

REAL ESTATE WEEKLY

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Looking ahead to the challenges and opportunities coming in 2020

2019 was a critical year for NYC real estate operators, developers, lenders and investors. Legal changes were numerous and their effects on values were profound.

These changes require careful analysis and evaluation of how they affect your investments.

Major Legal Developments

June 2019: The enactment of the Housing Stability and Tenant Protection Act of 2019 (HSTPA) brought wide-ranging change to the rent laws of New York City and State. HSTPA's changes include the permanent renewal of rent stabilization (which no longer requires periodic state legislative reauthorization), the repeal of vacancy allowances, new limits to rent increases under Major Capital Improvement (MCI) and Individual Apartment Improvement (IAI) provisions and the repeal of high rent deregulation for almost all residential properties — except for certain properties which qualify for benefits under the Affordable New York Housing Program (formerly known as RPTL § 421-a(16) and aka 421-a).

HSTPA's effect on rent stabilized multifamily properties was immediate and significant. The market has sharply reduced values, leaving owners with disincentives to renovate and buyers and lenders are evaluating increased exposure to overcharge claims.

Existing rent stabilized properties which have properly preserved legal rents in excess of preferential rents will continue to be able to charge up to the legal rent, although only on leases following a vacancy.

June 2019: NYS Court of Appeals' decision in *Kuzmich v. 50 Murray Street Acquisition LLC* reversed an Appellate Division decision that rental apartments in properties receiving benefits under RPTL § 421-g (certain Lower Manhattan properties converted to multifamily use) could be exempt from rent stabilization.

Following the *Kuzmich* decision, owners of 421-g properties have been considering their potential exposure to tenant allegations of overcharges.

July 2019: NYC's Department of Housing Preservation & Development (HPD) issued an updated schedule of payments in lieu of providing affordable housing

Legal Viewpoints

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under the Mandatory Inclusionary Housing (MIH) program. The updated schedule involves higher payments and is applicable to smaller projects in MIH areas which can make a payment instead of building permanently affordable MIH units.

July 2019: HPD issues a term sheet and updated guidance for Privately Financed Affordable Senior Housing (PFASH), which provides a path for mixed-market rate/affordable projects to increase their residential floor area, height and to achieve other zoning benefits through providing affordable senior housing.

The PFASH program finally implements the Affordable Independent Residents for Seniors (AIRS) provisions which were included in 2016's amendments to the NYC zoning resolution.

PFASH allows certain multifamily developments which would already contain some affordable units so as to qualify for 421-a to also generate additional residential development rights and benefits if their affordable units also comply with PFASH requirements.

December 2019: The rezoning of Manhattan's Inwood neighborhood, which occurred in 2018 and was attracting interest from developers and concern from residents, was struck down by a NY Supreme Court justice for insufficient environmental review.

This decision marks a setback for the City's affordable housing plan which counts on such rezonings, and the increased residential density they bring, to incentivize residential development and the permanently affordable housing MIH requires.

December 2019: In an attempt to steer some of the City's affordable housing production towards homeless individuals and families, the NY City Council passes

proposed NYC Admin Code Int. 1211(A)(2018) which requires that housing development projects of at least forty-one (41) rental dwelling units receiving discretionary city financial assistance set-aside at least fifteen percent (15) of affordable housing units for homeless individuals and families.

This is expected to take effect on January 18, 2020 and adds an additional layer of requirements on top of affordable housing units already subject to applicant income limitations.

2020 Issues and Possibilities

The various NYS and NYC laws and court decisions have created many changes and have driven a need to reevaluate the market:

- HSTPA still allows owners of rent stabilized properties to charge incoming tenants the legal rent for an apartment. Properties which previously registered and preserved legal rents in excess of a lower preferential rent have the potential to increase rents, upon vacancy up to the maximum legal rent.

- New construction residential projects which qualify for 421-a benefits can still permanently deregulate apartments at the initial rent-up (i.e. be exempt from rent stabilization) provided their initial rents are at or above the applicable high rent threshold (\$2,816.38 in 2020, and subject to change annually). The prospect of the NYS legislature enacting universal rent control is encouraging some NYC developers to participate in the ANYHP program and thereby take advantage of eligible market rate units' ability to achieve high rent deregulation (as well as the valuable 421-a property tax exemption benefits).

- Certain new residential projects which would already be making units affordable to qualify for 421-a benefits will want to consider making some affordable units available to seniors in order to also qualify for valuable zoning benefits (additional residential development rights, additional height, etc.) under the PFASH program.

