

EASING THE PAIN: PROPERTY TAX APPEALS

In a troubled real estate market, property owners may suffer both “insult and injury” in the form of increased property taxes. Some counties have not adjusted property tax values to reflect decreasing property values. Fortunately, property owners have the option of filing property tax appeals to challenge valuations and obtain more equitable valuations.

Deadline for Appeal

For properties with tax values greater than \$300,000, property tax appeals must be filed with the county district court on or before April 30. See Minn. Stat. § 278.01. A tax appeal petition should be served upon:

- The County Auditor;
- The County Attorney; and
- The County Assessor.

For straight-forward tax appeals, the Minnesota Tax Court provides a “form” petition that can be used, and one of the following documents must be attached:

- Valuation Notice;
- Notice of Proposed Tax; or
- Property Tax Statement.

Tax court appeal forms are located at www.taxcourt.state.mn.us. Click on “Forms,” Go to “Form 7.”

For properties with tax values less than \$300,000, there is a “small claims” procedure. There is also an “informal” method through the Board of Equalization. A property owner may appeal in person or by letter to the Board of Equalization. This is an informal assessment review procedure between property owners and the assessor/appraiser. If the property owner and the assessor/appraiser are unable to reach an agreement, the property owner may proceed with an appeal to the tax court by filing an appeal before April 30 (see above).

Most disputes are resolved prior to the parties going to trial. If presented with persuasive evidence, most

assessors are willing to listen to arguments that the property is overvalued. In the vast majority of cases, these matters are settled with the assessor prior to a full property tax appeal.



Is It Worth It?

Making the effort to file an appeal, negotiate with the County, and reach a resolution, requires investments of both time and money. In addition to time invested by the property owner, an attorney may need to be hired, and an appraiser will need to be identified who will testify that the value of the property is lower than the amount assigned by the assessor.

Nevertheless, savings can be significant. For example, an income producing property in Richfield, Minnesota, assessed at \$7.9 million pays a total tax of \$262,000. If an appealing taxpayer could receive even a ten percent reduction in tax value (assessed value of \$7.1 million), the potential tax savings would be approximately \$29,000.

While tax appeals only apply to the current year for commercial buildings, there is obviously a “ripple effect” for future values, as the property tax appeal valuation will set a “new floor” value going forward.

Additionally, with respect to specific types of properties, there are limitations in valuation increases. For agricultural, residential, timber and non-commercial seasonal, the amount of increase following the assessment challenge is limited to fifteen percent of the preceding assessment value, or thirty-three percent of the difference between the current assessment and the preceding assessment. In the second year, the property tax increase cannot exceed fifty percent of the difference between the current and preceding assessments.

“A PROMISE IS A PROMISE” BETWEEN A CONTRACTOR AND ITS SUB: INDEMNITY PROVISIONS WILL BE ENFORCED

On December 4, 2007, the Minnesota Court of Appeals held that an indemnity provision contained in a builder's contract with its subcontractor is valid and binding. The agreement required the subcontractor to defend, indemnify and hold harmless the contractor in disputes relating to the subcontractor's work. *Howard Homes Inc. v. Keeler Stucco, Inc.*, (Minn. App. Nos. A06-2036 and A06-2327, December 4, 2007).

In the Howard Homes case, a homeowner brought a claim against the builder for moisture intrusion and code deficiency violations. The home builder tendered its claims to the subcontractor relying upon an indemnification provision contained in its contract with the subcontractor, requiring the subcontractor to indemnify and defend the contractor for any claims relating to the subcontractor's work:

“[Subcontractor] shall protect, defend, hold harmless and indemnify [Builder], its employees, agents, etc. from and against any and all claims, actions, liabilities, losses and expenses allegedly or actually suffered by any person, including but not limited to, injury or death of persons or damage to property, arising out of or in any way relating to work, services or activities of myself or any of my officers, employees or agents. This shall not be reduced, eliminated or limited by the insurance coverage I have provided as a subcontractor.”

The subcontractor moved to have the case dismissed, arguing that the provision was unenforceable because it could permit a contractor to escape liability for its own negligence. Both the District Court and the Court of Appeals held that



the provision was enforceable and that the subcontractor had a duty to indemnify and defend the contractor under the terms of the agreement.

The significance of this decision is that it affirms that contracts between subcontractors and builders will be strictly enforced, and that both contractors and subcontractors should carefully read and understand the terms of any agreements they sign. This is especially true in a legal environment where homeowners are increasingly willing to bring actions against builders and general contractors for defects in construction.

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Alice O'Brien Berquist Joins Felhaber Law Firm



The law firm of Felhaber, Larson, Fenlon & Vogt, P.A. is pleased to announce **Alice O'Brien Berquist** has joined the firm's St. Paul Office. Ms. Berquist most recently served as Associate General Counsel for Allina Health System, handling employment law matters for its 22,000 employees. Earlier in her career she was an attorney in Felhaber's Labor & Employment Section. Ms. Berquist will focus her practice on labor and employment law and estate planning. We are delighted to have her rejoin our professional staff.

