

New York State & City Real Estate Legislative Update: Looking Back and Looking Ahead

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Over the past 18 months, several state and local laws affecting New York real estate have been enacted or have taken effect. In addition, as of this writing (August 2, 2022), the New York State Legislature is considering dozens of real-estate related bills, some of which may have far-reaching consequences for players in the real estate industry and their counsel. This article will describe the status and substance of a few of these laws and pending bills that, in our view, are of particular interest to the New York real estate law bar.

I. LOOKING BACK: ENACTED LEGISLATION AND RELATED EVENTS

A. Expiration of NYS Eviction and Foreclosure Moratoria.

On September 2, 2021, following an extraordinary joint session of the Legislature, Gov. Hochul signed legislation that extended the moratoria on evictions of residential

and small business tenants through January 15, 2022. 2021 N.Y. Laws ch. 417. In *Chrysafis v. Marks*, the United States Supreme Court found that the previous moratorium legislation violated landlords' due process rights by not permitting the contest of financial hardship declarations. *Chrysafis v. Marks*, 141 S. Ct. 2482 (2021). To address the Constitutional issue, the new legislation stated that hardship declarations created a "rebuttable presumption that the tenant is experiencing financial hardship." The *Chrysafis* plaintiffs subsequently amended their complaint in the District Court to challenge the new right of contest as illusory, but these efforts have been unavailing to date. *Chrysafis v. Marks*, 2021 U.S. Dist. LEXIS 227977, at *1 (E.D.N.Y. Nov. 29, 2021). With the expiration of the moratoria on January 15, lawmakers have now largely turned their focus to longer-term solutions to the problem of evictions such as the emergency rental assistance programs and, potentially, good cause eviction (see section IIA below). It should be noted that "The COVID-19 Housing Recovery and Relief for All Act," sometimes referred to as the "cancel rent" bill, remains in committee in both houses of the State Legislature. [A.2617, 2021-2022 N.Y. Leg. Sess.](#); [S.4050A, 2021-2022 N.Y. Leg. Sess.](#) In addition, bills are pending that would further extend the moratoria on evictions and foreclosures. See, e.g., [S.8397, 2021-2022 N.Y. Leg. Sess.](#) (foreclosure moratorium extension to May 15, 2022).

B. New Power of Attorney Form. A new power of attorney ("POA") form took effect on June 13, 2021 pursuant to legislation signed into law on December 15, 2020. 2020 N.Y. Laws ch. 323. The 2020 legislation was amended by chapter amendments enacted in March 2021. 2021 N.Y. Laws ch. 84. A POA is one of the most widely used legal documents. It allows an individual (an "Agent") to legally act

on behalf of another (a “Principal”) when it is inconvenient or impossible for the Principal to be present. The law effects major changes to the law governing POAs, which, in the aggregate, represent an attempt to simplify the process of appointment, create protections for third parties who accept POAs in good faith, and limit unreasonable rejections of POAs. The law does not impact the validity of any POA or statutory gift rider executed prior to June 13, 2021. For a useful overview of the POA changes, see Robert D. Lillienstein, *Big Changes to New York’s Power of Attorney Law are Now in Effect*, Moses & Singer LLP (July 1, 2021), available [here](#).

C. Real Estate Transfer Tax Liability Expanded. The New York State budget bill for fiscal year 2022 enacted significant changes to New York State’s real estate transfer tax with respect to conveyances made on or after July 1, 2021, unless the conveyance was made pursuant to a binding written contract entered on or before April 1, 2021. 2021 N.Y. Laws ch. 59. Real estate transfer tax is generally imposed on every conveyance of New York State real property or interest therein when the consideration exceeds \$500. N.Y. Tax Law §1402(a) (McKinney 2020). Absent a written agreement to the contrary, the obligation to pay the transfer tax is imposed on the grantor, but both the grantor and grantee are jointly liable for it. N.Y. Tax Law §1404(a) (McKinney 2021). Under the law, the grantee now has a statutory cause of action to recover transfer tax paid by it from the grantor if the grantor fails to pay the transfer tax, in effect clarifying that the grantor is the true obligor. Notably, the law expands the definition of who is responsible to pay the transfer tax to include the grantor’s officers, employees, managers, or members who are “under a duty to act” with respect to the transfer tax. Officers, employees, managers and members beware! The legislation does not change any provision of the New York City transfer tax.

D. Remote Co-op Board Meetings Legalized. On November 8, 2021, A1237/S1182 were signed into law, thereby amending the Business Corporation Law, the Not-for-Profit Corporation Law and the Religious Corporation Law to allow business corporations, not-for-profit corporations, religious institutions and cooperatives to hold meetings of shareholders, members, trustees, etc., via electronic communication. 2021 N.Y. Laws ch. 588. A8185/S7278A, currently in committee with both chambers of the State Legislature, would make a similar change to Section 339-v of the Real Property Law. [A.8185, 2021-2022 N.Y. Leg. Sess.](#); [S.7278A, 2021-2022 N.Y. Leg. Sess.](#)

E. Reverse Loans on Co-op Units Legalized. On December 1, 2021, Gov. Hochul signed into law A01508/S00760,

which amends the Banking Law, Uniform Commercial Code and Civil Practice Law and Rules so as to authorize “reverse” loans on cooperative apartments in New York State. The law, which does not take effect until May 30, 2022, includes a litany of requirements and borrower protections: for instance, the loans will only be available to persons 62 years of age and older, are non-recourse, and are subject to prior approval by the Board. 2021 N.Y. Laws ch. 643. At least initially, it appears that these loans will be originated and held exclusively in the private market as the Federal Housing Association (FHA) and other federal agencies do not presently recognize them. It remains to be seen what type of market for these loans will develop in time. For a useful summary of the law, see, e.g., Daniel G. Fish, *Reverse Mortgages and Seniors in Co-ops in New York*, N.Y.L.J. (Feb. 16, 2022), available [here](#).

