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COMMERCIAL REAL ESTATE REPRESENTATION

GOVERNOR CUOMO ISSUES 421-A REPLACEMENT BILL: "AFFORDABLE HOUSING NEW YORK PROGRAM" SET TO RESOLVE CONSTRUCTION WAGE DISPUTE AND INCENTIVIZE MIXED-INCOME PROJECTS

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On January 15, 2017, Governor Andrew Cuomo introduced a 421-a replacement bill as part of his New York State budget proposal. The bill, titled the "Affordable Housing New York Program" (aka the "Governor's Bill"), would both renew the 421-a property tax exemption program as passed and signed into law in June of 2015 (the "2015 Statute"), and resolve the construction wage impasse created by the 2015 Statute. Because the Affordable Housing New York Program is included in the NYS budget proposal, an on time budget would mean that the changes it proposes could take effect as soon as April 1st. Given that the NYS Assembly and NYS Senate will have to pass any 421-a replacement legislation, it is also possible that there could be changes to the Governor's bill and that the process could take until June's end of legislative session to be resolved. The absence of 421-a since the end of 2015 means that residential developers and other stakeholders should remain cautious when planning to develop properties under the Affordable Housing New York Program.

Rosenberg & Estis, P.C. previously summarized the main features of the Governor's Bill, including it's proposed resolution of the construction wage issue. Please [click here](#) to review the article.

This article is intended to address considerations that developers and property owners may have or may want to think about going forward.

DEVELOPER CONSIDERATIONS

- For projects commencing in 2016 and after, developers and property owners will want to see how well the options of the Governor's bill align with other requirements and incentive programs (voluntary or mandatory IH program, ZQA, subsidy programs, etc.), as well as with reasonable project underwriting.



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- For projects which commenced construction in 2015 and prior, and have not yet received benefits under 421-a, developers will also want to analyze whether it makes sense to opt into the Affordable Housing New York Program instead of sticking with 421-a benefits under the 421-a Statute in effect as of commencement of construction. For example: will the 35 year or 35 year enhanced benefits under the Affordable Housing New York Program outweigh the costs involved in complying with the revised affordability requirements (under Options A - G) and construction cost requirements (for certain projects of 300 or more units). Developers will also want to weigh the value of being able to have 70% - 75% of rental units be rented at free market rents and exempt from rent stabilization (upon those units reaching the high-rent de-regulation threshold).

- Under the 2015 Statute, projects commencing construction between June 23, 2015 and December 31, 2015 face a deadline to complete construction by December 31, 2019. One way or another, developers will have to decide whether to complete their projects by the 2019 deadline and qualify for benefits under the 2015 Statute or to comply with the requirements of the Affordable Housing New York Program to obtain 35 year benefits. Decisions will have to be made soon if the December 31, 2019 completion deadline is to be met.

- Developers of sites which commenced construction in 2015 and prior may want to retain the flexibility to opt into the Affordable Housing New York Program if it becomes law and if its terms are preferable to those of the old 421-a Statute. This may mean both proceeding with construction (to try to meet the 2019 completion of construction deadline) and also delaying filing or completing an application for 421-a PCE until the Affordable Housing New York Program becomes law and its requirements are finalized. Retaining the flexibility to opt into the Affordable Housing New York Program may involve modifying marketing of units, so that there is a possibility to market and rent the 25% or 30% of units at the affordability options contained in the Affordable Housing New York Program.

Rosenberg & Estis is monitoring the legislative developments relating to the Governor's bill and is available to advise on [economic incentives](#), affordable housing, [land use](#) and a full range of [real estate matters](#).

Respectfully yours,

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