KLG KASS LEGAL GROUP, PLLC

Newsletter

A newsletter on general legal matters

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IS BLOCKCHAIN IN THE FUTURE OF REAL ESTATE?

By: Benny L. Kass, Esq.

Bitcoin is one of our new moneys. Thousands of merchants now accept Bitcoin payments. A Miami penthouse was listed for 33 Bitcoins (valued at time of listing at $544,500) and the seller refused to take any other currency. Probably trying to avoid paying anything to the IRS.

What is Bitcoin? It is such a new concept, that it wasn't until earlier this year that Webster's Dictionary added a definition: "a digital currency created for use in peer-to-peer online transaction." How does it work? Compare it to the operating systems for our iPhones, Blockchain is the operating system that makes Bitcoin work. This column will attempt to explain Blockchain.

Let's go back to Webster's: Blockchain is "a digital database containing information (such as records of financial transactions) that can be simultaneously used and shared within a large decentralized, publicly accessible network."

Perhaps a more understandable definition can be found in an IBM report entitled "Blockchain for Dummies": "Blockchain is a shared, distributed ledger that facilitates the process of recording transactions and tracking assets in a business network. An asset can be tangible – a house, a car, cash, land – or intangible like intellectual property, such as patents, copyrights, or branding. Virtually anything of value can be tracked and traded on a Blockchain network, reducing risk and cutting costs for all involved." (Published by IBM).

(Continued on page 2)

HIGHLIGHTING SOME CHANGES TO THE 2014 DC CONDOMINIUM ACT – RE: MEETINGS

By: Mark M. Mitek, Esq.

In 2014, the DC City Council made significant changes to the DC Condominium Act. The original Condominium Act became law in 1976, and then in 1991, there were many sweeping changes. Thus, there have not been many changes, and such important ones, since 1991.

The new changes to the Condominium Act ("Act") do not specifically require Condominium Associations to amend their Condominium Instruments ("Declaration," "Bylaws," or "Plats"). However, some Boards of Directors may want to consider doing such so that their documents are consistent with ("mirror") the new Condominium Act provisions. In addition, a Condominium Board may want to amend their "Rules, Regulations and Policies" in connection with some of the new Condominium Act provisions, e.g., providing notice of meetings and permitting voting electronically,

(Continued on page 3)

In this issue...

(Continued from page 1)

IS BLOCKCHAIN IN THE FUTURE OF REAL ESTATE?

For example, just a couple of months ago, Vermont Governor Phil Scott signed a law allowing the creation of "blockchain-based limited liability companies". That law also requires a study on the use of Blockchain in insurance and banking. And the city of South Burlington, Vermont, has started a pilot project to record title and ownership. According to that city's clerk, "We are always interested in taking advantage of technology that enhances its delivery of services to residents."

Why is it called "Blockchain"? Because it literally involves computerized "blocks". Unlike paper ledgers that are typically pages long, when someone adds new information, a new "block" is created that links itself to previous ones. Since these "blocks" form a continuous chain, thus the name.

The best way to explain this complicated process is with a simple example, courtesy of Joseph Murray of the public accounting firm of Withum: "Company A wants to purchase $500 worth of goods from Company B; this purchase would be included in one block on the Blockchain. The vendor, and other parties within the Blockchain, would then be notified of a payment of $500 in return for goods. This transaction is then confirmed by nodes within the Blockchain, and once the pre-required number of parties confirm the accuracy of the transaction, the $500 is moved from the customer's bank account to the vendor. If there are not enough confirmations, meaning parties cannot agree that these transactions are accurate, the block is not validated and the transaction is not executed."

Without Blockchain, there would be numerous emails, phone calls, and lots of paper work for this simple transaction. And unless carefully encrypted, this $500 transaction may be available for everyone – including scammers – to see and act upon. In our example, both A and B hold what is known as a "wallet"; this is a private key that only you have. You can, of course, give me a public key to expedite the transaction, but you can limit the availability.

There is much more to Blockchain than can be presented in a short column. You have to learn about miners who create blocks for a fee; you have to understand "nodes" and "masternodes" to better understand how this operating system really works.

