



# Newsletter

A newsletter on general legal matters

## ADDRESSING HOARDING ISSUES IN A CONDOMINIUM ASSOCIATION

*By: Michelle L. LaRue, Esq.*

The Board of Directors (the “Board”) of a condominium association plays an important role in maintaining a harmonious living environment for all owners. One challenging issue for the board that may arise is hoarding, which can have a significant impact on the well-being of the affected individual, as well as the entire community. While respecting the rights and privacy of individual unit owners, the Board has a duty to address issues that may impact the health, safety, and welfare of all owners.

### Understanding Hoarding and Its Implications:

Hoarding is a complex psychological disorder characterized by the excessive collection of items, regardless of their value, and a persistent difficulty in discarding them. In a condominium, hoarding can lead to serious health and safety concerns, affecting not only the individual with the disorder but also neighboring residents. It may pose fire hazards, impede emergency responses, cause rodent infestation, and affect the overall cleanliness and aesthetic appeal of the community.

### Identifying Hoarding and Taking Proactive Measures:

The first step for a Board is to establish clear guidelines and rules regarding clutter, maintenance, and cleanliness within the community. Regular inspections of common areas and units can help

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## SHOULD I MAKE A GIFT OF REAL ESTATE DURING MY LIFETIME?

*By: Laurie Pyne O’Reilly, Esq.*

Generally, the answer to this question is “No,” certainly not without understanding the consequences. There are tax and other financial as well as practical reasons for not gifting real estate to your family members or intended beneficiaries during your lifetime. Instead, it is generally best to allow your real estate pass to beneficiaries under your Last Will and Testament or Revocable Trust.

The primary tax reason for not gifting real estate during one’s lifetime relates to the income tax that the beneficiary of the gift (“the Donee”) may have to pay upon selling the property. Federal tax laws currently provide a great benefit for recipients of real estate after the death of the owner. It is called a “step-up” in basis which can limit dramatically the amount of taxable gain. Since the amount of gain for income tax purposes is calculated using the

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## **ADDRESSING HOARDING ISSUES IN A CONDOMINIUM ASSOCIATION**

identify potential hoarding issues early on. When signs of hoarding are observed, the Board should approach the matter with sensitivity and compassion.

The Board should document specific instances of hoarding behavior, take note of areas within the community where clutter is accumulating, and gather photographic evidence discreetly. This documentation will serve as a factual basis for addressing the issue.

### Communication and Mediation:

Open communication is essential in addressing hoarding concerns. The Board should engage in a dialogue with the affected resident, expressing the association's concerns and the potential impact on the community. Offering support and assistance can be crucial, as hoarding is often associated with underlying mental health issues.

### Enforcement and Legal Remedies:

If communication and support prove ineffective, the Board may need to consider enforcement actions within the purview of the association's bylaws, rules and regulations and local laws. This may involve issuing warnings, fines, or seeking legal remedies to address the hoarding issue. However, the Board should consider a balance between enforcing the rules and respecting the rights of the individual.

### Community Resources and Collaboration:

In addressing hoarding, collaboration with local mental health professionals and community resources is essential. The Board can work to connect affected residents with appropriate support services, fostering a collaborative approach to resolving the issue.

### Conclusion:

The responsibility of a condominium association's Board extends beyond maintaining the physical aspects of the property. Addressing hoarding issues requires a thoughtful and comprehensive approach that considers both the well-being of the affected individual and the community at large. By combining clear communication, compassion, and, when necessary, legal enforcement, the Board can create a safe and harmonious living environment for all residents.

If you have any questions or concerns regarding hoarding issues within your condominium association, please do not hesitate to reach out to our office for guidance and support.

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## **SHOULD I MAKE A GIFT OF REAL ESTATE DURING MY LIFETIME**

difference between the tax basis and the sales price of the property, an increase in basis is a valuable thing. Property that is gifted during one's lifetime loses that benefit.

The basis of real estate for tax purposes is the purchase price of the property plus the cost of improvements. So, for example, if you purchase your home for \$500,000 and put an addition on the property costing \$100,000, your initial tax basis in the property of \$500,000 increases to \$600,000 after the improvements are made. If when you die the property is worth \$1,000,000, that value becomes the new basis applying the step-up rule. What that means is that when the property is sold after the death of the owner, there is little or no difference between the tax basis and the sales price of the property, and thus little or no income (capital gains) tax.

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## **SHOULD I MAKE A GIFT OF REAL ESTATE DURING MY LIFETIME**

If, on the other hand, the property is gifted during the lifetime of the owner (“the Donor”), the Donee receives a “carryover” basis that is equal to the owner’s basis at the time of the gift. When the property is sold the Donee will owe tax on the difference between the owner’s basis and the sales price. So in the previous example, if the property was gifted during the owner’s lifetime, when the Donee sells the property, tax will be owed on the difference between the owner’s basis, i.e., \$600,000 and the sales price of the property. If the sales price is \$1,000,000, tax will be owed on \$400,000 worth of gain. (The amount of taxable gain may be reduced if the property was used as the Donee’s principal residence. Costs of sale would also reduce the amount of gain.)

