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2017 Was the Year of New York City Real Estate Disruption

As the old saying goes, only change is constant.

Indeed, 2017 saw several major legal and regulatory changes and proposals that are already impacting New York City property ownership and development. As 2018 begins, the real estate community should expect to see further legislative and regulatory changes that will impact taxation, financing, development rights and more. But some of the major changes from 2017 are worth thinking about. And what will what their passage mean for the future?

First, there was the renewal of the 421a tax exemption.

In April of 2017 New York's legislature renewed the 421a property tax exemption, providing a valuable incentive program for new residential projects that commence construction before June 2022. The new program contains different affordability requirements than the old program, including a longer exemption period and one that is primarily available for new rental projects. Developers and lenders quickly learn that the new 421a can only be applied for after completion of construction, making it even more critical to confirm the eligibility of residential projects through the review and advice of 421a counsel and in consultation with the New York City Department of Housing Preservation & Development (HPD). Without a 421a preliminary certificate of eligibility (as was available during construction under the old program, no longer available under the new 421a program), a counsel's 421a opinion letter becomes even more essential for developers, borrowers and lenders.

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Following the renewal of the 421a statute, HPD and the City Comptroller adopted rules to: a) implement the new 421a program, b) limit the ability of new 421a projects to generate additional development rights under the voluntary Inclusionary Housing program and c) add documentation requirements for payment of prevailing wages to building service employees and, for the first time, to clarify how developers of large 421a projects are to meet minimum average wage construction requirements.

The city also passed two local laws that subject all properties receiving 421a benefits to regular audits by HPD as to their properties' compliance with rent registration and affordability requirements. Many large property owners are already reviewing their 421a properties' compliance with these and other 421a requirements in advance of HPD's audits, which are scheduled to begin in the fall of 2018.

Second, there were ICAP Rules issued. In March 2017 the New York City Department of Finance issued final rules for the Industrial and Commercial Abatement Program (ICAP). The ICAP rules provide critical guidance on how to mitigate increases in property taxes relating to renovation, expansion and new construction of commercial property throughout New York City. New ICAP projects are also subject to filing fees, for the first time.

Next is federal tax reform, which was signed into law in December 2017. While it appears that private activity bonds and low-income housing tax credits are still allowed, it remains to be seen what demand there will be for these programs among developers, borrowers and potential purchasers of these tax credits. If these tools are unable to keep up with the demand for housing finance, developers and borrowers will look to other tools and financing sources to pick up the slack.

Fourth, rezoning continued its march forward. Throughout 2017, the City Planning Commission and the City Council evaluated various rezoning proposals, several of which became law (East Midtown, East Harlem, among others). The effects of these rezonings will be seen in new residential, commercial and mixed-use developments. Owners and developers of sites in rezoned areas are expected to align their development plans with property tax incentives and financing programs, to fully incentivize development in rezoned areas.

During 2018, owners and developers will be faced with opportunities and new requirements from these legal and regulatory changes and proposals.

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