What does it have to do with real estate? A 2016 Goldman-Sachs projected an annual 2-4 billion dollar savings in the title insurance industry as a result of applying Blockchain to title examination. As discussed earlier, Vermont is in the forefront of trying to put title documents routinely in Blockchain and the Swedish government recently started using Blockchain to register land and properties. According to Lantmateriet – the Swedish land-ownership authority – land titles are already highly digitized and on a paperless system. However, despite the system, it still takes several months between signing a contract and finally registering a sale. With Blockchain, Swedish officials suggest, it could be just hours.

What are the potential real estate applications here in the United States? Clearly, buying and selling both commercial and residential. Registration of ownership as is being developed in Sweden and Vermont. But any aspect of real estate which requires ledgers – such as property management – is also a prime candidate for Blockchain.

The title insurance industry is raising concerns that Blockchain alone is not an absolute panacea. According to Steven Day, President of the American Land Title Association (ALTA), "There is more to title than just the effective recording of documents. There are covenants, easements, mortgages, leases, legal descriptions, on and on and on, that impact the title of a property. And many of these rights that impact the title are recorded within documents several steps back in the chain, and are not always adequately reflected in current recorded documents."

The title insurance industry makes the point that a digital ledger will not detect a forgery; nor can it identify a foreclosure defect – a defect which can make title unmarketable. Their position: even though the Blockchain technology has a promising future to make current systems more productive, it can never provide a home buyer the protection offered with a title insurance policy.

(Continued on page 3)

(Continued from page 2)

IS BLOCKCHAIN IN THE FUTURE OF REAL ESTATE?

Blockchain is transparent; transactions are visible by everyone who has an interest. Blockchain is secure because every transaction requires a key. And Blockchain will reduce costs for all transactions. However, the jury is still a long way from rendering a verdict.

(Continued from page 1)

HIGHLIGHTING SOME CHANGES TO THE 2014 DC CONDOMINIUM ACT – RE: MEETINGS

unit owner insurance requirements, leasing restrictions, etc.

With the Condominium Act changes now in effect for four years, the below highlights some of the important changes made regarding Meetings.

(A) Notice of Meetings. Notice of Association Meetings (regular or special) to unit owners can still be done in the same "old" manner – e.g., U.S. regular mail or hand delivery with the Secretary of the Association certifying such in writing. Alternatively, the new Act changes provide that notice of a Meeting (or delivery of other information) MAY be sent by electronic transmission to any unit owner if: (i) the Board authorizes such, (ii) the unit owner requests that notices are done electronically and waives notice by mail or hand delivery as to an Association meeting, AND (iii) an officer or agent of the Association certifies in writing that notice (or other information) was provided electronically as authorized by the unit owner. Electronic transmission in essence is defined as producing a written record to retain, retrieve, review and reproduce.

Over the last four years, electronic notices have helped condominium associations provide timely information to unit owners and at the same time save in the costs of mailing notices and other information. However, note, in order for electronic notices to be provided, the above requirements must be met.

(B) Owners' right to be heard at Board Meetings. Subject to reasonable Rules adopted by the Board, at each regularly scheduled Board meeting, a designated period of time must be set aside to give unit owners an opportunity to comment on any matter relating to the condominium association. If the meeting is a special meeting, unit owners would only be able to comment on the specific issue addressed at that meeting.

Accordingly, many condominium associations are providing a forum at the beginning of each Board meeting for unit owners to express their views and ask questions. However, Boards need to avoid the forum taking over the entire meeting – or a great portion of it. A regular monthly Board meeting should usually last an hour or so. And after the unit owner forum, owners should then be spectators. That is, owners should be observers – no different than attending a governmental (DC Council) meeting to watch and listen.

(C) Electronic Voting. Notwithstanding the language in an Association's governing documents, voting can be done electronically if the process used to provide notice of the vote and the way votes or proxies are made are in a consistent form approved by the Board.

Thus, there should be a Board Rule or Policy so as to assure that owners are: (i) given an opportunity to receive notice of a proposed vote, and (ii) provided the form to submit their vote or proxy so that the vote or proxy submitted electronically can be verified to assure it is valid.

(D) Open Meetings. Except as otherwise provided in the Condominium Instruments, all meetings of the Association, committees, and the Board are to be open for OBSERVATION to all unit owners in "good standing." Notice of Board meetings (regular, special, emergency) shall be provided to unit owners who request notice, and they must make the request, in writing, at least once a year and include their name, address and zip code. Notice of Board meetings must also be published (shown) in a location reasonably calculated to be noticed by unit owners.

