

Co-op Coalition Survey: Fee for Loss of Homestead Deduction Credit (3- 2024)

16 co-ops responded.

Sent: Thursday, February 22, 2024 at 03:34:12 PM EST

Subject: CO-OP SURVEY - FEE FOR LOSS OF HOMESTEAD DEDUCTION CREDIT (REP) (DUE 3-8)

A Coalition member wants to know about charging a fee for loss of homestead deduction credit. Please reply by Friday March 8, 2024. Thanks in advance for helping another Coalition member. The background and questions follow:

Background: Cooperative apartment buildings receive a homestead deduction on assessed valuation that reduces the property tax. This homestead deduction credit is based on the number of apartments who meet the requirements of DC residency. Some apartment owners may not meet this deduction because they have qualified tax residency in other states or countries and may not file DC tax returns. When this happens the building loses a portion of the homestead deductions and thus causes an increase in the property tax.

Questions:

1. Does your coop charge those apartments who do not qualify for the homestead credit the proportional amount of the increased property tax to cover the loss of the homestead deduction?
2. Assuming that your governing documents provide for this additional fee, does your coop include reference to this fee in your By-laws or House Rules?
3. If you are willing to share the language used in your governing documents, please provide the text.

Note: The responses to this survey contain varying arrangements and raise several issues that were posed to the DC Cooperative Housing Coalition Legal Counsel. The following is general information about the applicable DC tax laws from DC/CHC's Legal Counsel and is not intended as legal advice to any individual cooperative.

The senior tax credit is an individual tax benefit to be paid only to each qualifying senior resident who has submitted the necessary information to the District. OTR used to issue a separate check for each qualifying resident, so that this credit was paid directly from the District to the resident, to ease his/her financial burden. Lately, OTR has been issuing an aggregate check to each cooperative and expecting the cooperative to distribute the senior tax credits to its qualifying senior residents. We have seen no legal authority for this aggregate check approach, but that is how OTR has been doing it.

The Homestead Deduction, on the other hand, is issued to the "taxpayer" that owns the real property and is responsible for paying the real property tax. That is the cooperative itself, as a corporate entity. A cooperative receives one Homestead Deduction for each resident who qualifies, and, if a majority of the apartments are occupied by persons who qualify for the Homestead Deduction, OTR will consider the cooperative's property to be "owner occupied residential real property," eligible for the 10% real property tax "cap." That means that, no matter how much the tax assessment on the property may increase from one year to the next, the actual real property tax bill cannot increase more than 10% from one year to the next.

Typically, a cooperative's governing documents provide that each shareholder/member is responsible for paying a specific percentage of all corporate expenses, including taxes paid by the corporation. If that is the case, the cooperative would not have legal authority to allocate its real property taxes in any other way. However, if a cooperative's bylaws or ownership contract/proprietary lease provides that the cooperative may charge a particular shareholder/member for corporate expenses on the basis of the particular benefit derived, or the particular burden caused, by that individual, that may provide a legal basis for requiring the shareholders/members who do not qualify for the Homestead Deduction to pay larger shares of the corporation's real property taxes, to make up for the Homestead Deductions that the corporation did NOT receive. In any case, as usual, each board must consult with the cooperative's own legal counsel and get advice about what their own documents might, or might not, allow.

