



ROSENBERG & ESTIS, P.C.

NEWSLETTER
July 2017 | Vol. 2



We Help Shape the NYC Skyline



Message from a Member at R&E: Michael E. Lefkowitz



"Thank you so much for taking time to read our newsletter. It is our pleasure to provide expert advice on current and evolving real estate issues and trends."

HOT TOPIC | INDUSTRY UPDATE

The New 421-a

featuring Daniel M. Bernstein, Elise J. Kessler, Frank E. Chaney and Nicholas Kamillatos



HPD Says New 421-a Exemption is too Generous, Plans to Restrict 421-a Units “Double Dipping” Under Inclusionary Housing Program.

Residential Developers Should Look to Alternative Zoning Programs: Rosenberg & Estis, P.C. is leading the way in Alternative Zoning Programs.

The New 421-a property tax exemption under Real Property Tax Law Section 421-a(16) was signed into law on April 10, 2017 (the “New 421-a”) and already is reshaping residential development in NYC. The New 421-a applies to projects commencing construction from January 1, 2016 until June 15, 2022 and also may be available to projects which commenced construction in 2015 and prior under certain circumstances.

On June 27, 2017, R&E attorneys Daniel M. Bernstein, Frank E. Chaney, Nicholas Kamillatos and Elise J. Kessler presented an important panel discussion on the New 421-a program and the zoning, financing and rent regulatory programs and issues which may allow savvy developers to build larger, taller and better projects with more advantageous economics.

This alert will summarize some of the major issues which were addressed in the June 27th event and that will be of interest to NYC developers and property owners.

New 421-a

What is the New 421-a and what does it do? The New 421-a is a long and valuable property tax exemption for mixed-income rental projects which make 25% or 30% of their units affordable. It is available for small homeownership projects, but with less generous benefits. Without the New 421-a, rental projects can expect to pay approximately 25%-30% of gross rents as property taxes. With the New 421-a, property taxes will largely be frozen at or near pre-construction levels for 25 years, with a smaller exemption in years 26-35.

There are 3 main categories of projects which can qualify for the New 421-a:

- Rental projects of fewer than 300 units and certain larger rental projects (depending on their location). These projects can receive 35-year 421-a benefits.
- Small homeownership projects outside of Manhattan, 35 or fewer units, AV limit. These projects can receive capped 20-year 421-a benefits.
- Rental projects of 300 or more units located in an Enhanced Affordability Area (EAA) or 300+ unit projects located elsewhere that elect to follow construction wage requirements. These projects may have three Affordability Options available, must pay a minimum average construction wage (\$60 per hour in Manhattan EAA, \$45 per hour in Brooklyn or Queens EAA). These projects can receive enhanced 35-year 421-a benefits, have longer affordability restrictions and certain other differences from smaller projects.

R&E is leading the way in advising developers on the New 421-a, including how to switch a project from the old-law 421-a program to the New 421-a Program. If you have a residential project that commenced construction in 2015 or prior and are seeking benefits under the expired 421-a program, please feel free to contact the attorneys listed below to discuss whether the New 421-a program is a possibility for your project.

HPD Will Amend Inclusionary Housing Program Rules to Eliminate 421-a “Double-Dipping” For Off-Site Projects

In response to the New 421-a’s more generous property tax exemption benefits and general incompatibility with condominium and cooperative projects, HPD has proposed amending the Rules of the Inclusionary Housing program to prohibit affordable units that qualify for 421-a property tax exemption benefits from also generating off-site bonus floor area through the Inclusionary Housing program. This means that an affordable housing unit could either receive property tax exemption benefits under the

We are in the process of verifying with HPD whether this proposed change to the Inclusionary Housing Program would apply only to the Voluntary Inclusionary Housing (VIH) Program or to the Mandatory Inclusionary Housing (MIH) Program as well.

Fortunately for developers, there are alternatives that may still allow New 421-a affordable units to also generate a zoning bonus: on-site Inclusionary Housing (VIH and MIH) and Senior Housing aka Affordable Independent Residences for Seniors. There are also important rent regulatory changes in New 421-a (as compared to the expired 421-a program) that are worth attention.