(Continued on page 4)

(*Continued from page 3)*

HIGHLIGHTING SOME CHANGES TO THE 2014 DC CONDOMINIUM ACT – RE: MEETINGS

Note, the Condominium Act defines a unit owner in good standing as, unless as otherwise defined in the governing Declaration or Bylaws, "a unit owner who is not delinquent for more than 30 days in the payment of any amount owed to the unit owners' association, or a unit owner who has not been found by unit owners' association or its executive board to be in violation of the condominium instruments or the rules of the unit owners' association."

Accordingly, a Board should have a policy on such matters, which may even provide a unit owner not in good standing to be able to attend meetings – but may not be able to be heard or vote. However, some Boards even allow owners who are not in good standing to be heard.

(E) Executive Session Board Meetings. Under certain circumstances (e.g., personnel matters, negotiating contracts, pending or anticipated litigation, governmental proceedings, meetings with legal counsel, matters involving individual unit owners, or upon an individually recorded vote of 2/3rds of Board members present for some other exceptional reason which compels and overrides the general public policy for an open meeting) the Board may meet in executive session (in private). However, before doing so, in open session, there must be a motion and affirmative vote of the Board to convene in executive session.

The last sentence is important – in order to go into executive session, there needs to be a motion and an affirmative vote of the Board.

(F) Minutes. They shall be made available for review and copying by unit owners in good standing. Such right can only be exercised during reasonable business hours or at a mutually convenient time and location – and upon 5 days' written notice, identifying the Minutes requested. Formal action taken in executive session shall be recorded in the Minutes, but shall not require disclosure of any details that are properly the subject of the confidential matters in executive session, e.g., no names, unit numbers, litigation strategies, etc.

It should also be noted: Minutes are just that, minutes, not days or years. In general, they shall be very short summaries of what was done. Minutes should usually be a page, maybe two pages, depending on the matters that were addressed by the Board. And in general, unit owner names and unit numbers should be avoided.

(G) Board Action without a formal Meeting. The Board may take action on a matter without a formal Board meeting by Resolution – but only with the unanimous written consent as to the action decided on by all Board members. A copy of the Resolution must be attached to the Minutes of the next Board meeting. And a reminder: if the action taken is regarding a matter that would have been in executive session, the Resolution should provide limited information for privacy and privilege reasons.

Action without a formal meeting is a very helpful tool for Board members. A lot of Board business can be done outside a Board meeting. However, the above requirements must be followed. Further, a Board should not use such authority to hide or obscure its obligations to the membership, especially regarding important matters, e.g., addressing and adopting a budget.

(H) Telephone Conference or Video Conference Board Meetings. Board meetings can be conducted by telephone conference or video conference, provided the Board member who is doing so via telephone or video conference and the Board members who are present in person can hear one another.

With such conference technology nowadays, it should be very difficult for a Board member not to be able to participate in a Board meeting.

For a listing and summary of the many changes in 2014 to the DC Condominium Act, please review our Memorandum on this topic by visiting our firm web site.

The articles in this Newsletter should not be considered legal advice. Please contact an attorney in our office if you desire consultation and advice.

2018/2019 ESTATE TAX UPDATE

By: Laurie Pyne O'Reilly, Esq.

Recent changes in estate tax law make the "death tax" - - as it is often referred to - - a non-issue for most people. Increased exemptions from both state and federal estate tax mean that most estates will not be taxed. It's important, however, to keep track of changes in the law to assure that appropriate tax avoidance measures can be taken.

Estate tax is a transfer tax imposed on the value of a decedent's assets owned and transferred on account of death. A decedent's estate is taxed only to the extent the value of estate assets exceeds the estate tax exemption amount.

For estate tax purposes, the decedent's assets include all property -- tangible and intangible -- that the decedent retained control over before death. So, in addition to property such as real and personal property, bank accounts, etc. titled in the decedent's name, the decedent's taxable estate also includes the decedent's retirement accounts, life insurance policies, and interests in jointly held property that passes to a survivor, such as joint bank accounts. The value of a decedent's taxable estate is reduced by the amount of the decedent's debts and the value of property left to the surviving spouse and to eligible charities.

