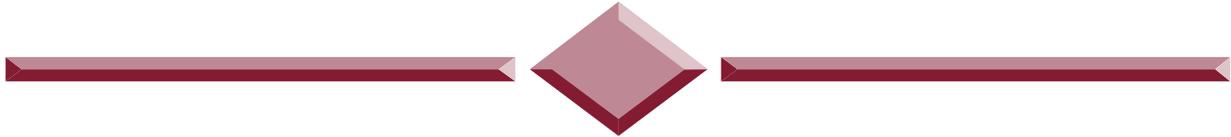


The Client Letter

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This newsletter addresses current issues and developments in the law relating to development of planned communities. It is published periodically for distribution to clients and friends of Hyatt & Stubblefield, P.C., Attorneys and Counselors. The information presented is not intended as specific legal advice to any person. Principles of law expressed in this newsletter are subject to change from time to time.



We Are Here to Help

In tough economic times—and the current economic situation is about as tough as it has been for 75 years—businesses are reluctant, even afraid, to contact their lawyers. The client worries about incurring "unnecessary" costs, about whether the questions can be postponed, and, all too frequently, about the expected advice the client may not want to hear. Yet it is precisely times such as these that you should be employing to the fullest your relationship with your counsel and that you should feel very comfortable doing so.

Whether dealing with the problems of today or cautiously beginning to plan for the future, you should have and should utilize the best resources available in order to have maximum assistance in making hard decisions.

We want you to know that we are here to help.

At Hyatt & Stubblefield, we believe our first role as professionals is to be a counselor, an experienced and genuinely concerned advisor. As such, we assist in the creation of business and development and risk management strategies; most importantly we provide the benefit of decades of experience throughout the United States and a genuine interest in and concern for you and your business.

All of us are available to assist you, and all of us—attorneys and staff—share the commitment to providing the highest level of cost-effective service. You know me as a solution seeker, and we stand ready to work with you to develop and to implement strategies appropriate for your short- and long-term business needs.

We can work with you to address legal costs just as creatively. The important thing is for you to know that we are here to help.

Give us a call and let us do so.

**Please visit our new website:
www.hspclegal.com**

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IRS Increases Scrutiny of Tax-Exempt Organizations

During the past year, the Internal Revenue Service has begun to place greater emphasis on reviewing the activities of tax-exempt organizations as a result of concerns about abuse in the industry. Steven T. Miller, Commissioner of the Tax Exempt and Government Entities division of the IRS, in testimony before the House Ways and Means Subcommittee on Oversight in mid-2007, explained that the number of tax-exempt organizations in the United States has grown by more than 350,000 since 1997, and the total number of tax-exempt organizations in the U.S. now approaches 1.6 million. These organizations hold assets in excess of three trillion dollars. The rapid growth of the tax-exempt sector, both in terms of sheer size and complexity, has raised concerns about abuse and methods of compliance. While many tax-exempt organizations are grass-roots organizations run by volunteers, many 501(c) organizations are becoming large economic hubs, such as hospitals, foundations, and universities, that control great wealth and operate on a global scale.

The tax-exempt sector has changed markedly over the past 40 years, but there has not been much change in the laws governing tax-exempt organizations. However, Congress has begun to take more interest in the area, particularly as a result of some serious problems involving major charitable institutions. Commissioner Miller says, "it is important for IRS to act as the 'cop on the beat' to insure that charities behave in accordance with their charter and the privilege of tax exemption." Thus, the impetus for the IRS' new enforcement strategy.

The IRS manages tax-exempt organizations in three stages - determinations or rulings on prospective matters, education and outreach, and a vigilant examination program. Particular emphasis is now being placed on the determination process, and applicants are having to go to much greater lengths to prove that they are entitled to tax-exempt status. More scrutiny is being placed by determination specialists on the applicant's purpose and structure. Applicants that submit brief descriptions of their activities, which may have been automatically approved several years ago, are now receiving requests for a substantial amount of additional information. However, while applicants are having to put much more effort into proving their entitlement to tax-exempt status, we have not seen an instance where an organization that is deserving of tax-exempt status has been denied such status. The increased scrutiny and increase in the quantity of applications has caused a backlog of determination cases awaiting review, but the IRS is working on increasing staffing and reducing the backlog.

The IRS has also increased its education and outreach efforts substantially to help tax-exempt organizations remain compliant. The IRS offers live seminars and workshops across the country specially designed for tax-exempt organizations. It also conducts phone forums; publishes an electronic newsletter, "EO Update"; and maintains a toll-free call site where individual questions are taken and answered. Another educational tool offered is the website stayexempt.org, which offers a web-based version of the day-long workshop as well as mini-courses for small and mid-sized exempt organizations.

Maintaining a "robust" examination program to detect and deter non-compliant behavior is important to the IRS. They have strengthened the program by adding staff and offices and by increasing funding. The Exempt Organization Compliance Unit conducts a compliance check when an error on a taxpayer's return is discovered or when further information or clarification is required from a taxpayer to substantiate the return. The Data Analysis Unit is a group of statisticians and economists that uses trend research and analysis and other techniques to identify areas of noncompliance and to develop strategies to improve compliance through examinations as well as techniques that do not involve an examination of an organization's books and records. The Exempt Organization Financial Investigations Unit, staffed with specialists and forensic accountants, conducts examinations of organizations identified as potentially involved with fraudulent transactions.