F. Co-ops and Seasonal Dwelling Units Excluded from Certain HSTPA Provisions. Legislation has been enacted that modifies the Housing Stability and Tenant Protection Act of 2019 (the “HSTPA”) insofar as cooperative housing corporations and seasonal dwelling units are concerned. 2019 N.Y. Laws ch. 36. As to co-ops, on December 22, 2021, the Governor signed legislation amending the General Obligations Law, the Real Property Law, and the Real Property Actions and Proceedings Law to exclude co-ops from the ambit of HSTPA provisions, including the limitations on security deposits (capped at a single month’s rent), limitations on late fees (capped at \$50 or 5% of monthly maintenance), and prohibition on landlord’s recovery of attorneys’ fees following a default judgment. 2021 N.Y. Laws ch. 789 (amending N.Y. Gen. Oblig. Law § 7-108, N.Y. Real Property Law §238-a and N.Y. Real Property Law § 234); see also chapter amendments enacted in Feb. 2022 at 2022 N.Y. Laws ch. 93. The December 22, 2021 law does not change the HSTPA as it applies to cooperative housing corporations subject to the provisions of articles 2, 4, 5 or 11 of the Private Housing Finance Law (so-called “PHFL Affordable Developments”). Lawyers who work with cooperative apartments should familiarize themselves with the complete list of co-op carveouts from the HSTPA and the new limitations introduced by the December 22, 2021 law. For a useful summary, see Jeremy A. Cohen et. al., *Co-ops Now Exempt from Housing Stability and Tenant Protection Act*, Seyfarth Shaw LLP (Jan. 4, 2022), available [here](#). As to seasonal dwelling units, the Governor signed legislation amending the General Obligations Law to exclude seasonal dwelling units from the HSTPA limitation on security deposits, but only if the units are rented for 120 or fewer days in any calendar year and are registered with local authorities. 2021 N.Y. Laws ch. 428; see also chapter amendments enacted on Feb. 24, 2022 as 2022 N.Y. Laws ch. 111.

G. Remote Online Notarization. During the pandemic, Executive Orders permitted a Remote Ink Notarization (“RIN”) procedure whereby notaries were permitted to notarize documents remotely, provided that the notary and the signer were physically situated in New York, the notary viewed the transaction remotely, and the notary physically acknowledged the document. See N.Y. Exec. Order No. 202.7 (Mar. 19, 2020), available [here](#). RIN pursuant to the Executive Orders was rescinded effective June 25, 2021. On February 22, 2022, Gov. Hochul signed legislation allowing notarization to occur through a complete electronic format, also referred to as remote online notarization (“RON”), effective January 31, 2023 (at which point it is anticipated that the Department of State will have promulgated regulations necessary to implement the RON system). These regulations will address an online registration system for notaries and standards for ensuring the audio/video technology is secure, conducted in real time and enables the notary to communicate with and identify the signatory at the time of the notarial act. See Governor Kathy Hochul, Approval Memorandum No. 128, ch. 767 (Dec. 22, 2021). The “RON Law”, 2022 N.Y. Laws ch. 104, is a “chapter amendment” to RON legislation signed into law in December 2021. 2021 N.Y. Laws ch. 767. The December 2021 legislation was to take effect by its terms on June 20, 2022; however, there was a recognition that the Department of State will likely not have completed the necessary regulations by that date, and that an interim RIN system would need to be put in place to cover the gap. See Governor Kathy Hochul, Approval Memorandum No. 128, ch. 767 (Dec. 22, 2021). The 2022 legislation defers the effective date of the December 2021 RON legislation and establishes an interim RIN system. The RON Law also establishes an interim RIN system that will be available until January 31, 2023. 2022 N.Y. Laws ch. 104, §1. The interim RIN system in effect until January 31, 2023 differs from the EO RIN System in a few significant respects: for instance, principals are not necessarily required to be physically present in New York at the time of the notarial act, and a form of “Certificate of Authenticity” is prescribed.

H. Anti-Housing Discrimination Package. On December 22, 2021, Gov. Hochul signed a legislative package comprised of nine different bills designed to combat housing discrimination. 2021 N.Y. Laws ch. 687, 2021 N.Y. Laws ch. 698, 2021 N.Y. Laws ch. 690, 2021 N.Y. Laws ch. 697, 2021 N.Y. Laws ch. 686, 2021 N.Y. Laws ch. 688, 2021 N.Y. Laws ch. 696, 2021 N.Y. Laws ch. 699, and 2021 N.Y. Laws ch. 701. The package “addresses many of the issues identified in an expose by Newsday, ‘Long Island Divided’, which explored discrimination and both explicit and implicit bias that exists in the real estate industry.” Press Release, Sen. Brian Kavanagh, *Governor Hochul Signs*

Legislative Package to Combat Housing Discrimination (Dec. 22, 2021), available [here](#). The legislation, among other things, creates an anti-discrimination housing fund; adds a surcharge to licensing fees for brokers and salespeople; requires State and local housing agencies to affirmatively further fair housing; increases required trainings for real estate professionals on fair housing, implicit bias and cultural competency; and requires brokers to follow standardized client intake procedures. Efforts to address fair housing issues continue in the current legislative session. On February 28, 2022, S.2525A, which would require real estate brokers and salespersons to compile and report client demographic data to the Secretary of State, passed the Senate and was delivered to the Assembly. S.2525A, 2021-2022 N.Y. Leg. Sess. available [here](#).