Ms. Berquist can be reached at 651-312-6014 or aberquist@felhaber.com.

BACK TO THE BASICS: THE FUNDAMENTALS OF PERFECTING A MECHANICS' LIEN

With the current slump in the housing market, mechanics' lien foreclosures are on the rise. Contractors and subcontractors are increasingly forced to rely on mechanics' liens to ensure they receive payment for work performed. An error is the last thing a contractor wants to discover while attempting to foreclose a lien. Even a minor technicality can cause a contractor to lose its lien rights. It is important that everything from the pre-lien notice to service of the mechanics' lien statement is consistent with Minnesota law.

When determining the steps to take to ensure a valid mechanics' lien, a contractor should ask itself a number of questions:

1. Am I required to give pre-lien notice?
2. Is my mechanics' lien statement accurate?
3. Did I properly serve and file my mechanics' lien statement?

Pre-Lien Notice

The first thing a contractor has to do is determine whether it is required to provide pre-lien notice. Every contractor that has contracted or will contract with another to provide labor or materials must give pre-lien notice to the owner. Unless a contractor plans to provide all the labor and materials itself, it is likely required to give pre-lien notice. The notice must be included in any written contract. If the contract is oral, the pre-lien notice must be delivered personally or by certified mail within 10 days of entering into the contract. In addition to the general contractor, essentially all other people that contribute to the improvement of real property (i.e. subcontractors and suppliers), are required to give pre-lien notice to the owner. Again, the notice must be delivered personally or by certified mail and must be given within 45 days of the first day of work. Minnesota law sets forth specific language that must be included in any pre-lien notice and requires that the notice be in 10-point font and in bold type or all capital letters. If the pre-lien notice is not in the proper form, the lien is not valid.

Despite the seemingly all-encompassing reach of the

pre-lien notice requirement, there are a few exceptions. A contractor that is managed or controlled by the same people that manage or control the owner is not

required to give pre-lien notice. Similarly, a contractor that works on a project that is wholly residential in character with more than four family units can forego pre-lien notice. Finally, if the project is wholly or partially nonresidential, is not agricultural, and the improvements add more than 5,000 usable square feet of space, no pre-lien notice is required. If there is any doubt as to whether one of the exceptions applies, it is best to err on the side of providing the pre-lien notice. Failure to provide pre-lien notice when required invalidates the mechanics' lien.

Mechanics' Lien Statement

Contractors must also be wary of potential pitfalls in the mechanics' lien statement itself. Minnesota has strict requirements for the contents of a mechanics' lien statement. It is critical that the contractor strictly complies with the requirements to avoid the types of errors that have cost other contractors their liens. A contractor should pay particular attention to the dates of work, the description of the property and the amount of the lien. Failure to include this information, or including inaccurate information, may cause a contractor to lose its lien rights.

For example, an inaccurate description of the real property may invalidate the lien. The description must be sufficient to allow a person to identify the property. The contractor must also be sure to accurately state the dates of the first and last item of contribution. This is particularly important with the last item of contribution because the time period for filing and serving the lien runs from the last date of work. Finally, if a contractor knowingly overstates the amount of the lien, the contractor will not be entitled to a lien. If the parties have a contract, the amount of the lien must be the agreed price. If the parties do not have a contract, the amount of the lien should be the reasonable value of the work performed.



Service and Filing

The final step in ensuring a contractor has an enforceable lien is making sure the lien statement is served and filed properly. The mechanics' lien statement must be served within 120 days of the date of the last item of contribution. The lien statement must be served personally or by certified mail. It can be served upon the owner, the owner's authorized agent, or, in the case of subcontractors and suppliers, the person who entered into a contract with the contractor.

The mechanics' lien statement must also be recorded. The lien statement must be recorded in all counties where the property is located. If the property is abstract, it must be filed in the office of the county recorder. If the property is Torrens, it must be filed in the office of the registrar of titles. If it is both, it must be filed in both offices. The lien statement must be filed within 120 days of the date of the last item of contribution. If it is not filed within 120 days or it is filed in the wrong office, the contractor will not be entitled to a lien. Contractors should beware that the performance of de minimis work for the sole purpose of extending the time for filing a lien is insufficient to revive an untimely

lien. In order to best protect itself, a contractor should serve and file its lien statement within 120 days of its last substantive work.

Conclusion

With the increasing challenges facing contractors in the current housing market, lien rights are of utmost importance. Now is the time to review your procedures and ensure you are not inadvertently waiving your lien rights. If you have questions about the requirements for properly perfecting a mechanics' lien, you should seek competent legal advice.