Federal Estate and Gift Tax

In 2018, there was a substantial increase in the combined federal estate and gift tax exemption. For decedent's dying in 2017, the exemption amount was $5.49 million. Under the Tax Cuts and Jobs Act of 2017, the exemption jumped to $11.18 million for decedents dying in 2018. (The 2017 law sets the exemption amount at $10 million indexed for inflation, which translates to $11.18 million.) The estate tax and gift tax exemptions are unified so that tax is owed only when combined taxable gifts made during lifetime and net estate assets owned at death total more than $11.18 million for decedent's dying in 2018.

In 2019, the federal estate and gift tax exemption amount will increase to $11,400,000 after indexing for inflation.

The exemption amounts are "portable" between spouses, so that any unused exemption from the first spouse to die may be used by the surviving spouse. In order for the surviving spouse to take advantage of this portability provision, an estate tax return must be filed for the deceased spouse, even if there is no estate tax liability or filing requirement.

Federal estate and gift tax rates have remained unchanged since 2013 with a minimum rate of 18% and a maximum rate of 40%. The maximum rate is reached when the taxable portion of an estate–that is the portion in excess of the lifetime exemption–is above $1 million.

There is also an annual gift tax exemption for gifts made in 2018 of $15,000 per donee. This exemption allows a taxpayer to make gifts of up to $15,000 per year to as many individuals as desired without the necessity of filing a gift tax return or paying gift tax. Spouses can make gifts totaling $30,000 per donee to a single individual without gift tax consequences, even if the entire gift comes only from one spouse's funds. This is called a "split gift." The annual gift tax exemption will remain at $15,000 for 2019.

District of Columbia Estate Tax

In the District, the estate tax exemption amount increased to $2 million in 2017. Under the Budget Support Act (BSA) of 2014, the exemption amount increased to $11.18 in 2018 when the law, then in effect, provided for it to equal the federal exemption amount. However, after it became known that the federal exemption amount would increase sharply, the DC Council quickly passed legislation disassociating the DC estate tax from the federal estate tax, effectively cutting the exemption in half. In October of 2018 the Council enacted legislation that reduced the DC estate tax exemption amount to $5.6 million for decedents dying in 2018. The law has retroactive effect covering all decedents who die or died during 2018. Unless changed, the 2019 exemption amount will be the same as for 2018 but adjusted for inflation. Unlike federal law, DC law does not provide for portability, so spouses are not entitled to use a portion of their deceased spouse's unused exemption. Also, there is no gift or inheritance tax in DC.

The rate of estate tax imposed on taxable estates remains unchanged in 2018: estates valued at

(Continued on page 7)

THE BASICS OF JUDICIAL FORECLOSURE

By: Steven M. Cammarata, Esq.

Many investors and homeowners are interested in the process of judicial foreclosure. Knowing the basics of how it works will place you in a competitive advantage of buying a property in foreclosure or defending a case brought by a lender.

The securitization of a home as collateral against a loan is known as a "mortgage". Together, the mortgage consists of a private agreement between the owner and lender (the Loan Note) and the public agreement between the owner and trustees for the lender (the Deed of Trust).

So what happens when the owner stops paying on the Loan Note? The Deed of Trust allows the trustees to conduct a sale of the home in conformance with state law. State law in D.C. is a mixture of code and case law. Taken together, to complete a residential mortgage foreclosure in D.C., the following steps are taken:

First: You may see a substitution of trustees recorded in the land records. The Deed of Trust allows for the lender to substitute its trustees at any time it chooses. Substituting the trustee is a sign that the lender is getting its paperwork in order to start the foreclosure. The new, or "substitute," trustees are often members of the law firm hired by the lender. There are only a handful of high-volume foreclosure firms in D.C., making it easier to identify properties which are "pre-foreclosure".

Second: Remember that the Loan Note is a private instrument, so you will not know when the loan is in default unless you are personally the borrower. Also realize that a few common reasons for people falling into default relate to death, divorce, job loss, or unforeseen expenses. Searching public records can identify whether there are liens, judgments, bankruptcy, or probate filings which may identify if the loan is in default and the position of the lender's lien.

Third: When ready to start foreclosure, the lender will file a Complaint in the Superior Court for D.C. This is a formal lawsuit naming the lender as plaintiff and owner as defendant. At this stage a wealth of information is available in the public domain.

