Client Advisory

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Real Estate Department

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New York State Creates Affordable New York Housing Program to Replace 421-a Tax Incentive Program

On April 10, 2017, Governor Cuomo signed into law the Affordable New York Housing Program - a replacement for the expired tax incentive program under Section 421-a of the New York Real Property Tax Law. The new program applies to new or converted multiple dwellings that commence construction between January 1, 2016 and June 15, 2022 (“Eligible Sites”).

Thirty-Five Year Exemption

The new program provides a 35-year real estate tax exemption for new or converted rental housing projects of any size on an Eligible Site, provided it is located outside of an enhanced affordability area (as defined in Section II, below), or for projects with fewer than 300 units, if located in an enhanced affordability area. In order to receive this exemption, 25% to 30% of units must comply with one of the following affordability options measured by Area Median Income (currently $95,400 for a family of four):

Affordability Option A: If a project is financed with tax exempt bond proceeds or 4% tax credits but no other government assistance, it will qualify if:

- 10% of units do not exceed 40% of AMI;
- 10% of units do not exceed 60% of AMI; and
- 5% of units do not exceed 130% of AMI.

Affordability Option B: A project will qualify regardless of other government assistance if:

- 10% of units do not exceed 70% of AMI; and
- 20% of units do not exceed 130% of AMI.

Affordability Option C: If a project does not use any substantial government assistance and is not located in Manhattan south of 96th Street, it will qualify if:

- 30% or more of units do not exceed 130% of AMI.

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A rental housing project[1] that complies with one of the above options A through C can receive a full real estate tax exemption during construction and for 25 years, starting upon completion of construction. At the end of the 25-year period, the project will receive a 10-year partial real estate tax exemption based on the percentage of affordable units located in the project. With limited exceptions, while the project receives benefits, its building service employees must be paid prevailing wages.

Enhanced Thirty-Five Year Benefit

All new or newly converted projects in designated "enhanced affordability areas," including the area of Manhattan south of 96th Street and portions of Brooklyn and Queens that are within approximately one mile of the East River (generally, Community Boards 1 and 2 in each borough) with 300 or more rental units, must (a) comply with affordability requirements similar to those for the 35-year exemption, and (b) pay prevailing wages to building service employees and minimum average hourly wages to construction workers, in order to receive benefits under Affordable New York. The current required minimum average hourly wage for construction workers is $60 in the Manhattan enhanced affordability area and $45 in the Brooklyn and Queens enhanced affordability area. Average hourly wage is defined as the aggregate amount of all wages and benefits paid to construction workers divided by the number of hours of construction work.

These projects must also comply with one of the following affordability options:

Affordability Option E: If a project is financed with tax exempt bond proceeds or 4% tax credits but no other government assistance, it will qualify if:

- 10% of units do not exceed 40% of AMI;
- 10% of units do not exceed 60% of AMI; and
- 5% of units do not exceed 120% of AMI.

Affordability Option F: A project will qualify regardless of government assistance if:

- 10% of units do not exceed 70% of AMI; and
- 20% of units do not exceed 130% of AMI.

Affordability Option G: If a project does not use any substantial government assistance and is not located in Manhattan south of 96th Street, it will qualify if:

- 30% or more of units do not exceed 130% of AMI.

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[1] A homeownership option ("Affordability Option D") is also available to condominium and co-op projects located outside of Manhattan, and with fewer than 35 units, where all of the units will have an average assessed value of no more than $65,000. It provides for a full real estate tax exemption during construction and for 14 years, starting upon completion of construction. At the end of the 14-year period, the project will receive a 6-year real estate tax exemption of 25%.

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In exchange for compliance with these requirements, these projects will receive a full exemption from real property tax during construction and for a full 35 years (referred to in the statute as an "Enhanced Thirty-Five Year Benefit"), starting upon completion of construction.

While projects in the enhanced affordability area with 300 or more rental units may only qualify for the Enhanced Thirty-Five Year Benefit, projects outside the enhanced affordability areas with 300 or more rental units may elect to seek either the 35-year exemption or the Enhanced Thirty-Five Year Benefit.

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