Inclusionary Housing On-Site

The voluntary Inclusionary Housing program is still available in two areas, R10 (and R10 equivalent) zoning districts and Inclusionary Housing Designated Areas. Mandatory Inclusionary Housing is still required in Mandatory Inclusionary Housing Designated Areas. Developers must satisfy HPD’s approval process in order to participate in either Inclusionary Housing program. This means compliance with HPD’s strict design, unit size, unit distribution and UFAS requirements and underwriting approval, among other requirements. As long as the affordable units are built on the same site as the market rate units, “double-dipping” is still allowed: i.e., the units can be counted as satisfying the requirements of both the Inclusionary Housing program and the New 421-a tax exemption program.

Senior Housing

In March of 2016, there was a change in the zoning resolution that will allow a developer who may not be able to participate in the VIH program to increase the project’s residential floor area. This new option is senior housing, referred to as Affordable Independent Residences for Seniors (“AIRS”). To receive a bonus for AIRS, a project must satisfy certain affordability, age and use requirements. As with on-site Inclusionary Housing, on-site AIRS may also be counted as satisfying the requirements of both the AIRS program and the New 421-a tax exemption program.

Conclusions

The New 421-a program is compatible with several zoning incentive programs and financing programs, including the Inclusionary Housing on-site program, Senior Housing, and various financing programs. Developers and property owners should focus on what the New 421-a may mean for their projects and properties and may want to take advantage of this important tax incentive program.

Contact Information for Questions Regarding the New 421-a:



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R&E EVENTS

Developers Panel: the New 421-A

Follow-up Article Featured Above



On June 27, 2017, our lively panel discussion shared important updates regarding the New 421-a tax exemption, Voluntary and Mandatory Inclusionary Housing, senior housing and rent regulation. We will keep you on our list for alerts about further developments in the affordable housing area as well as other new legal developments in real estate. Additionally, we will notify you about upcoming R&E events.

Councilman David G. Greenfield Event



On May 22nd, 2017, Rosenberg & Estis, P.C. recently was honored to welcome City Councilman David G. Greenfield to address members of the firm on issues related to development in New York City.

Greenfield represents the 44th District in Brooklyn's Bensonhurst, Borough Park, Midwood and Ocean Parkway neighborhoods. He is chair of the city's Land Use Committee, overseeing zoning, landmarks, sidewalk cafes and city land and public facilities.

Speaking at R&E, Councilman Greenfield addressed the current development landscape in New York City, highlighting the de Blasio administration's focus on affordable housing as its primary consideration with respect to citywide development. Greenfield explained the dynamics

of the current approval process and said that while there is now a greater level of public scrutiny of discretionary land use actions than in the past, many projects can still proceed as-of-right.

With regard to affordable housing, the Councilman said that in addition to expanding housing opportunities for very low-income families, attention must also be paid to creating more affordable housing for moderate and middle income families.

Councilman Greenfield highlighted the success of the city in clearing up the Landmarks Preservation Commission's calendar backlog of nearly 100 properties, some of which had sat on the calendar, unacted upon for 50 years. He also highlighted recent legislation that he had sponsored to require the Landmarks Commission to act on properties within a year of being calendared to ensure that such a backlog doesn't reoccur.

Other land use topics discussed by the Councilman, both in his formal remarks and in the Q&A session afterward, included the zoning proposal for East Midtown currently in public review, which will allow the area's landmarked properties greater latitude for transferring unused air rights in exchange for paying into a development fund to finance transportation improvements in and around Grand Central; the recent renewal of the hotel conversion moratorium, originally passed by the Council in 2015; and currently pending legislation at the Council that will place tighter restrictions and requirements on variance applications before the Board of Standards and Appeals.

Recap of CLE regarding 'Current Issues in Affordable Housing in NYC'



On May 4th, 2017, R&E attorney, **Daniel M. Bernstein** moderated a CLE program at The New York City Bar Association. Mr. Bernstein moderated a panel that offered the inside perspective from private and public sector practitioners with extensive experience in the real estate industry and in affordable housing in New York City.

