

Time To Fix NYC's Broken Property Assessment System

By **Seth Feldman** (May 3, 2024)

The existing real estate tax assessment system for residential properties in New York City — a system in place since 1981 — is well known to be wholly unfair and ridiculous.

The Court of Appeals for the State of New York, in its recent decision in *Tax Equity Now New York LLC v. City of New York*, issued a shot across the bow by permitting a class action to proceed against the city that, if successful, could throw the entire system in the bin, and force the Legislature to fix the problem.



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The city must now justify in court how a 919 square foot condo worth \$1 million pays \$18,500 in real estate taxes, while a two-family house worth \$2 million pays only \$1,750. It can't.

In a nutshell, for this 1981 system to be fair requires us to make two irretrievably absurd assumptions: (1) the values of all one- to three-family homes, i.e., Class 1 properties, throughout the entire city have and will always go up and down in unison, and (2) cooperative and condominium buildings can be assessed the same way as rentals.

Here's one simple way to fix it.

The simplest and fairest way to tax all residential property is to do so at the same rate, which means single-residential condominium units and residential cooperatives should be in Class 1 with one- to three-family homes. From the street, a 100-unit condo or co-op and a 100-unit rental may all look alike, but they operate entirely differently.

Rentals seeks to maximize income, i.e., rent, to maximize profit. Landlords want all apartments paying as much rent as possible, and capital improvements are made to all elements of the building, most notably the apartments themselves, to further maximize profit. It therefore makes sense to assess a rental based on rent paid per square foot or some income-based approach, because those numbers determine what the building is worth.

Condos and co-ops want to keep income, e.g., maintenance and assessments, as low as possible to cover common element expenses while at the same time maintaining adequate reserves to improve upon those same common elements whenever necessary or desired.

Condos and co-ops do not invest money to improve upon any individual apartments, the individual owners do. Condos and co-ops don't want residents paying as much rent as possible; they want their individual apartments sold for as much as possible, because individual apartments are largely valued on what other apartments in the same building are sold for. Lower bills help those values.

Finally, condos and co-ops are not in the business of selling and buying buildings; that's what landlords do. While an occasional condo or co-op will vote to dissolve itself and sell the entire building to an outside investor, this is extraordinarily rare.

Rather, condos and co-ops are in the business of reselling individual parts of themselves, i.e., single-residential apartments. It therefore makes sense to assess condos based on price paid per square foot and co-ops based on price paid per share, and not a wholly fictional, often inaccurate, fair market value of a building that will never be sold.

Reclassify condos and co-ops as Class 1 and have each self-certify their own values backed with empirical evidence and comparables. The NYC Department of Finance will have the power of audit, and buildings will have the power to appeal, just as they do now.

Let each condo and co-op publicly declare what they believe their apartments are worth, on average on a per square feet or share basis, and then let them pay taxes accordingly in Class 1. After that, just as they do now, the Department of Finance will assess as it sees fit, and the individual homeowners will have the right to appeal, but this time based on reality.

But remember, the Class 1 assessment caps still apply. If a condo or co-op building's reassessment using Class 1 standards results in an increase to the unabated property tax obligation larger than 6% from the 2024-2025 fiscal year, then 106% of the 2024-2025 tax obligation can be reversed engineered into an effective market value, and the Class 1 caps will continue to apply going forward.

The next step would be to reassess properties after an arm's-length sale. The current system does not allow properties to be reassessed after they are sold, which is absurd. No existing Class 1 properties would see any changes of any kind until they get sold. Under the new system, when the two-family home in Brooklyn purchased in 1992 for \$300,000 sells in 2027 for \$3 million, the home is subsequently reassessed as a \$3 million property, and the buyer who paid \$3 million will be paying those bills.

To be clear, we are only talking about the full assessment of a property. The city and state will still be able to adopt abatement programs as they see fit to either alleviate burdens and encourage investment.

The foregoing provides for fair transitions into an equitable system and, perhaps most importantly, one that is predictable and easy to utilize. Real estate brokers and attorneys will be able to advise prospective purchasers what their new tax bill will be upon reassessment and when that reassessment will likely occur.

Sponsors of newly constructed residential condominiums would now effortlessly estimate the unabated tax bills for every apartment based on simple math, instead of using complicated and highly imperfect opinions of outside experts filled with caveats and qualifiers.

At the same time, no one is faced with the daunting hardship of suddenly being unable to afford their own home.

Now is as good a time as any to fix things. Let's do it fairly.

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