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**REAL ESTATE FINANCE BUREAU**

**M E M O R A N D U M**

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Re: N.Y. Real Prop. Tax Law § 421-a

July 10, 2015

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The Department of Law publishes this memorandum as a guidance document pursuant to New York State Administrative Procedure Act § 102(14).

On June 26, 2015, the Rent Act of 2015 was signed into law. Contained within are substantial changes to N.Y. Real Prop. Tax Law § 421-a, including revised qualifications for a building's receipt of § 421-a benefits if construction commences after December 31, 2015. Counsel for sponsors of newly-constructed condominiums and co-operatives are strongly encouraged to review the revised provisions of the N.Y. Real Prop. Tax Law § 421-a, and ensure an adequate discussion of the requirements, obligations and consequences associated with receipt of N.Y. Real Prop. Tax Law § 421-a tax benefits are disclosed in a sponsor's offering plan.

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**REAL ESTATE FINANCE BUREAU**

**M E M O R A N D U M**

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Re: N.Y. Real Prop. Tax Law § 421-a

June 24, 2014<sup>1</sup>

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**I. Introduction**

The Department of Law has observed that some recent offering plans and amendments submitted to it pursuant to parts 20 and 21 of title 13 of the New York Compilation of Codes, Rules & Regulations (“N.Y.C.R.R.”) contain inadequate disclosure about the requirements and obligations of sponsors and unit owners/cooperatives related to their receipt of N.Y. Real Prop. Tax Law § 421-a tax benefits. The requirements and obligations associated with receipt of § 421-a benefits are material information that must be disclosed in a sponsor’s offering plan. This memorandum provides disclosure guidance and directives concerning certain material information associated with receipt of N.Y. Real Prop. Tax Law § 421-a benefits.<sup>2</sup>

**II. Disclosure Guidance and Directives**

The Department of Law hereby directs sponsors to ensure their offering plans provide an adequate discussion of the requirements, obligations and consequences associated with receipt of N.Y. Real Prop. Tax Law § 421-a tax benefits. If a sponsor has applied (or intends to apply<sup>3</sup>) for a property tax exemption pursuant to N.Y. Real Prop. Tax Law § 421-a, such discussion should include, at a minimum:

1. Whether the building is located within the statute’s geographic exclusion area, *see* N.Y. Real Prop. Tax Law § 421-a[7](a)(ii), and if it is located within the

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<sup>1</sup> This memorandum applies to offering plans for buildings receiving a partial property tax exemption pursuant to § 421-a where construction commenced on or before December 31, 2015. For buildings qualifying for § 421-a tax benefits after December 31, 2015, separate guidance from the Department of Law will be made available at a later date.

<sup>2</sup> Because the Department of Law has received very few offering plans for newly-constructed cooperatives in recent years, this memorandum presents guidance and directives in terminology applicable to condominiums, with citations to Part 20 and Article 9-B of the N.Y. Real Prop. Law. Sponsors of newly-constructed cooperatives should also follow the guidance and directives herein, in a context suitable to cooperatives. To the extent that such a context is not readily discernable, counsel for sponsor may seek specific guidance from the Department of Law.

<sup>3</sup> *See infra* at Point III.

geographic exclusion area, how the building will satisfy the statute’s requirements concerning “affordable units” set forth in § 421-a[7].