Best regards,

Janet Sten, Director

DC Cooperative Housing Coalition

<http://www.CoopsDC.org>

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<40 units	<p>1. Yes, we recover from shareholders the full value of any lost Homestead deduction</p> <p>2. Yes, By-laws describe that any lost Homestead deduction is the responsibility of a shareholder.</p> <p>3. ARTICLE XV – REIMBURSEMENT OF HOMESTEAD DEDUCTION AND TRASH CREDIT BY NON-QUALIFYING SHAREHOLDERS</p> <p>Any shareholder who does not qualify for the D.C. Homestead Deduction as a resident of The Lehigh for a particular tax year must reimburse the corporation the amount of the Homestead Deduction benefit and the Trash Credit lost. The Board of Directors will calculate the amount of this charge and notify the shareholder of the amount, and the shareholder is responsible for reimbursing the corporation in one lump-sum payment made within thirty (30) days of such notice.</p>
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<p><40 units</p>	<p>1. Does your coop charge those apartments who do not qualify for the homestead credit the proportional amount of the increased property tax to cover the loss of the homestead deduction?</p> <p>Yes.</p> <p>2. Assuming that your governing documents provide for this additional fee, does your coop include reference to this fee in your By-laws or House Rules?</p> <p>Yes, in our By-Laws.</p> <p>3. If you are willing to share the language used in your governing documents, please provide the text.</p> <p>Each member shall for any year either (a) qualify his or her apartment unit for the District of Columbia's homestead exemption and tax credit by submitting a valid certificate, if necessary, or (b) reimburse the Corporation for any additional taxes or fees that it must pay to the District of Columbia due to the owner's failure to qualify his or her unit for the homestead exemption and tax credit.</p>
<p><40 units</p>	<p>Our coop does not charge a fee for loss of homestead deduction. Over the years we have had residents who maintain their primary residence elsewhere, sometimes because their coop unit is rented consistent with our governing documents, and we have never penalized them.</p>
<p><40 units</p>	<p>1. Does your coop charge those apartments who do not qualify for the homestead credit the proportional amount of the increased property tax to cover the loss of the homestead deduction?</p> <p>No, although we have discussed charging a fee to cover the loss of the homestead exemption from those coop apartments that are no longer claimed as the primary residence.</p> <p>2. Assuming that your governing documents provide for this additional fee, does your coop include reference to this fee in your By-laws or House Rules?</p> <p>Not applicable.</p> <p>3. If you are willing to share the language used in your governing documents, please provide the text.</p> <p>Not applicable.</p>
<p><40 units</p>	<p>1. Does your co-op charge those apartments who do not qualify for the homestead credit the proportional amount of the increased property tax to cover the loss of the homestead deduction?</p> <p>As president of the co-op, last Fall I requested that our property manager, EJJ Real Estate, which manages our accounts, to credit only eligible shareholders with the homestead tax exemption. Presently the homestead benefit is shared among all co-op shareholders, including ineligible non-occupant shareholders.</p> <p>EJJ refused my request, saying the manner of allocating homestead deduction must be addressed in our by-laws, which it is not. Ironically, EJJ said they didn't need by-laws language for the senior citizen tax deduction which they credit to the eligible individuals.</p>

	<p>So I spoke with Robin Butler, co-op tax specialist in the DC Tax Office, who clarified it is <u>not the intention</u> of the homestead exemption to benefit non-eligible shareholders. Eligibility is clearly defined on the DC tax website. I pointed this out to our property manager to no avail.</p> <p>Ms Butler added the tax office makes no requirement on how the co-op is to allocate the homestead benefit among its eligible co-op shareholders. It is up to the co-op to manage their own tax accounts.</p> <p>Ms. Butler explained that the benefit amount is flat \$714 per unit, regardless of share percentage. Allocating this exemption amount to all residents, including non-eligible shareholders, reduces the benefit to the eligible shareholders. This, she added, can result in a substantive loss to the intended beneficiaries over the years.</p> <p>2. Assuming that your governing documents provide for this additional fee, does your coop include reference to this fee in your By-laws or House Rules?</p> <p>No, but a proposal may be forthcoming to add language that the homestead must be granted ONLY to eligible shareholders. Unfortunately, this would not make up for losses from previous years. It's still an open question why our property manager does not need language in the by-laws for the senior tax deduction which they credit to the individual.</p> <p>3. If you are willing to share the language used in your governing documents, please provide the text.</p> <p>None to share at the moment.</p>
<40 units	<p>1. Does your coop charge those apartments who do not qualify for the homestead credit the proportional amount of the increased property tax to cover the loss of the homestead deduction?</p> <p>Yes, we charge this as a monthly add-on to base cooperative fee.</p> <p>2. Assuming that your governing documents provide for this additional fee, does your coop include reference to this fee in your By-laws or House Rules?</p> <p>From our By-Laws:</p> <p>The board of directors shall have the power and authority to adopt, policies, rules and regulations which may impose reasonable charges against individual members and those seeking to become members or lessees for providing services or incurring certain expenses which are caused by or for the benefit of less than the entire membership.”</p>
40-60 units	<p>1. We do not do this. 2. We don't have any provision that specifically prohibits or allows it. 3. N/A</p>
40-60 units	<p>1. The co op does not charge shareholders who have out of state residency but it does assess shareholders who sublet their units for the loss of the homestead deduction on those units.</p>