Fourth: The court will not take any action in the foreclosure suit until an initial conference is held. At the initial conference the owner will identify his/her intentions for the property in front of a magistrate judge. Many times homeowners want to keep the property and engage in loan modifications. Other times they want to sell the property, either out-right or by short sale. The magistrate judge will determine whether to keep the case in "early mediation" or assign the case to a presiding judge for ruling on the case.

Fifth: D.C. Code entitles residential homeowners to participate in mediation before a neutral mediator contracted by the court. If requested by the parties, a mediation date will likely be determined at the initial conference. Following mediation, the court will keep the case in front of the magistrate judge so long as the homeowner and lender are attempting to work together. This process of attending mediation and status hearings can range from two months to two years in some cases. You can monitor the case progression by viewing the case docket on the court's website.

Sixth: If mediation fails, the lender will ask for judgment of foreclosure. If the foreclosure is contested, the parties will engage in discovery, motion practice, and ultimately trial. Once the lender obtains judgment, the property can be sold.

Seventh: The judgment issued by the court instructs the trustees to sell the property at public auction to the highest bidder. The bidder will be required to pay a deposit at sale (likely 10% of the property value). The lender will set the bid amount and may continue to bid until it is satisfied with the price. Note: the lender cannot make money at these sales, only recoup its investment. Thus, even if the debt is very low, the lender will not increase the bid past the debt amount irrespective of the property value. Any proceeds of sale above the debt amount get returned to the homeowner or other creditor and is not a windfall for the lender.

Eighth: Once the property is sold by the trustees, the lender will ask for the court's ratification of the sale. The lender will file a report of sale listing the purchaser, purchase price, and method of sale. If the court agrees that the sale was fairly held, it will ratify the sale. At this point the purchaser is the new legal owner of the property.

(Continued on page 7)

(Continued from page 6)

THE BASICS OF JUDICIAL FORECLOSURE

Ninth: While technically the purchaser is the legal owner as soon as the court ratifies the sale, the recordation of the deed formalizes the transfer and exchanges funds. The purchaser will choose its preferred settlement company and work with the trustees to obtain a deed to the property. If settlement falls through, the lender may ask the court's permission to re-sell the property at auction with the deposit forfeited. If the settlement is successful you will see a new deed recorded in the land records.

Tenth: Once the property is transferred the lender will provide an accounting to the court for ratification. At this point you will see how the proceeds of sale were allocated and either a secondary creditor or the owner may apply to recover any funds received after the lender's debt and expenses are paid.

There are countless nuances and unique circumstances that can arise in a mortgage foreclosure, but knowing the framework will set you ahead of the game if planning to invest in properties or defend against a suit.

(Continued from page 5)

2018/2019 ESTATE TAX UPDATE

less than $1 million are tax free; estates between $1 million and $10 million are taxed at between 8%-15.2%; and the maximum rate of 16% applies to estates valued at over $10 million dollars.

Maryland

In Maryland, under law enacted in 2014, the estate tax exemption increased from $3 million in 2017 to $4 million in 2018. Under the same law, the Maryland exemption was due to match the federal exemption amount in 2019. Like in DC, however, the precipitous increase in the federal estate tax exemption to $11.18 did not sit well with lawmakers who made quick work of amending the law. In April 2018, legislation passed in Maryland decoupling the estate tax exemption amount from the federal exemption, and setting the 2019 exemption amount at $5 million. Like federal law, Maryland law now allows for portability between spouses. However, unlike federal and DC law, the exemption amount will not be indexed for inflation.

There is no gift tax in Maryland, but there is inheritance tax on transfer to beneficiaries who are not close family members. For 2018 Maryland's estate tax rates remain unchanged, topping out at 16%.

Virginia

Virginia does not impose any estate, gift or inheritance tax. The estate tax was repealed for decedents whose date of death is on or after July 1, 2007.

Planning

Because of the very generous federal exemption amount currently in effect, most estates will not be subject to federal estate tax even taking into account taxable lifetime gifts. However, the federal exemption is subject to change and could be decreased. And, even though there is no gift tax in most states, including DC, Maryland and Virginia, because of the reduced exemption amounts applicable to DC and Maryland, some estates in those jurisdictions will be subject to tax even if not subject to federal estate tax. Proper planning, including the use of trusts and other estate planning tools, can help alleviate the potential state (and DC) estate tax burden.

Schedule Your Complimentary

Estate Planning

Consultation Today!

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