In a situation where there is no plan or expectation for the recipient to ever sell the property, but to own it until their death, the basis of the property would step-up again after the recipient’s death. Since there is never complete certainty about the need to sell property during one’s lifetime, it is usually better to let the property pass upon the death of the initial owner in order to receive the step-up in basis when the owner dies.

What about adding someone’s name to the deed rather than transferring the whole property? The same basis carryover rule would apply to the interest transferred by the owner. If, for example, the owner adds his daughter’s name to the property title so that they own it jointly, the daughter would receive a carryover basis for her half of the property. (Her ownership would be presumed to be fifty percent if not otherwise specified in the deed.) Upon the death of the parent, there would be a basis step-up for just the owner’s half interest in the property. In the example above, upon the death of the owner, the tax basis in the property would be \$800,000, \$300,000 in carryover basis on the daughter’s one half interest in the property plus \$500,000 stepped-up basis in the parent’s one half interest. If the

property was sold after the parent died and the property was worth \$1,000,000, there would be \$200,000 of capital gain to be reported, rather than no gain if an interest in the property had not been transferred.

Another reason to avoid adding someone’s name to the deed during one’s lifetime is that once the transferee’s name is on the deed, they have all the rights that the law allows to owners of real estate. One such right is the right of partition. A co-owner of real estate has the right to petition the court to order the sale of the property and division of the proceeds between owners. Even if the parties enter into an agreement allowing either owner the right of first refusal if the other ones wants to sell, either party still has the right of partition. The non-selling owner would either need to buy the other owner out or allow a sale of the property and a division of the proceeds.

Additionally, once someone’s name is added to real estate, unless it is a spouse and the property is title as “tenants-by-the-entirety”) the creditors of that new owner can file judgment liens against the property and potentially force a sale to recover the amount owed.

So a well-intentioned gift can come with unexpected consequences that can be disastrous to the gift giver.

Transferring real estate during one’s lifetime also comes with the need to file a gift tax return. Federal tax law requires the filing of a gift tax return in any year that gifts to any one individual exceed the annual gift tax exclusion amount. For 2024 that amount is \$18,000 per person, and \$36,000 per married couple. A return is required to be filed even if no gift tax is due. (Total gifts would need to exceed \$13.61 million before any gift tax would be owed.)

There can be situations in which a lifetime gift of real estate makes sense, but the owner should be aware of the pitfalls before signing it over.

## D.C. ENACTS NEW PROVISIONS REGARDING RENT INCREASES

*By: Andrew J. Lavin, Esq.*

On January 10, 2024, District of Columbia Mayor Muriel Bowser signed new legislation which increases the amount of time housing providers must provide notice to their tenants of future rent increases. The *Fairness in Renting Notice Clarification Emergency Amendment Act of 2023* (ACT 25-355) establishes that as of January 1, 2024, housing providers must now send their tenants notice of any rent increase 60 days prior to the increase taking effect rather than the 30-day notice required under the previous rule. Any 30-day notice of rent increases sent by housing providers prior to January 1, 2024, remains valid under the ACT 25-355.

Housing providers should ensure that when providing the required notice, they are doing so by using the updated D.C. Rental Accommodations Division Form 8 “Housing Provider’s Notice to Tenant of Rent Adjustment” (RAD Form 8). The first paragraph of the new RAD Form 8 states in bold print “**This notice is to tell you that your monthly rent will be increased in at least sixty (60) calendar days**” and can be found on the D.C. Department of Housing and Community Development’s website at [dhcd.dc.gov](http://dhcd.dc.gov) along with the form’s instructions.

In addition to the new notice requirements for the rent increases, effective 06/29/2023, the Council of the District of Columbia enacted legislation capping inflation-based rent adjustments for a two-year cumulative limit of 12% of the rent charged before 05/01/2023 for nonelderly and nondisabled tenants. The *Rent Stabilized Housing Inflation Protection Emergency Amendment Act of 2023* (ACT 25-151) establishes that if a rental unit’s rent was increased by more than 6.1% in 2023, the rent increase adjustment on or after 05/01/2024 must be less than 5.9%. This new legislation is also reflected in the new RAD Form 8.

Previous versions of RAD Form 8 stipulated that a tenant’s rent charged may be increased based on the inflation rate, determined by the Consumer

Price Index for Urban Wage Earners (“CPI-W”) in the Washington, DC area. The total amount of the increase was permitted to be what the CPI-W indicated, plus an additional 2%. The total adjustment of the CPI-W plus the additional 2% was not to exceed 10% of the rent charged.

Now, pursuant ACT 25-151, the new RAD Form 8 stipulates that the total adjustment of the CPI-W plus the additional 2% may not exceed 6% of the rent charged. Additionally, for rent increases effective May 1, 2024, to April 30, 2025, the previous year’s increase plus the projected increase may not exceed 12% of the previous year’s prior rent. The calculation is based on the legislation’s compounding requirement that rent increases are based on the rent in effect on 04/30/2023. Housing providers should ensure that they are using the most up-to-date version of RAD Form 8 and that increase limits for affected rental units are carefully calculated before sending notice of increases in rent.

Should you have any questions on this or any other matter, please contact our office at (202) 659-6500.

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