I. Housing Our Neighbors With Dignity Act (“HONDA”). On August 13, 2021 the Governor signed this legislation which, “subject to amounts available by appropriation therefor,” directs a new housing trust fund corporation to develop a program that would allow the State to finance the acquisition of financially distressed hotels and office properties by appropriate nonprofit organizations for the purpose of maintaining and increasing affordable housing. 2021 N.Y. Laws ch. 396. It remains to be seen how much funding will be allocated to this program and how successful it will ultimately be. For a useful overview of HONDA, see Meghan C. Altidor and James Allen, *Affordable Housing Alert: New York’s HONA Act Incentivizes Affordable Housing Conversions*, Nixon Peabody (August 17, 2021), available [here](#).

J. Solar Rights Act. On August 2, 2021, the Solar Rights Act became law. It adds a new section to the Real Property Law that prohibits homeowner’s associations from adopting or enforcing any rules or regulations that would effectively prohibit, or impose unreasonable limitations on, the installation or use of solar power systems. N.Y. Real Prop. Law § 342.

K. NYC: Guaranty Law Challenged. Local Law 55 of 2020 prohibits landlords from enforcing “personal guaranties” by natural persons of payments accrued between March 7, 2020 and June 30, 2021 included in commercial leases with certain tenants. N.Y. City Local Law No. 55 (2020), available [here](#). In November 2020, in *Melendez v. City of New York*, the Southern District of New York dismissed the plaintiffs’ request to enjoin enforcement of this law on the basis that it violated the Contracts Clause because, even though the plaintiffs were able to plausibly allege that it represented a substantial impairment of their contract rights, the law advanced a legitimate public purpose and constituted a reasonable and necessary response to a real

emergency. *Melendez v. City of N.Y.*, 503 F. Supp.3d 13, 19 (S.D.N.Y. 2020), *aff'd in part, vacated in part, rev'd in part*, 16 F.4th 992 (2d Cir. 2021). On October 28, 2021, the Second Circuit reversed the dismissal in part, and found that the District Court erred in entering the judgment in favor of Defendants as a matter of law on a motion to dismiss. *Melendez v. City of N.Y.*, 16 F.4th 992, 996 (2d Cir. 2021). The case was remanded to Judge Abrams in the Southern District for the development of the facts and the determination of the likelihood of success on the merits which is required for the injunction being sought. Landlords and their counsel are closely watching these proceedings as there remains the possibility that the guaranty law “could ultimately be struck down and that the obligations shielded from liability under it could become enforceable.” Warren A. Estis and Alexander Lycoyannis, *Could NY’s Guaranty Law Be Found Unconstitutional?*, N.Y.L.J., Dec. 1, 2021, at 5, available [here](#).

L. NYC: Tenant Data Privacy Act. On May 28, 2021, New York City enacted The Tenant Data Privacy Act (the “TDPA”), privacy legislation that applies only to owners of Class A multifamily dwellings. N.Y.C. Local Law 63 (2021), available [here](#). The TDPA addresses privacy issues concerning “smart access systems,” which include “any system that uses electronic or computerized technology, a radio frequency identification card, a mobile phone application, biometric identifier information, or any other digital technology in order to grant entry.” Under the TDPA, owners of affected Class A multiple dwellings must provide tenants with a privacy notice, obtain tenants’ consent for the use of smart access systems, establish data retention periods for collected data, ensure that collected data is not sold or shared, establish parameters surrounding the tracking of tenants, and protect all collected data. The TDPA went into effect on July 28, 2021, but multifamily residential landlords in New York City who own existing smart access buildings were given until Jan. 1, 2023 to comply. The TDPA creates a private right of action for tenants whose data is sold and used in violation of the TDPA. It is not clear whether this right of action is available to tenants of a cooperative. Practitioners who represent owners of and tenants in affected buildings should educate themselves on these new statutory requirements. For a useful overview, see Lisa M. Brill, Kris Ferranti and Malcolm K. Montgomery, *The New Tenant Data Privacy Act*, Shearman & Sterling LLP (June 3, 2021), available [here](#).

M. NYC: Loft Tenant Access to NYC Housing Court. Buildings in New York City that meet the criteria set forth in the Loft Law, N.Y. Multiple Dwelling Law Article 7-C, are subject to the jurisdiction of the New York City Loft Board. A7667/S6950 makes it unlawful to disrupt or

fail to provide essential services and habitability for loft apartments and allows tenants to pursue claims in housing court. See Press Release, Sen. Brian Kavanagh, *Governor Hochul Announces Enactment of Law Significantly Increasing Protections for Loft Residents* (Dec. 7, 2021), available [here](#).

N. NYC: First Deadline under the Climate Mobilization Act (“CMA”). In New York City, the deadline for owners of covered buildings with high emissions intensities to apply for an emissions limit adjustment from the Department of Buildings under the CMA was July 1, 2021. N.Y. City Local Law No. 97 (2019), available [here](#). Although Local Law 97 is not a recently enacted law (it was signed into law in 2019) and does not mandate annual emissions intensity reports until May 1, 2025, covered building owners, their counsel and consultants will need to prepare for it well in advance. The primary financing program available to help building owners pay for mandated energy efficiency improvements is the Commercial Property Assessed Clean Energy (C-PACE) loan program pursuant to Local Law 96. N.Y. City Local Law No. 96 (2019), available [here](#). The first C-Pace financing deal was approved this past summer. See Keith Larsen, *The wait is over: C-PACE finally goes live in NYC*, *The Real Deal* (June 15, 2021), available [here](#).

O. NYC: Registration of Short-term Rentals. Intro 2309-2021, which became law in January 2022, requires short-term rental hosts to register with the City. N.Y. City Local Law No. 18 (2022), available [here](#).

