

Rosenberg & Estis, P.C.

COMMERCIAL REAL ESTATE REPRESENTATION

Proposed New §421-a Legislation Announcement

Dear Clients:

As you may have heard, Governor Cuomo has introduced a bill to enact what he calls the "Affordable Housing New York Program". The bill proposes to extend tax exemption benefits to new residential developments which meet construction wage and affordability requirements. The bill enacts a new subdivision 16 to §421-a which replaces an earlier version that was enacted in June, 2015, but never became effective based on the inability of REBNY and the trade unions to reach a wage agreement by the January, 2016 deadline. The bill is part of the Governor's budget which is scheduled to be adopted by April 1, 2017.

This is an evolving situation, and the final terms of the new §421-a will not be known until the statute is enacted by the Legislature and signed by the Governor. We will advise you about the final elements of new legislation as soon as it is enacted.

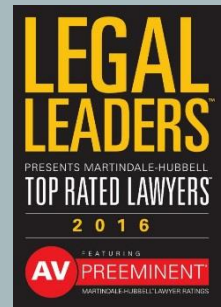
At present the bill proposed by the Governor includes the following significant points:

- The bill re-enacts most of the provisions adopted by the State Legislature in the June, 2015 Rent Act. Those provisions include:
- High rent deregulation applies to apartments in buildings receiving the new §421-a benefits. As a result, new §421-a buildings will not be precluded from using the high rent deregulation rules which apply to otherwise rent stabilized apartment buildings. However, eligibility for high rent deregulation in new §421-a buildings will depend on how high rent deregulation is applied to otherwise stabilized buildings. (See our firm's recent newsletter regarding the *Altman* high rent deregulation cases.)
- Affordability requirements apply for 35 years after construction is completed (they apply for 40 years for enhanced benefit buildings). Designated affordable apartments will only be deregulated from rent stabilization as a result of a vacancy after the expiration of the 35 year restriction period.
- Under new subdivision 16, the same three affordability options that were in the 2015 Rent Act, will apply to new §421-a projects:

Option A: 25% of the apartments must be affordable, 10% at or below 40% of AMI, 10% at or below 60% of AMI, 5% at



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or below 130% of AMI; (tax exempt bond financing and tax credits are permitted).

Option B: 30% of the units must be affordable, 10% at or below 70% of AMI, 20% at or below 130% of AMI.

Option C: 30% of the apartments must be affordable, at or below 130% of AMI.

- Option C buildings cannot be located south of 96th Street in Manhattan, and other areas designated by the City Council; Options B and C are not eligible for tax exempt bond financing.
- Option A, B and C projects are eligible for a 35 year tax exemption. The first 25 years, a 100% exemption applies; the final 10 year exemption benefit is pro-rated, depending on the affordability option selected.

The New Enhanced Affordability and Benefits:

- Large rental projects with 300 or more apartments in the "Enhanced Affordability Areas" must be constructed paying the Manhattan, Brooklyn or Queens enhanced project wages to be eligible for tax benefits. Generally the wages average \$45.00 per hour for Brooklyn and Queens projects, and \$60 per hour for Manhattan projects.
- Enhanced Affordability Area projects receive a 100% exemption for 35 years after construction is completed.
- Affordability requirements for Enhanced Affordability Area projects are set forth as Options E, F and G, and those affordability requirements apply for 40 years. As a result, the affordability requirements remain in effect for at least 5 years after the tax exemption expires.

Option E: at least 25% of the apartments are affordable, 10% at or below 40% of AMI, 10% at or below 60% of AMI, 5% at or below 120% of AMI. Option E permits tax exempt bond financing and tax credits.

Option F: at least 30% of the apartments must be affordable, 10% at or below 70% of AMI, 20% at or below 130% of AMI.

Option G: 30% of the apartments must be rented to tenants at or below 130% of AMI. This option is only available in the Brooklyn and Queens Enhanced Affordability Areas, and tax exempt bond financing is not available.

- **Opting in and Election:** (1) Large projects with 300 or more apartments which are not within the Enhanced Affordability Areas have certain rights to opt into enhanced benefits by complying with the new affordability requirements and (2) eligible projects commenced on or before December 31, 2015 may elect to qualify for subdivision 16 benefits

by complying with the applicable subdivision 16 requirements. This election is not available if §421-a benefits have already been applied to the pre-2016 project.

Extended Benefit For Pre-July 1, 2008 §421-a Buildings:

- The Governor's proposed new subdivision 16, leaves in place subdivision 17 of §421-a, which was enacted in the 2015 Rent Act. Under subdivision 17, projects commenced before July 1, 2008, which currently include affordable units and currently qualify for the 20/25 year tax exemption may qualify for extended benefits. Extended benefits include a 50% tax exemption for years 26-35, or a 50% exemption for years 21-35 if a twenty year benefit was previously granted. In order to qualify for the extended benefits, in addition to the current 20% of apartments which are affordable, additional affordability must be provided. The number of affordable apartments during the extended period must increase to 25%; the additional affordable apartments must be rented to households which do not exceed 130% of AMI.

Legal and Political Process:

At this point in time, all of these provisions are part of the Governor's proposed budget that has been submitted to the State Legislature. Until the State Legislature enacts these new §421-a provisions and they are signed into law by the Governor, none of this has the force and effect of law. Additionally, even after the State Legislature enacts the law and it is signed by the Governor, the City's Department of Housing Preservation and Development ("HPD"), will have to promulgate regulations, policies and procedures to actually implement the new benefit rules.

This is a process that our firm has participated in for almost four decades, and one with which we are very familiar. We will send updates to you as this new §421-a law advances, and we look forward to the opportunity to advise you regarding any legal questions you may have. For more information, please contact:

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Respectfully yours,

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