	<p>The co-op bylaws allow for reasonable fees on sublets including actual expenses.</p> <p><i>bylaws language</i></p> <p><u>Fees on Assignment, Subletting or Reallocation.</u></p> <p>The Board of Directors shall have authority to impose a reasonable fee on the assignment of or subletting under a Proprietary Lease, or the reallocation of shares, to cover actual expenses and attorneys' fees of the Corporation in connection with each such proposed transaction, and may direct that such attorneys' fees be paid directly to the attorneys. In the event the Board imposes such a fee, no assignment, sublease or reallocation of shares will be effective against the Corporation as Lessor until the fee is paid.</p>
40-60 units	<p>1. Does your coop charge those apartments who do not qualify for the homestead credit the proportional amount of the increased property tax to cover the loss of the homestead deduction fees?</p> <p>No.</p> <p>We discussed (and argued) this issue. We considered altering our co-op fees to break out "gross property tax" as a separate line item against which each unit's "homestead exemption" credit would apply. Sadly, the math was against us since simply dividing gross property tax (before exemptions) by total shares resulted in a "per share property tax" line item (gross tax prior to exemptions/shares) that was higher than the current in-place net property tax/shares for five or six large units. This meant that at least two board members would be billed for more net property tax than they previously in any prior year. Both members were influential votes, although both went on record claiming that "money was not the issue," and their stance was only a matter of principle. In the end, of course, the issue was never called to a vote because it was clear that the proposal would fail. (That's politics.)</p> <p>Next, we considered invoicing for our "lost opportunity" property tax. No, that was not going to pass either because "this was not the original agreement signed by prospective buyers." (We only have one lawyer on our board, but we have a bunch (too many) of "lawyer-ish" members.) This argument relies on the "likely" co-op fees as provided by Realtors when a purchaser makes a purchase decision.</p> <p>Our board then, as a sort of salve, finally passed a requirement that FUTURE buyers must sign an agreement to being billed extra fees to compensate for having failed to abide by our Bylaws (must be your "primary residence"). So that was our "solution." It was politics at its finest: "Don't tax me, tax that fellow behind the tree" (Huey Long).</p> <p>This answer written by possibly only one of two votes that would have made the larger units pony up their actual tax instead of forcing the little units to pay more than they actually owed.</p> <p>2. Assuming that your governing documents provide for this additional fee, does your coop include reference to this fee in your By-laws or House Rules?</p> <p>Our governing documents (2021) did not anticipate property tax issues that never existed until the DC government granted individual homestead exemptions to co-operative</p>