II. LOOKING AHEAD: PENDING LEGISLATION

A. Good Cause Eviction (“GCE”). State lawmakers are considering A5573/S3082, sometimes referred to as the “Good Cause Eviction” bill. [A.5573, 2019-2020 N.Y. Leg. Sess.](#); [S.3082, 2021-2022 N.Y. Leg. Sess.](#) The legislation seems to be advancing, though it is not clear that it has majority support, and even less clear that it would be supported by Gov. Hochul in its current form. See Holly Dutton, *Eviction Legislation Gains Steam*, *Multi-Housing News* (Feb. 3, 2022), available [here](#). It should be noted that, since the summer of 2021, at least four upstate cities have passed good cause eviction laws, including Albany, Poughkeepsie and Newburgh. As presented, GCE would apply to all apartments in New York other than apartments currently subject to rent regulation and owner-occupied buildings with fewer than four units. The legislation would prohibit landlords from evicting tenants, subtenants or occupants (seemingly including hotel room occupants for 30 days or more and occupants without valid leases), without demonstrating “good cause.” “Good cause” is

defined to include, among other things, the failure to pay rent, unless the tenant received a rent increase that was “unreasonable” (an annual increase of greater than 3 percent or 1.5 times the increase in the CPI, whichever is higher, is presumptively unreasonable, but a lesser annual increase is not presumptively reasonable). Landlords must offer every affected tenant a renewal lease at a rent that is not “unreasonable.” Recovery for owner’s own use is only available if the building is fewer than 12 units and the owner can show an “immediate and compelling necessity.” To put it mildly, GCE inspires strong feelings among its supporters and opponents. To its supporters, GCE “prevents the potential exploitation of struggling tenants through exorbitant rent hikes and ensures fair and equal access to housing security by subjecting rent increases, particularly those above 5%, to rigorous judicial scrutiny in eviction court.” Kathy Sheehan and Kamal Johnson, *New York Needs Good-Cause Evictions*, N.Y. Daily News (Oct. 27, 2021), available [here](#). Meanwhile, its opponents posit that GCE is, in effect, universal rent control and “...is not the solution as it will result in degraded housing quality over time and fewer affordable housing options on the market while failing to address real problems with a lack of code enforcement by local municipalities.” *The New York State Senate Standing Committees on Housing and Judiciary on S3082, Good Cause Evictions*, The Real Estate Board of N.Y. (Jan. 7, 2022) (testimony of Real Estate Board of New York, available [here](#)). As of this writing, the GCE bills are in the Assembly Housing Committee and the Senate Judiciary Committee. Sen. Brad Hoylman has introduced a commercial version of GCE, S428 (no Assembly counterpart as of the date hereof), that would prohibit the eviction of small retail tenants in New York City other than for “good cause” as defined in that bill. That bill is in committee in the Senate.

B. Statewide Right to Counsel in Eviction Proceedings.

Citing the “eviction crisis of unfathomable proportions” in New York State and the success of New York City’s 2017 right to counsel legislation (N.Y. City Local Law No. 136 (2017), available [here](#)) in reducing evictions in the five boroughs, legislators in Albany are debating the “Civil Right to Counsel in Eviction Proceedings Act,” which would enact a statewide government-funded right to counsel for covered individuals in eviction proceedings and establish a New York State Office of Civil Justice to enforce the law. [A.7570C, 2021-2022 N.Y. Leg. Sess.;](#) [S.6678C, 2021-2022 N.Y. Leg. Sess.](#) As of this writing, the legislation is in committee in both chambers of the State Legislature.

C. Commercial Lessor Duty to Mitigate. Currently, in the commercial context, New York landlords have no duty to mitigate damages when a tenant vacates in violation of the

terms of its lease, absent an express obligation in the lease itself. See *Holy Props. Ltd., L.P. v. Kenneth Cole Prods.*, 637 N.Y.S.2d 964 (1995). The opposite rule has applied in the residential context since 2019, when section 227-e was added to the Real Property Law pursuant to the HSTPA. 2019 N.Y. Laws ch. 36, adding N.Y. Real Prop. Law §227-e. Pursuant to Section 227-e, where a tenant under a lease “covering premises occupied for dwelling purposes” vacates a premises in violation of the lease terms, the landlord must, “in good faith and according to the landlord’s resources and abilities, take reasonable and customary actions” to rent the premises at the lower of fair market value or at the rate agreed to in the defaulted lease. If the landlord so rents the premises, the new tenant’s lease will terminate the previous tenant’s lease and mitigate damages otherwise recoverable against the previous tenant. Significantly, any lease provisions exempting a landlord from this duty is void as contrary to public policy. A6906/S1129 would amend section 227-e to delete the words “covering premises occupied for dwelling purposes.” [A.8482, 2019-2020 N.Y. Leg. Sess.;](#) [S.7053, 2019-2020 N.Y. Leg. Sess.](#) (passed by the Assembly and introduced in the Senate in January 2021). In so doing, it would impose a non-waivable duty to mitigate on landlords under commercial leases. The bill has passed in the Assembly but appears to have stalled in the Senate as this this writing.

D. Yellowstone Waivers. Senator Brian Kavanagh has sponsored [S3133](#), a bill that would legislatively overturn the Court of Appeals’ 4-3 decision in *159 MP Corp. v. Redbridge* that upheld the enforceability of Yellowstone injunction waivers in commercial leases. *159 MP Corp. v. Redbridge Bedford, LLC*, 104 N.Y.S.3d 1 (2019). Sponsors state that this decision will deny commercial tenants access to the courts because landlords will “undoubtedly include a waiver of declaratory and Yellowstone relief in their leases as a matter of course...[which]... will enable them to terminate leases based on a tenant’s technical or dubious violation...” The bill renders such waivers void as contrary to public policy, among other provisions. The authors are aware of no counterpart bill in the Assembly as of this writing.