During this program attendees learned all about the revised 421-a program that was just enacted and renamed the "Affordable New York Housing Program." Participants gained perspective and

insight into the statutory, regulatory, and practical considerations that will drive market rate and affordable housing development into the future.

Recap of CLE regarding 'AirBnB Under Siege: The Evolving Legal Landscape for Short-Term Rentals in NYC'



On April 20, 2017 at the New York City Bar Association, **Alexander Lycoyannis** was honored to moderate a CLE panel discussion entitled "AirBnB Under Siege: The Evolving Legal Landscape for Short-Term Rentals in NYC." The panel consisted of Lycoyannis's law partner **Michael A. Pensabene**, New York City Civil Court Judge Jack Stoller, and New York State Assembly member Linda Rosenthal. It was a lively and informative discussion and the panel absolutely knocked it out of the park.

BISNOW ARTICLES FEATURING R&E ATTORNEYS

BISNOW featuring **Adam R. Sanders**



"What I am seeing is opportunistic developers looking to discover new, underutilized areas, and one of the ways that they are doing that is to go into communities outside of New York City along established transit lines," Sanders said.

Transit Lines Become The Next Frontier For Workforce Housing Development

June 13, 2017 | Travis Gonzalez

Following New York City Mayor Bill de Blasio's pledge to bring 80,000 new low-cost units to the city, affordable housing development has become a popular topic. But within the spectrum of development, which runs the gamut from low-income apartments to luxury penthouses, units reserved for workforce housing, households making from 60% to 120% of the area median income, are a less prominent part of the conversation.

More than 1 million people, often older workers and middle class families, have moved out of the New York City area since 2010, at a yearly rate of 4.4%.

As the economy improves and workers relocate to cheaper areas farther from urban centers, developers looking for a lower barrier to entry have found opportunity outside the five boroughs, along the transit lines that feed into the city.

Please [click here](#) to read the entire article.

BISNOW featuring **Brett B. Theis**



"Scott is a very well-known and well-respected guy in Brooklyn, with a huge client base. When he spoke out, it struck a chord and it hurt the DOB," Theis said. "So the DOB decided to target him after the New York Times article, utilizing the vague and overbroad statute to ban him for life."

Scott Schnall Case Moves To Federal Court, Challenging The Constitutionality Of DOB Statute

May 17, 2017 | Travis Gonzalez

Scott Schnall's battle with the New York City Department of Buildings is moving to federal court.

Following the successful application to set aside 300 DOB stop-work orders for Schnall's projects, the new claim argues that the law granting the DOB discretionary power to permanently revoke filing privileges is unconstitutional and being abused by the department.

The case has the potential to loosen the DOB's vice grip on New York's design and construction professionals, many of whom do not speak out against the department's policies and regulations in fear of retaliation.

Please [click here](#) to read the entire article.

BISNOW featuring **Michael E. Feinstein**



"Unit owners can go two years during the course of a lien foreclosure action and not pay anything, and then prior to the foreclosure sale save the apartment from foreclosure by paying all amounts due to the board," Feinstein said.

Heywood v. Wozencraft Adds To Condo Board Toolbox For Dealing With Delinquent Unit Owners

April 18, 2017 | Travis Gonzalez

On Jan. 12, the Appellate Division, 1st Department of the New York State Supreme Court, affirmed the Supreme Court's ruling ejecting a condominium unit owner, Steven Wozencraft, from his apartment after he refused to pay common charges. The decision marked an unusual occurrence: the eviction of an owner from his own property.

Heywood v. Wozencraft makes for an important addition to the limited toolbox New York City condo boards have in dealing with delinquent unit owners.

Please [click here](#) to read entire article.

**BISNOW featuring
Deborah E. Riegel**

**NYC Rent Regulation Remains A
'Tightrope Walk' For Owners
Looking To Deregulate Units**

**March 20, 2017 | Travis
Gonzalez**

Following the 2015 Altman decision, owners are still grappling with the legal uncertainty surrounding rent regulation. A November 2016 decision by a lower appellate court to reject the Altman ruling has only added to the ambiguity behind setting apartment rent prices in NYC — which has increased the number of class action lawsuits against owners.

