

1974 WL 27818 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

June 14, 1974

*1 A condominium unit and the percentage of common elements allocated thereto are to be taxed to the owner.

Honorable J. Clint McClain
Anderson County Auditor
Post Office Box 4046
Anderson, South Carolina 29621

Dear Mr. McClain:

Reference is made to your request for the opinion of this office concerning the taxation of condominiums.

We have examined the master deed for the condominiums referred to in your letter and the same is recorded in your County in Book 17-S at page 507, and paragraph 3.1 thereof provides in part as follows:

'The Project is hereby divided into Condominium Units, each consisting of a fee simple interest in a unit and an undivided fee simple interest as set forth in Exhibit B in the Common Elements.'

The individual deeds refer to this deed and the owner of a unit holds fee simple title thereto as well as to a percentage of the common elements. Real property in this State is taxed to the owner, Section 65-1611, and a lien exists upon such property for the taxes, Section 65-2701.

Under these statutes the condominium unit would be taxable to the owner and the common elements would be taxable to all owners.

The Horizontal Property Act, codified in Section 57-471, et seq., however, specifically provides for the taxation of the unit as follows:

'Taxes, assessments and other charges of this State, or of any political subdivision, or of any special improvement district, or of any other taxing or assessing authority shall be assessed against and collected on each individual apartment, each of which shall be carried on the tax books as a separate and distinct entity for that purpose, and not on the building or property as a whole. * * *.' Section 57-519.

This section does not however provide for the taxation of the common elements, and such therefore gives rise to the issue of the person or persons liable for the taxes.

It is the opinion of this office that the Legislature intended that the common elements be taxed to the owner of the condominium units according to the percentage of undivided interest in such elements appurtenant to each unit.

Section 57-515 provides in part:

'No lien arising subsequent to recording the master deed or lease as provided in this chapter, and while the property remains subject to this chapter, shall be effective against the property. During such period liens or encumbrances shall arise or be created only against each apartment and the percentage of undivided interest in the common elements appurtenant to such apartment, in the same manner and under the same conditions in every respect as liens or

encumbrances may arise or be created upon or against any other separate parcel of real property subject to individual ownership; * * *.'

This section and Section 65-2701 that creates a first lien on the property taxed must, if possible, be reconciled. 'Statutes must be reconciled, if possible, so as to render both operative.' [Bell v. South Carolina State Highway Dept.](#), 204 S. C. 462, 30 S. E. 2d 65.

*2 A construction that the lien attaches to the percentage of the elements appurtenant to each unit and that this percentage is to be taxed to the owner of each unit give effect to both of these statutes and to Section 65-1611.

It is therefore the opinion of this office that a condominium unit and the percentage of common elements allocated to the unit are to be taxed to the owner. For tax purposes, the unit and percentage of common elements attributable thereto are to be considered and treated as property separately owned from that of the other units of the common elements of the condominium.

We have examined the deeds to other lots and find nothing therein that would subject the same to the Horizontal Property Act.

We hope this will be helpful, and with best wishes, I am
Yours very truly,

Joe L. Allen, Jr.
Assistant Attorney General

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