E. Mold History Disclosures. A3714/S5097 would amend the Public Housing Law, the Public Health Law, and the Real Property Law, as applicable, to (i) add to the Property Condition Disclosure Statement questions as to mold history and mold testing, (ii) require that prospective lessees be notified of mold history and mold testing and (iii) direct State agencies to promulgate rules and standards for the remediation and prevention of indoor mold. [A.3714, 2021-2022 N.Y. Leg. Sess.;](#) [S.5097, 2021-2022 N.Y. Leg. Sess.](#) On March 9, 2022, the bill was approved by the Senate Housing, Construction and Community Development

Committee and referred to the Finance Committee. In the Assembly, it remains with the Housing Committee.

F. Lead-Based Paint Disclosure Act. A6608A/S2142A would require each seller of real property to provide the buyer with a certificate that the property has been tested for lead-based paint along with the results of the test prior to the closing. [A.6608A, 2021-2022 N.Y. Leg. Sess.](#); [S.2142A, 2021-2022 N.Y. Leg. Sess.](#) The certificate would also be filed with the State Department of Health. Prospective lessees would be required to be notified of lead-based paint test reports. The Property Condition Disclosure Statement would be amended to include the newly-created disclosure requirements. The bill is on the Senate's floor calendar and remains in committee with the Assembly.

G. Co-op Sale Approvals. At least two bills are currently under consideration which would mandate processes for applications for, and approvals of, cooperative apartment sales.

1. **A1623/S2874.** This proposed legislation would amend the Not-for-Profit Corporation Law and the Business Corporation Law to require residential cooperative corporations to establish uniform process for considering purchase applications to ensure that the process "is fair, transparent and does the utmost to protect against illegal discrimination." [A.1623, 2021-2022 N.Y. Leg. Sess.](#); [S.2874, 2021-2022 N.Y. Leg. Sess.](#) The bill requires that written notice of such process be made available to prospective purchasers and sellers promptly upon request. At minimum, the processes must require co-op boards to acknowledge receipt of applications within 21 days and advise the purchaser of any incomplete items; following submission of a complete application, the board must notify the purchaser that the application is complete and the date by which review will be complete. The purchaser must be notified of the decision no more than 90 days after completion of the application; if no notice is given, consent will be deemed granted. If consent is denied, the notice must state the reason for denial. This legislation is currently in committee in the Senate and Assembly. Note that other localities in New York State already regulate cooperative apartment sale approvals in a similar manner. In 2021, in Westchester County, the notification and disclosure requirements already required by Local Law 2018-11 were amended to, among other things, require boards to provide the Westchester County Human Rights Commission with the reason for the rejection of the purchaser's application, in addition to notice of the fact of the rejection. Westchester County Local Law 2018-11, §1. Since 2009, Suffolk County Local Law 2009-28,

as amended by Suffolk County Local Law 2009-36, has mandated an application and approval process.

2. **A5856/S2846.** "The Fairness in Cooperative Homeownership Act" would amend the Real Property Law to require cooperative corporations to maintain standardized applications and lists of requirements, provide them to prospective purchasers and sellers promptly upon request, and include instructions as to how to submit the materials. [A.05856, 2021-2022 N.Y. Leg. Sess.](#); [S.02846, 2021-2022 N.Y. Leg. Sess.](#) Prospective purchasers must submit their applications by registered mail. Co-op corporations are required to acknowledge receipt of the application, and any subsequent submissions, within 10 business days by registered mail, failing which, the application is deemed complete. An acknowledgment of receipt must set forth with specificity whether the submitted application fully satisfies the requirements, and, if applicable, a list of deficiencies and additional materials requested. The purchaser must be notified of the decision no more than 45 days after completion of the application (this time period is extendable with the consent of the purchaser or unilaterally by 14 days with written notice to the purchaser). If the corporation fails to timely act on the application, then the purchaser may inform the board that if no action is taken within 10 days, then failure to act with constitute consent. A mechanism is included that permits boards to extend the notice and approval periods for applications received between July 1 and September 10 of each year. This legislation is currently in committee in the Senate and Assembly.

H. Removal of Illegal Restrictive Covenants. Covenants, conditions and restrictions in recorded documents that discriminate based on race have been illegal for over half a century. See Fair Housing Act of 1968, 42 U.S.C. § 3601; see also *Shelley v. Kraemer*, 334 U.S. 1, 22-23 (1948). Nevertheless, these loathsome provisions remain in property records throughout the United States, including New York. See Sara Clemence, *Is There Racism in the Deed to Your Home?*, N.Y. Times (Aug. 17, 2021), available [here](#). In recent years, states have sought to make it easier for property owners to remove these restrictions: at least eight states have enacted legislation, and legislation is pending in at least six states, including New York. New York's legislation would amend the N.Y. Real Prop. Law to require "sellers" to have "any covenants, conditions and restrictions [that] exist in a document to be recorded which discriminate on the basis of race, color, religion, sex, sexual orientation, familial status, marital status, disability, national origin, source of income, or ancestry" "removed from such document by submitting a restrictive covenant modification document ... either with the deed for recording, or

separately.” [A.6152-A, 2021-2022 N.Y. Leg. Sess.](#); [S.4740-A, 2021-2022 N.Y. Leg. Sess.](#) No filing fee will be assessed for a restrictive covenant modification document. The legislation also requires, within one year from the effective date of the legislation, condominium and cooperative boards and homeowners’ associations to “delete or amend” any such covenants, conditions or restrictions that exist in a recorded document, without the necessity of any approval from the property owners. Further, the legislation permits any person holding an ownership interest in real property that he or she believes is subject to an unlawful restrictive covenant in violation of state or federal law to record a “restrictive covenant modification document” containing a complete copy of the original document with the unlawful language stricken, signed under penalty of law. The law directs county recorders to make available forms of the restrictive covenant modification documents. This legislation is on the floor calendar at the Assembly and in committee at the Senate.