Deborah Riegel, a member of Rosenberg & Estis' Litigation Department, has seen this before. "Roberts drew the legal roadmap on how to do this," she said. In 2009, tenants had a historic Court of Appeals victory with the Roberts decision. Under the ruling, residential properties that took advantage of the J-51 tax abatement while under renovation cannot be deregulated, effectively rolling back rents for the affected tenants.

Please [click here](#) to read the entire article.



**BISNOW featuring
Frank E. Chaney and Elise J. Kessler**



"Everybody likes the idea of affordable housing, but when it comes down to specific buildings in a specific neighborhood, it seems to be turning out to be a much harder sell," Frank Chaney, a land use attorney, said.

"There are developers who want to develop, are willing to go through the MIH program, but they are taking a backseat to see what happens with the new 421-a," Kessler said.

**NYC's Mandatory
Inclusionary Housing Policy
Causes Uncertainty And
Hesitation Among Developers**

**Feb 20, 2017 | Travis
Gonzalez**

Last year, NYC Mayor Bill de Blasio proposed, and the city council approved, a mandatory inclusionary housing policy for new construction projects on sites that have been upzoned or use a special permit to increase floor area. Under the program, developers can construct taller and denser residential buildings but must provide up to 30% of the floor area as affordable housing. Mandatory inclusionary housing represents a significant step in the mayor's plan to increase neighborhood economic diversity. It is also controversial.

Please [click here](#) to read entire article.

PRESS RELEASES

**ROSENBERG & ESTIS REPRESENTS
EMERALD CREEK CAPITAL IN \$41.5
MILLION BRIDGE FINANCING**

*Firm Served as Legal Counsel for Lender for
Midtown East Condo Tower Transaction*

Rosenberg & Estis, P.C., New York City's largest real estate law firm, served as legal counsel for lender Emerald Creek Capital in a one-year bridge financing deal, totaling \$41.5 million, with New Empire Real Estate Development.

Please [click here](#) to read more.

(Rosenberg & Estis, P.C. Team: [Michael E. Lefkowitz](#), [Eric S. Orenstein](#), [Steven R. Goldberg](#) and [David Fries](#))

**ROSENBERG & ESTIS, P.C. SECURES
POSSESSION OF RENT-STABILIZED
APARTMENT IN AIRBNB CASE**

*Property Owner Granted Possession After
Tenant Rents Apartment On Airbnb*

R&E has secured summary judgment granting possession of a rent-stabilized apartment to the property's owner, 859 Ninth Avenue LLC, after the tenant violated the lease by renting the unit on Airbnb and by using it as a hair salon.

Please [click here](#) to read more.

(Rosenberg & Estis, P.C. Team: [Michael A. Pensabene](#) and [Isaac Tilton](#))

**ROSENBERG & ESTIS, P.C. REPRESENTS
THE DURST ORGANIZATION IN ONE
WORLD TRADE CENTER BROADCAST
LICENSE AGREEMENT**

*ION Media Will Utilize Tower for Flagship TV
Station Digital Broadcast*

Rosenberg & Estis, P.C., New York City's largest real estate law firm, served as legal counsel to The Durst Organization in a deal to relocate ION Media to the top of the 408-foot spire that caps the 1,776-foot One World Trade Center in Lower Manhattan.

Please [click here](#) to read more.

(Rosenberg & Estis, P.C. Team: [Robert M. Kessler](#), [Jean S. Tom](#) and [Charles Caldarola](#))



**ROSENBERG & ESTIS REPRESENTS THE
DURST ORGANIZATION IN THE
PURCHASE OF PIERS AT PENN'S
LANDING**

*R&E attorneys provide counsel for Durst's
complex acquisition of the Piers at Penn's
Landing*

Rosenberg & Estis, P.C., New York City's largest full-service real estate law firm, served as legal counsel for The Durst Organization in its purchase from Brandywine Realty Trust of a net

ROSENBERG & ESTIS, P.C. NAMES THREE NEW EQUITY MEMBERS; DESIGNATES TWO ATTORNEYS AS MEMBERS

The law firm of Rosenberg & Estis, P.C. announced the promotion of five attorneys. [Jason R. Davidson](#), [Eric S. Orenstein](#), and [Deborah E. Riegel](#) have been named equity members of the firm, while [Steven R. Goldberg](#) and [Adam R. Sanders](#) will become members of the firm.