	<p>members. Sorry, no help here.</p> <p>3. If you are willing to share the language used in your governing documents, please provide the text.</p> <p>Our governing documents are from 1921. They are useless for anticipating future tax rules.</p>
40-60 units	<p>Our co-op does not currently have any system in place to charge a fee for the loss of homestead deduction credits. However, this is a concern for us, as we do have many residents who do not live in the building full time.</p> <p>We'll be very interested to hear about the results of this survey and if there is any suggested language to include in governance documents for this exact issue. Our Governance Committee is currently going through a revision of our by-laws and it would be great to include something on this topic.</p>
40-60 units	<p>1. Does your coop charge those apartments who do not qualify for the homestead credit the proportional amount of the increased property tax to cover the loss of the homestead deduction? No we do not.</p> <p>2. Assuming that your governing documents provide for this additional fee, does your coop include reference to this fee in your By-laws or House Rules? N/A</p> <p>3. If you are willing to share the language used in your governing documents, please provide the text. N/A</p>
>150 units)	<p>1. Does your coop charge those apartments who do not qualify for the homestead credit the proportional amount of the increased property tax to cover the loss of the homestead deduction? YES</p> <p>2. Assuming that your governing documents provide for this additional fee, does your coop include reference to this fee in your By-laws or House Rules?</p> <p>THE FEE IS REFERENCED IN THE HOUSE RULES LAST UPDATED BY THE BOARD IN 2019. HOWEVER, FY 2024 IS THE FIRST YEAR WE HAVE ATTEMPTED TO CHARGE NON-PRIMARY RESIDENTS. ATTACHED IS THE LETTER WE FORMULATED TO SEND TO ALL SHAREHOLDERS IN THE FALL.</p> <p>3. If you are willing to share the language used in your governing documents, please provide the text.</p> <p>SEE BELOW FROM SECTION OF HOUSE RULES. CHANGING HOUSE RULES ONLY REQUIRES MAJORITY VOTE OF OUR BOARD.</p> <p>Cooperative Homestead Deduction Application</p> <p>1. All shareholders who reside in the Saxony and constitute their primary place of residence are required to file the District of Columbia Cooperative Homestead Deduction Application with the General Manager. The deduction results in a reduction in</p>

	<p>the assessed value of the Cooperative's real property, thereby reducing the annual real property tax liability.</p> <p>2. Any shareholder who does not claim its primary residence as the Saxony (1801 Clydesdale PL NW, Washington, D.C. 20009) or does not file an exemption form will be assessed substantially equivalent to that portion of the Saxony's annual real property tax that would have been avoided if the shareholder had obtained the Homestead Exemption.</p> <p>See Additional Attachment</p>
>150 units	<p>1. Does your coop charge those apartments who do not qualify for the homestead credit the proportional amount of the increased property tax to cover the loss of the homestead deduction?</p> <p>Yes, we do. It is a by-pass, we directly charge those shareholders who b/c of whatever reason didn't qualify for the homestead exemption. We charge the same amount that the city surcharges the coop for every stockholder who didn't qualify.</p> <p>2. Assuming that your governing documents provide for this additional fee, does your coop include reference to this fee in your By-laws or House Rules?</p> <p>Our by-laws had to be amended to allow us to charge these stockholders.</p> <p>3. If you are willing to share the language used in your governing documents, please provide the text.</p> <p>(b) Notwithstanding any other provision of these By-Laws or any provision of any Stockholder Lease, if a stockholder fails to qualify for a Homestead Deduction under the laws and regulations governing the District of Columbia Real Property Tax, and if such failure results in greater Real Property Tax liability for the Corporation, the Board may assess that stockholder, and that stockholder shall pay, an amount equal to the additional Real Property Tax payable by the Corporation as the direct result of the stockholder's failure to qualify for a Homestead Deduction."</p>
>150 units	<p>1. Yes. Those shareholders who have a homestead exemption on file are charged a reduced amount for their taxes. Those who do not have a homestead on file pay a higher amount.</p> <p>2. This is not included in our bylaws.</p>
>150 units	<p>1. Does your coop charge those apartments who do not qualify for the homestead credit the proportional amount of the increased property tax to cover the loss of the homestead deduction?</p> <p>No.</p>
>150 units	<p>1. Does your coop charge those apartments who do not qualify for the homestead credit the proportional amount of the increased property tax to cover the loss of the homestead deduction?</p>

No. We cannot per our attorney although it was discussed.

2. Assuming that your governing documents provide for this additional fee, does your coop include reference to this fee in your By-laws or House Rules?

N/A

2. If you are willing to share the language used in your governing documents, please provide the text.

N/A