I. Closure of FAR Calculation Loopholes. A2128/S2016 would amend the Multiple Dwelling Law to close perceived loopholes with respect to the calculation of floor area ratio (“FAR”) that presently allow developers to maximize building height and mass by locating mechanical void spaces throughout a building (as opposed to in a basement or on a roof), increase the ceiling heights on individual floors, and build large terraces, balconies and porches, all without increasing a building’s total FAR. [A.2128, 2021-2022 N.Y. Leg. Sess.](#); [S.2016, 2021-2022 N.Y. Leg. Sess.](#) The so-called “mechanical void loophole” came to the fore in January 2019, when the city revoked Extell Development’s permits to use a 160 foot mechanical space at 50 West 66th Street which the Department of Buildings said violated zoning rules. See Will Parker, *City To Revoke Permits For Extell’s Kazakh-Backed Tower At 50 West 66th Street*, *The Real Deal* (Jan. 17, 2019), available [here](#). This legislation imposes restrictions on the size of allowable mechanical voids, sets a ceiling height cap of 12 feet for a given floor’s area to only be counted once and ensures that balconies and terraces will be counted towards a building’s total floor area. As of this writing, this legislation is currently in committee in both houses of the State Legislature.

J. Willful Neglect/Compulsory Repairs. Two pending bills attempt to address a perceived trend by predatory landlords to willfully debilitate rent-regulated properties to the point of condemnation or demolition in order to develop market rate units. A4487/S3307 would give the City the right to assign a community-based organization to make repairs and impose a lien in an amount equal to the cost thereof if (i) there have been multiple good faith tenant complaints about conditions that have not been addressed

or remedied within 120 days and (ii) 50% or more of the tenants have consented to the repairs. [A.4487, 2021-2022 N.Y. Leg. Sess.](#); [S.3307, 2021-2022 N.Y. Leg. Sess.](#) This program would be financed by a New York State Housing Finance Agency bond issuance. At present, this legislation is in committee in both houses of the State Legislature. S2842/A2434 would amend the Real Property Actions and Proceedings Law to establish a cause of action in favor of tenants against landlords who willfully neglect their properties. [A.2434, 2021-2022 N.Y. Leg. Sess.](#); [S.2842, 2021-2022 N.Y. Leg. Sess.](#) The tenant is provided with the choice of two remedies: treble damages or relocation to a comparable location. This bill is in committee in both houses of the State Legislature.

K. Additional LLC Disclosures. Over the past five years, federal and New York laws and regulations have required increasing amounts of disclosure of the “beneficial ownership” of limited liability companies transacting in real property in New York State. See, e.g., [FinCEN, Geographic Targeting Order Covering Title Insurance Company](#) (May 8, 2020) (one iteration of a series of orders the first one of which was issued in 2016); N.Y. Tax Law §1409(a) (McKinney 2021); N.Y. City Admin. Code § 11-2015 (2019); and, most recently, the federal Corporate Transparency Act (§§ 6401-03 of the National Defense Authorization Act for Fiscal Year 2021, 116 P.L. 283, 134 Stat. 3388). The required disclosures under the existing laws are not generally publicly available because they are made to the government or agencies thereof. Legislation pending in Albany aims to change that. A9415/S8439 “aims to provide full transparency for the beneficial owners of limited liability companies in New York by defining beneficial ownership, requiring annual disclosure on tax returns, and publishing beneficial owners of limited liability companies in New York’s publicly searchable corporation and business entity database.” [A.9415, 2021-2022 N.Y. Leg. Sess.](#); [S.8439, 2021-2022 N.Y. Leg. Sess.](#) These bills are pending in Senate and Assembly committees at the time of this writing. Another bill pending in the Senate, S4592, takes a more limited approach. [S.4592, 2021-2022 N.Y. Leg. Sess.](#) It would require that any deed for a property with 1-4 family dwelling units by or to a limited liability company be accompanied by a document that makes “full disclosure of ultimate ownership by natural persons”. This bill is at present pending in a Senate committee. The authors are not aware of any counterpart bill in the Assembly. It will be interesting to see if growing calls to identify and seize real property assets of certain designated Russian nationals will accelerate the advancement of this legislation.

L. Business Interruption Insurance: Mandated Pandemic Coverage. Bill Number A1937/S4711 would require

certain perils to be covered under business interruption insurance during the COVID-19 pandemic. [A.01937, 2021-2022 N.Y. Leg. Sess.](#); [S.04711, 2021-2022 N.Y. Leg. Sess.](#) The bill would hold harmless businesses and non-profits, who currently maintain business interruption insurance, for losses sustained because of the COVID-19 health emergency, but for which no such coverage is currently offered. This legislation is presently in committee in both houses of the State Legislature.

