind your clients that pursuant to the Illinois Family Relief plan that went into effect this summer, eligible homeowners will receive a rebate in the amount equal to the property tax credit shown on their 2021 Illinois income tax return, up to a maximum of $300. The rebates will start being sent by the Illinois Comptroller's Office in mid-September 2022.
2. Many attorneys, especially transactional attorneys, are notaries public and need to be aware of all of the notary law changes that went into effect this year, including, but not limited to, the requirement of keeping a written journal of all notarial acts. The journal must be kept for at least 5 years after the end of the registration of the notary.
3. Remind your clients who own or are purchasing homes or two flats in Chicago, that they can apply to have the lead service lines (water pipes) removed from their homes for free. Certain income requirements apply. ■