Several areas of concern to the IRS include donors who claim deductions for charitable contributions while maintaining control over the contributed assets, blurred lines between "related" and "unrelated" activities, high executive compensation, and types of executive compensation (such as revenue sharing or equity-based arrangements). Finally, the IRS has redesigned Forms 990 and 990-EZ, the tax return filing forms for tax-exempt organizations, in an effort to increase the transparency of tax-exempt organizations.

According to Commissioner Miller, the IRS regularly encounters lax governance practices on the part of tax-exempt organizations during examinations. Continuing education by personnel involved with a tax-exempt organization to stay abreast of requirements is an important tool to avoiding missteps and avoiding inviting an IRS examination. The IRS has a lot of resources available to tax-exempt organizations through stayexempt.org or the general IRS website, irs.gov.

Coping with Foreclosures

The news media reports that foreclosure rates are up across the county, and some jurisdictions are dealing with very high numbers of foreclosures. This has left some communities with a number of vacant properties while banks try to sell the properties. Many banks are overwhelmed with the quantity of homes in their inventory. The problem has been magnified by the financial instability faced by many banks today. In addition, bank failures, the government's takeover of some banks, and the sale of assets of other banks means that the players continue to change. It can be difficult to know who to deal with about a vacant property, much less how to deal with it.

A vacant foreclosed property owed by a bank can mean that no one is taking care of the home. Unfortunately, with the bleak financial forecast for the United States, some of these properties may be vacant for quite some time. Lack of home maintenance takes its toll on the community over time. During the growing season, the grass may not be cut, weeds may get high, and the shrubs may be overgrown, but if the property remains vacant for a longer period, the home may fall into disrepair. Not only do neighbors have to look at the shabby property every day, but poor maintenance can affect the property values of everyone in the community.

Generally, there is something that can be done in these cases. Unfortunately, it is not always simple to undertake. The first thing that needs to be done is to try to determine the name of the owner of the property. The bank does not become the owner of a property until the foreclosure sale has occurred and the property has been conveyed to the bank by a deed. A process must be followed by the bank prior to the foreclosure sale, which generally involves providing notice to the owner of the bank's intent to foreclose and notice of a public or private sale. During this process, a property is often said to be "in foreclosure," although, technically, foreclosure has not yet occurred. This process can take quite some time, depending on whether the bank wants to push it through

or delay foreclosure to avoid responsibility or to work out a compromise with the existing owner.

In some cases, the homeowner moves out right away after receiving notice from the bank while in other cases the homeowner stays in the home after foreclosure has occurred and the bank has to undertake eviction proceedings to remove the homeowner. Therefore, while the homeowners may have already moved out, the foreclosure may not have occurred, and the bank may not yet be the owner of the property.



In order to find out the name of the owner, a search of the deed records is required. Some states and counties provide online access to deed records. In other cases, a trip to the county courthouse or land records office is required. If the deed records do not show a change in ownership, but the property is being listed for sale, ask the real estate agent for the owner's contact information. If you are able to get a copy of the deed, the deed will list the owner's name, but you may have to get an address or phone number for the new owner from the tax assessor's office or the closing attorney shown on the deed.

Once you obtain the name and contact information for the bank, write and/or call the bank and inform bank representatives of the bank's responsibilities as an owner. Once a bank becomes an owner, it has the same responsibilities for the property as any other owner, although it may or may not be responsible for any delinquent assessments due at the time of the transfer in ownership. The bank has the responsibility to maintain the property consistent with the community standards, covenants, and rules, and the bank owes assessments during its period of ownership. In some cases, the bank may agree to hire a landscaper or contractor already providing services to the community to perform maintenance without the association being forced to undertake enforcement action.

The association has the same remedies against a bank for failure to comply with the standards that it would have against any other owner, and you should review the community's governing documents to determine the

We would be pleased to send **The Client Letter** to friends and business associates who you feel would benefit from receiving it. Just send our office a note with their names and addresses or give us a call at 404-659-6600.

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remedies available. The most effective remedy against an absentee owner in the case of a failure to maintain the property is a right of self-help. The association may also be able to fine an owner for non-compliance, but fining may not make the bank actually start maintaining the property. Where self-help is permitted by the governing documents, a procedure is usually required, which generally involves giving the owner notice of the violation, a period of time during which the owner can cure the violation without penalty, and notice of the association's intent to cure the problem if it is not remedied within the cure period. This notice should be sent by certified mail to document receipt by the bank of the notice.

Under the self-help remedy, if the bank does not correct the problems within the cure period agents for the association can enter the property and perform the required maintenance. This does not mean that the association is at liberty to improve the property with additional plantings or to repaint the home in a more attractive color, but the association can perform work that is required to properly maintain the property. Generally, where self-help is permitted, the governing documents also allow the association to charge its costs in performing the required work back to the owner.



Inside News

- Check out our new website at www.hspclegal.com.
- Wayne Hyatt is serving as the 2008 U.S. Chair-Elect of the Anglo-American Real Property Institute.
- Wayne, along with Carl Lisman, a Vermont attorney, presented "Two Ordinary Guys Discuss Professionalism" at the 2008 Annual Meeting of the American College of Real Estate Lawyers in San Francisco in October.
- Jo Anne Stubblefield is chairing and serving on the faculty of the ALI-ABA Course of Study on Resort Real Estate and Clubs in Savannah, Georgia, on November 13-14, 2008.
- David Herrigel and Jan Bozeman will be presenters at the National Business Institute program "Legal Aspects of Condominium Development and Homeowners' Associations" in January in Atlanta.

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