M. Affordable Housing Legislation. The need for additional affordable housing in New York State has been widely acknowledged and reported. In New York City alone, it has been forecast that 560,000 new housing units will need to be created by 2030 to keep up with expected population and job growth. Gov. Hochul has announced a new \$25 billion five-year housing plan, which includes a renewed version of 421-a called “485-w”, which has proven to be controversial. Whether 421-a will be extended and on what terms remains to be seen. See Daniel Bernstein, *NYC Affordable Housing: The End of 421-a and The Future of Housing Incentives*, Rosenberg & Estis, P.C. (Jan. 31, 2022), available [here](#). An array of legislation aimed at increasing the supply and availability of affordable housing is pending in the State Legislature, including a bill that would establish a housing access voucher program ([A.3701A, 2021-2022 N.Y. Leg. Sess.](#); [S2804B, 2021-2022 N.Y. Leg. Sess.](#)), bills that would reform zoning laws to be less exclusionary ([A.8883, 2021-2022 N.Y. Leg. Sess.](#); [S.7635, 2021-2022 N.Y. Leg. Sess.](#) (would allow local zoning boards of appeals to approve affordable housing developments, provide for an appeal process to DHCR, create a state zoning board of appeals within the DHCR to hear such appeals, and direct DHCR to conduct a study to integrate low-income housing tax credit applications with this new zoning application process); [A.9246, 2021-2022 N.Y. Leg. Sess.](#); [S.7574, 2021-2022 N.Y. Leg. Sess.](#) (would prohibit cities and villages from establishing minimum lot sizes of more than 1,200 square feet, requiring the construction of off-street parking (except for freight loading and unloading), or disallowing the construction of multifamily dwellings in districts zoned for residential use. The minimum number of residential units to be permitted on each lot range from 2 to 6, depending on whether the lot is in a city or in a village and whether it is within a quarter mile of a rail or subway station. Towns would be prohibited from establishing minimum lot sizes of more than 20,000 square feet (5,000 square feet for lots with access to sewer and water lines)), bills that would establish new incentives and funding sources ([A.3531, 2021-2022 N.Y. Leg. Sess.](#); [S.3006, 2021-2022 N.Y. Leg. Sess.](#); [A.3669, 2021-2022 N.Y. Leg. Sess.](#); [S.2731, 2021-2022 N.Y. Leg. Sess.](#); [A.3798, 2021-2022 N.Y. Leg. Sess.](#); [S.2732, 2021-2022 N.Y. Leg.](#)

[Sess.](#)), and bills that would recognize and incentivize new social housing models through community land trusts and tenant opportunities to purchase (see [A.4854-A, 2021-2022 N.Y. Leg. Sess.](#); [S.4547-A, 2021-2022 N.Y. Leg. Sess.](#) and [S.8265, 2021-2022 N.Y. Leg. Sess.](#)). At the same time, proposals to incentivize and facilitate the conversion of vacant commercial space to residential apartments are being considered, including possible amendments to the Multiple Dwelling Law. A summary of a few of these interesting legislative proposals follows.

1. **Accessory Dwelling Units.** A4854A/S4547A would require local governments to promulgate laws permitting the creation of accessory dwelling units (“ADU”) in lots zoned for residential use. [A.4854-A, 2021-2022 N.Y. Leg. Sess.](#); [S.4547-A, 2021-2022 N.Y. Leg. Sess.](#) An ADU is an attached or detached residential dwelling unit located on a lot with a proposed or existing primary residence that provides complete independent living facilities for one or more persons. ADUs would not be counted toward allowable residential density. Local governments would be permitted to provide reasonable standards such as height, landscape, architectural review, and maximum size (all with certain limitations). Localities would also be able to prohibit seasonal or vacation rentals of ADUs and require that the primary dwelling be owner-occupied for an ADU to be lawfully rented. The legislation includes a lending program to assist low and moderate income homeowners with financing for the creation of ADUs and protections for tenants in ADUs, including anti-discrimination, rent regulation and eviction protections. While this legislation is presently in committee in both houses of the State Legislature, it appears doubtful that it will pass in its current form given stiff opposition from suburban legislators. The Governor has indicated that she will support a more limited ADU proposal that aims to legalize existing ADUs in New York City. Andrew Coen, *Squirreling Away New Space*, Commercial Observer, Mar. 1, 2022, at 22, available [here](#).

2. **Community Land Trusts.** Senators Brian Kavanagh and Robert Jackson introduced legislation, S8265, that would create a “Community Land Trust Acquisition Fund”. [S.8265, 2021-2022 N.Y. Leg. Sess.](#) Community land trusts are “nonprofit organizations that own land to ensure that housing on it is and remains affordable to low- and moderate-income families.” Sen. Brian Kavanagh and Katrell Lewis, *Op-ed: Community land trusts are a bridge to affordable homeownership*, Crain’s N.Y. Business (Mar. 3, 2022), available [here](#). The bill would support the growth of community land trusts through a dedicated funding mechanism. The bill is in

committee in the Senate and does not at present have any Assembly counterpart.

- 3. Tenant Opportunity to Purchase Act.** A5971/S3157 would add a new Article 7-C to the Real Property Actions and Proceedings Law which “establishes a comprehensive procedure that allows tenants either acting individually or as a group to purchase the buildings in which they are renters at a price that is fair to the seller and purchaser.” [A.5971, 2021-2022 N.Y. Leg. Sess.;](#) [S.3157, 2021-2022 N.Y. Leg. Sess.](#) Under the Act, “when rental buildings go up for sale, tenants would have the right of first refusal to either buy the building themselves and turn it into a limited-equity cooperative or designate a preferred buyer who would steward the building under a social housing model.” Similar legislation was first enacted in the District of Columbia in the 1980’s and is now being considered in California and Massachusetts in addition to New York. These bills are in committee in both legislative chambers.

N. Prohibition on Gas Appliances in New Construction.

[A8431/S6843A](#), a/k/a the “All-Electric Building Act,” would ban gas hookups in new construction in New York State starting in 2024, unless certain exceptions apply. The legislation appears to be advancing at the committee level in the Senate and the Assembly. This legislation follows New York City’s Local Law 154, signed into law by Mayor DiBlasio shortly before he left office, which prohibits the combustion of substances with certain emissions profiles in New York City buildings. N.Y. City Local Law No. 154 (2021), available [here](#). The New York City law requires compliance within two years for buildings less than seven stories; larger buildings have until 2027.

