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Columns

Real Estate Insider

Posted 11/30/2005
By Moshe Lazarus, Esq.

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Stock Transfer Stamps

Dear Moshe:

I recently sold my co-op apartment in Jackson Heights and moved to Manhattan. I was prepared for most of the closing costs I had to pay (like transfer taxes, the broker's commission, and the co-op attorney's fees). However, there was one fee that caught me by surprise, and that was the \$580 the co-op attorney charged me for stock transfer stamps.

This was the first time I ever heard of stock transfer stamps (my lawyer did not mention anything about these stamps when he listed the closing costs that I should expect), and I was surprised to have this extra fee. What are stock transfer stamps? Should I have paid for them? If so, why didn't my attorney tell me about them ahead of time (when I asked him at the closing, he told me that they weren't very common, and that he didn't think I would be charged for them. Does this make any sense to you)? I guess it's not that big a deal, but I just wanted to make sure that I wasn't taken advantage of. Thanks in advance for your answer.

Answer:

Thank you very much for your interesting question. For the record, I do not think that \$580 is "not that big a deal," and I am happy that you have given me the opportunity to help you recover at least a portion of this money. In responding to your question, I will first provide you (and our readers) with some background information regarding stock transfer taxes, and will then address your particular situation.

As you have recently learned, New York State imposes a "stock transfer tax" on sales of shares of stock, payable at the rate of five cents for each share sold. The payment of this tax is made by purchasing what are known as "stock transfer stamps" and affixing them to the certificate of stock that is being transferred, and then canceling these stamps by hand.

Now, as we have discussed several times in this column, one who owns a co-operative apartment does not technically own real property (as does one who owns a home or even a condominium). Rather, the owner of a co-op holds an ownership interest in the co-operative corporation that owns the building in which the apartment is located. This ownership interest is evidenced by stock certificates issued by the co-op corporation to the owners of each individual apartment unit. These stock certificates, together with the proprietary lease relating to the specific apartment, create and evidence the owner's interest in the co-op apartment.

As such, one who sells a co-op apartment is technically not selling real property, but rather is

selling the shares of stock he holds in the co-operative corporation. This being the case, he, like any other person who sells shares of stock in New York, is obligated by law to pay the stock transfer tax. Of course, this is the reason that you were required to pay for the stock transfer stamps at the closing.

However, unless there is more to the story that was not included in your letter, I am afraid that your attorney has not taken care of you as well as he should have. You see, although the stock transfer tax must be paid, **it likewise, is 100% refundable to the seller.** [The question of why a tax is assessed if it is 100% refundable is a good one, and the answer is beyond the scope of this column.] Thus, although you were required to pay for the stock transfer stamps, you were likewise entitled to apply and receive a rebate for the tax you have paid, and your attorney should have advised you of this right.

What's more, even if you did not intend to apply for a rebate, the tax law explicitly states that the maximum amount one may be taxed in connection with any single sale of stock shares is \$350. Of course, the \$580 you were charged well exceeds this limit. Both your attorney and the co-op's attorney (who charged you for the stock transfer stamps and collected this amount) should have been aware of this limit, and you should not have been required to pay as much as you did.

However, it is likely that these wrongs may still be remedied. You see, the tax law allows a person who has paid the stock transfer tax in a timely manner, a period of two years, to apply for the rebate to which he is entitled. As you indicate in your letter, that the sale was fairly recent, it is likely that this period has not yet lapsed, and that you are therefore still entitled to apply for a rebate for the stock transfer taxes you have paid.

Now, in fairness to your attorney, I will tell you that his mistakes (as well as those of the co-op attorney) may very well not have been due to laziness or impropriety. Rather, these mistakes may have simply been the result of your attorney's lack of familiarity with the provisions of the tax code that were called into play in your situation.

You see, as your attorney told you at the closing, the payment of stock transfer taxes and the application for stock transfer tax rebates are in fact fairly uncommon. The reason these matters are so uncommon is that, due to the fact that the stock transfer tax is 100% refundable, many co-op attorneys simply do not bother requiring the seller to pay the stock transfer tax at all. [It is important to note that although this practice is quite common, I believe that it is not in the best interest of the seller or of the co-op attorney to ignore their obligations with respect to the stock transfer tax.] What's more, even when the tax is in fact collected, it is usually so small (usually between \$10 and \$25) that the amount that would be refunded to the seller simply does not warrant the time and effort necessary to apply for the rebate.


As these matters are so rare, many attorneys (not just your attorney) pay very little attention to stock transfer tax issues, and are therefore not prepared to advise or protect their clients appropriately, when unusual circumstances present themselves. Of course, this does not condone or pardon your attorney's mistake, but may perhaps allow you to view his oversight in a different light.

That being said, I do think that you were not protected adequately, and am happy that the means to remedy this wrong are likely still available to you. Thus, I would urge you to insist that your attorney assist you in making your application for the rebate (as I believe he should have done originally), and that you make sure to see this application through, to its conclusion.

I will conclude by wishing you much hatzlacha and happiness in your new apartment, and in all that you do.

DISCLAIMER: The advice contained in this column is general in nature, and may vary greatly depending on the particulars of a given situation. For this reason, one should not act in reliance on the advice set forth in this column without first consulting with Mr. Lazarus or another attorney.

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