“We are pleased to continue a period of controlled growth within the firm, from the addition of new attorneys, to the expansion of the executive leadership,” said firm founder, Gary Rosenberg. “By focusing exclusively on real estate, we have been able to provide a superior level of service to the real estate industry in New York City.”

Please [click here](#) to continue reading.



ROSENBERG & ESTIS, P.C. SECURES EVICTION OF GENTLEMEN’S CLUB FROM PRIME TIMES SQUARE PROPERTY THEREBY ALLOWING DEVELOPMENT TO PROCEED

Rosenberg & Estis, P.C., New York City’s largest real estate law firm, successfully obtained the removal of a gentlemen’s club commonly known as Cheetahs from the former Hotel Carter, which had been purchased by a client of Rosenberg & Estis, P.C. Cheetahs was one of the last two tenants remaining at this important property, occupying ground floor space which interfered with the new owners’ plans to redevelop the building and the lobby.

Please [click here](#) to read more.

(Rosenberg & Estis, P.C. Team: [Norman Flitt](#) and [Laura Davidov](#))

ROSENBERG & ESTIS, P.C. VICTORIOUS IN APPELLATE TERM, SECURES EVICTION IN ELABORATE ‘ILLUSORY TENANCY’ SCHEME

Tenant Falsely Claimed Rights to Rent-Stabilized Unit

Rosenberg & Estis, P.C., New York City’s largest real estate law firm, has secured a victory for its client in a Civil Court trial and a subsequent appeal to the Appellate Term, First Department, securing possession of a rent-stabilized apartment after unraveling an elaborate scheme perpetrated by the tenant and her alleged roommate (“Appellant”), who claimed rights to the unit by alleging that the tenant of record was an illusory tenant.

Please [click here](#) to continue reading.

(Rosenberg & Estis, P.C. Team: [Deborah E. Riegel](#), [Ethan R. Cohen](#) and [Ilya Prokopets](#))

lease interest in “The Piers at Penn’s Landing,” located in Philadelphia, Pennsylvania. The site consists of Piers 12-15, 19 and 24 North situated along the Delaware River waterfront and is one of the main attractions in Philadelphia for residents and tourists alike. The property currently is home to a Dave & Buster’s entertainment complex, a Hibachi Japanese Steakhouse, Morgan’s Pier beer garden, the Philadelphia Marine Center marina, and a parking facility operated by DLC Management.

Please [click here](#) to read more.

(Rosenberg & Estis, P.C. Team: [Christopher A. Nicosia](#))

ROSENBERG & ESTIS REPRESENTS ONE WORLD TRADE CENTER IN BUILDING AMMENITY FLOOR MANAGEMENT AGREEMENT

New floor will offer a host of amenities for building tenants

Rosenberg & Estis, P.C., New York City’s largest real estate law firm, served as legal counsel for One World Trade Center in its agreement with meeting and event operator, Convene, to manage the buildings new 31,300 square foot amenity space, on the 64th floor in the 3.1 million square foot tower.

Please [click here](#) to continue reading.

(Rosenberg & Estis, P.C. Team: [William Byers](#) and [Stefanie M. Graham](#))

ROSENBERG & ESTIS REPRESENTS THE DURST ORGANIZATION IN HERALD SQUARE RETAIL LEASE



Firm Represented Owner in 47,000-Square-Foot Lease for a Nordstrom Rack

Rosenberg & Estis, P.C., New York City’s largest real estate law firm, served as legal counsel for The Durst Organization in a lease for approximately 47,000 square feet of retail space in The Durst Organization’s new mixed use building, EOS, located at 855 Sixth Avenue in Manhattan. In addition to the retail space, the building contains approximately 150,000 square feet of office space (which has been fully leased) and approximately 375 residential rental apartments.

Please [click here](#) to continue reading.

(Rosenberg & Estis, P.C. Team: [Dennis I. Hellman](#), [Jolie E. Meer](#) and [Stefanie M. Graham](#))

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