O. Tax Bills. Last year, many in the New York real estate industry breathed a collective sigh of relief when the 2022 budget legislation made no provision for the so-called “mezzanine recording tax” ([A.3139, 2021-2022 N.Y. Leg. Sess.;](#) [S.3074, 2021-2022 N.Y. Leg. Sess.](#)) and “pied-a-terre tax” ([A.5736, 2021-2022 Leg. Sess.;](#) [S.4199, 2021-2022 Leg. Sess.](#)); nevertheless, these bills, while apparently dormant right now, remain pending in legislative committees. Several additional tax bills are under consideration at present:

- 1. Mom and Pop Rent Increase Exemption.** A2418/S2957 would amend the Real Property Tax Law to create a partial tax exemption in New York City for non-residential or mixed-use buildings where the landlord enters into a ten year lease with a small business tenant (defined to include businesses that employ 50 or fewer people) that includes a renewal clause that limits rent increases to no more than 3% annually. [A.2418, 2021-](#)

[2022 N.Y. Leg. Sess.;](#) [S.2957, 2021-2022 N.Y. Leg. Sess.](#) The abatement would be for up to ten years, calculated using the small business tenant’s percentage share of the building’s total square footage multiplied by a prescribed abatement base. As of this writing, the Senate version of the bill has passed the Cities 1 Committee and been added to the floor calendar. The Covid-19 Small Business Recovery Lease Act, [A2380/S2140](#), would provide a similar tax exemption, but only with respect to leases with Covid-impacted tenants and defers annual rental increase cap to later local legislation. This bill is in committee with the Senate and the Assembly.

- 2. Green Development Neighborhoods.** A290/S49 would establish a “green development neighborhood” tax exemption program. [A.290, 2021-2022 N.Y. Leg. Sess.;](#) [S.49, 2021-2022, N.Y. Leg. Sess.](#) The bills would amend the Real Property Tax Law to authorize municipalities to provide for a 35% tax exemption for a maximum of 20 years for 1-3 story homes that are designated a green development or are LEED-ND certified. As of this writing, this bill has passed the Senate.
- 3. Exclusion of For-Profit Companies from Section 420-c.** Section 420-c of the Real Property Tax Law provides for certain local real property tax exemptions for real property owned by a “non-profit housing development fund companies.” A5559/S1911 would amend Section 420-c to exclude from the tax exemption companies established or controlled by for-profit entities. [A.5559, 2021-2022 N.Y. Leg. Sess.;](#) [S.1911, 2021-2022 N.Y. Leg. Sess.](#) As of this writing, this bill is in committee in both houses of the State Legislature.
- 4. Amended NYS Historic Tax Credits.** A3670/S4439 would amend the New York State Historic Tax Credit program, which has been used to incentivize the preservation and renovation of historic properties, particularly upstate. [A.3670, 2021-2022 N.Y. Leg. Sess.;](#) [S.4439, 2021-2022 N.Y. Leg. Sess.](#) Among other things, it would provide small projects of \$2,500,000 or less with a credit equal to 150% of the amount of credit allowed the taxpayer under the Internal Revenue Code. As of this writing, this bill is in committee in both houses of the State Legislature.

P. Foreclosure Abuse Prevention Act. A7737-B/S5473-D would amend the Real Property Actions and Proceedings Law, the General Obligations Law and the Civil Practice Law and Rules to clarify the existing law and rectify certain “erroneous judicial interpretations” of statutes of limitations as they apply to mortgage foreclosure actions. [A.7737, 2021-2022 N.Y. Leg. Sess.;](#) [S.5473D, 2021-2022 N.Y. Leg. Sess.](#) This legislation appears to be an attempt

to legislatively overturn the Court of Appeal's decision in *Freedom Mortg. Corp. v. Engel*, which, among other things, held that mortgage loans accelerated through filing a verified complaint could be reinstated or "de-accelerated" through a voluntary dismissal of the action. *Freedom Mortg. Corp. v. Engel*, 146 N.Y.S.3d 542, 553 (2021). As of this writing, this legislation is in committee in both houses of the State Legislature. In the Assembly, it had advanced to the third reading.

Q NYC: Prohibition on Use of Tenant Criminal History and "Blacklists". Intro. 2047-2020 would prohibit housing discrimination in rentals, sales, leases, subleases or occupancy agreements on the basis of arrest record or criminal history. Int. 2047-2020, 2021-2022 N.Y. City Leg. Sess., available [here](#). Landlords, sellers, and their agents would be prohibited from obtaining criminal record information at any stage in the process, though they may consult the sex offender registry provided they notify the applicant written notice of the inquiry and a reasonable amount of time (not more than 3 days) to withdraw the application. Two family owner-occupied housing and rooms in owner-occupied housing are exempt. Intro. 77-2022 would mirror recent State law changes by prohibiting landlords from refusing to rent to tenants solely because they appear on tenant screening lists. Int. 77-2022, 2021-2022 N.Y. City Leg. Sess., available [here](#).

R. NYC: "Commercial Rent Control" Legislation. Int. 82-2022 would create a "Storefront Business Bill of Rights," including lease renewal procedures and the option to extend the lease in certain cases for up to one year with not more than a ten percent rent increase. Int. 82-2022, 2021-2022 N.Y. City Leg. Sess., available [here](#). Int. 1796-2019 would establish a system of commercial rent registration and regulation applicable to retail stores of 10,000 square feet or less, manufacturing establishments of 25,000 square feet or less, and professional services or other offices of 10,000 square feet or less. Int. 1796-2019, 2021-2022 N.Y. City Leg. Sess., available [here](#). The

Mayor would appoint a seven-member Commercial Rent Guidelines Board responsible for annually establishing guidelines and the rate of rent adjustments for covered commercial spaces. In Albany, legislators are considering S7571/A3110 which would establish in New York City commercial rent regulation (authorizing the rent guidelines board to establish maximum rents) and a right to renew commercial leases. [A.3110, 2021-2022 N.Y. Leg. Sess.](#); [S.7571, 2021-2022 N.Y. Leg. Sess.](#)

In summary, State and local legislation in the pipeline, including that summarized above, stands to affect nearly every aspect of the New York real estate industry, including commercial and residential leasing, development, finance, land use, and tax. Practitioners should make efforts to stay abreast of these legislative developments, many of which, if ultimately signed into law, could have significant impact on their clients.

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