(This article contains a general overview of the law. This article does not constitute and should not be treated as legal advice as to any particular situation.)

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2008 COMPLIMENTARY FELHABER SEMINARS

MARK YOUR CALENDARS!

Our upcoming seminars focus on a variety of timely legal topics presented by our firm attorneys. Seminars include a complimentary continental breakfast and/or luncheon.

<u>Topic</u>	<u>Date</u>	<u>Location</u>
Property Manager Seminar	Wednesday, March 12	Sheraton West Hotel Minnetonka, MN
Workers' Compensation Seminar	Friday, April 25	Town & Country Club St. Paul, MN
Multiemployer Seminar	Thursday, May 29	Town & Country Club St. Paul, MN
HIPAA Training Seminar	Wednesday, June 18	Town & Country Club St. Paul, MN
Labor & Employment Law Seminar	Friday, October 10	Mall of America Marriott Bloomington, MN

To receive a seminar invitation, e-mail kdyck@felhaber.com. State your name and address with the name of the seminar(s) you wish to attend. One month ahead of the seminar date log on to www.felhaber.com to register online.

STATE CONTRACTORS MUST USE E-VERIFY FOR ALL NEW EMPLOYEES



On January 7, 2008, Governor Tim Pawlenty signed an executive order requiring, among other things, all vendors with state contracts of over \$50,000 and their subcontractors to:

- a. certify that they are in compliance with the Immigration Reform and Control Act of 1986 (“IRCA”); and
- b. certify that they have or are in the process of implementing the E-Verify program for all newly hired employees in the United States who will perform work on behalf of the State of Minnesota.

The State now has the ability to terminate the vendor’s contract if the vendor or subcontractor(s) knowingly employ workers in violation of federal immigration laws. The State will institute procedures to ensure vendors and their subcontractors are in full compliance with IRCA as well as a scoring incentive program for businesses which implement E-Verify for new hires. The Order will be effective on January 29, 2008.

What is E-Verify?

E-Verify is an Internet based system operated by the Department of Homeland Security in partnership with the Social Security Administration that allows participating employers to electronically verify the employment eligibility of their newly hired

employees. Participating employers can sign up for E-Verify at the following website:

<https://www.visdhs.com/EmployerRegistration/>.

Who Is A “Vendor” Under The Executive Order?

A representative of Governor Pawlenty’s office has indicated that the term “vendor” is accorded the broadest meaning possible under Minn. R. 1230.0150, subpart 27 and includes natural persons or business entities that provide any technical, administrative and/or physical services to the State of Minnesota.

If you have any questions regarding Governor Pawlenty’s Executive Order No. 08-01, signing up for E-Verify, for tips on how to properly handle I-9 forms, or for advice on how to audit subcontractors’ hiring procedures, please contact Le Phan at (612) 373-8407 or hphan@felhaber.com.



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NEW SHAREHOLDERS AT FELHABER

Felhaber, Larson, Fenlon & Vogt, P.A. is pleased to announce that three of its attorneys were recently appointed as shareholders: Marnie Fearon, Eric Riensche and Rich Savelkoul.

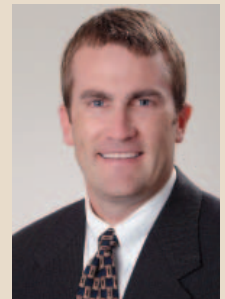
Ms. Fearon practices in the areas of general litigation. Mr. Riensche primarily practices in the areas of civil litigation and appellate practice. Mr. Savelkoul represents business and energy clients. Log on to www.felhaber.com to review their individual biographies.



Marnie Fearon



Eric Riensche



Rich Savelkoul

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Likewise, platted vacant land is subject to limitations on increases in tax value. An assessment may be limited to one-third of the difference between the property's unplatted value and the market value based upon the highest and best use of the platted property, with an additional one-third in the second and third years. See Minn. Stat. § 273.11. For plats outside of the metropolitan area, there are even greater limitations on the ability to increase unplatted properties. To the extent property tax assessors are increasing tax values up to these limitations or, to the extent the value of the properties can be demonstrated as having not increased, then the amount the assessor can or should increase the property value is correspondingly limited.

Conclusion

In a market of decreasing property values, especially for single and multi-family developed and undeveloped lots, property owners should be ready to challenge increased property tax assessments. Minnesota has procedures in place which can ease the pain of paying taxes on properties which are no longer appreciating. If you have any questions regarding property tax appeals or for assistance with filing an appeal, please contact Steve Yoch.

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Real Estate Report

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The Real Estate Report is an update on legal developments. It is not intended to be legal advice and should not be relied upon without consulting counsel.

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Catherine Sjoberg, Felhaber attorney, serves as editor of this publication. Please contact her at csjoberg@felhaber.com if you have any story ideas or comments you would like to share.

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