2. For buildings that are ineligible to receive § 421-a tax benefits without satisfying § 421-a[7](b), a sponsor should also discuss and disclose the following with respect to affordable units:
  - a. the number of affordable units within the building;
  - b. which units within the building are designated as affordable units;
  - c. the terms, prices and restrictions upon which those affordable units will be sold or rented;
  - d. resale, occupancy and other restrictions associated with the affordable units; and
  - e. the impact upon condominium governance and the condominium’s operating budget that may result from the affordable units (including, *e.g.*, whether sponsor has specially allocated common charges pursuant to N.Y. Real Prop. Law § 339-m).
3. Whether a restrictive declaration concerning the affordable units is recorded in the property records (as may be required pursuant to § 6-09(b)(3)(ii) of title 28 of the Rules of the City of New York (“R.C.N.Y.”), and if so, supply the City Register File Number for the recorded document.
4. Whether:
  - a. building service employees must be paid at a prevailing wage for the duration of the building’s tax exemption, *see* N.Y. Real Prop. Tax Law § 421-a[8](b);<sup>4</sup> or
  - b. the building is exempt from the prevailing wage requirement because it either
    - i. contains fewer than fifty residential units, *see id.* at § 421-a [8](c)(i), or
    - ii. meets the specified affordability requirements for certain units set forth in § 421-a[8](c)(ii).
5. Whether the sponsor intends that the building shall be exempted from the statutory obligation to register the units as rent-stabilized by reason of its condominium status. *See id.* at § 421-a[2](f).<sup>5</sup>

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<sup>4</sup> *See* N.Y. Real Prop. Tax Law § 421-a[8](a)(i) for the definition of ‘building service employee.’ ‘Prevailing wage,’ in accordance with *id.* at § 421-a[8](a)(ii), is defined at N.Y. Labor Law § 230. Pursuant to N.Y. Labor Law § 230, the Comptroller of the City of New York is empowered to promulgate a schedule of prevailing wages for building service employees, the most recent copy of which is *available at* <http://comptroller.nyc.gov/wp-content/uploads/documents/230-schedule-2013-2014.pdf>. Sponsors are directed to calculate the condominium’s operating budget in compliance with the statutory prevailing wage requirement, when applicable.

<sup>5</sup> A building offered pursuant to Part 20 does not achieve condominium status until the offering plan has been consummated. *See* 13 N.Y.C.R.R. § 20.1(c)(6) (defining “consummation”), *see also* Memorandum of the Department of Law regarding Occupied Buildings and Part 20 Offerings (March 4, 2014) *available at*

6. That if, prior to consummation, sponsor rents any residential unit (or portion thereof) to any person other than an interim lessee,<sup>6</sup> sponsor is obligated to abandon the offering plan in accordance with the provisions of 13 N.Y.C.R.R. §§ 20.1(1)(2) and 20.5(g). *See* Memorandum of the Department of Law regarding Occupied Buildings and Part 20 Offerings (March 4, 2014).
7. That sponsor has fifteen months from the date of issuance of a final certificate of eligibility from the New York City Department of Housing Preservation and Development (“HPD”) to declare its offering plan effective. *See* 28 R.C.N.Y. § 6-02(g)(3). Thereafter, sponsor is obligated to register units in the building as rent-stabilized as they become occupied. *Id.*
8. Other material implications related to receipt of § 421-a tax benefits that may arise for sponsor, unit owners, or tenants in the building.

### **III. Preliminary Certificate of Eligibility for § 421-a Tax Benefits and Associated Disclosures**

In addition to the disclosure requirements set forth above, sponsors are directed to furnish the Department of Law with a copy of their preliminary certificate of eligibility for § 421-a tax benefits issued by HPD to comply with 13 N.Y.C.R.R. § 20.2(c)(5)(ii)(B-16). Projections of real estate taxes on Schedule A of an offering plan should conform to the requirements set forth in 13 N.Y.C.R.R. § 20.3(g)(2)(vi). Sponsors should also disclose in their offering plans that purchasers may obtain more information about the § 421-a application process, tax benefits, and requirements associated therewith at <http://www.nyc.gov/html/hpd/html/developers/421a.shtml>.

### **IV. Sponsors Required to Amend Offering Plans**

Part 20 or 21 offering plans that: (i) have been accepted for filing by the Department of Law prior to the date of this memorandum; (ii) disclose that sponsor has applied or intends to apply for § 421-a benefits; and (iii) fail to disclose the information enumerated *supra* in Part II; must be promptly amended to supply prospective purchasers with this relevant material information.

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[http://www.ag.ny.gov/sites/default/files/pdfs/bureaus/real\\_estate\\_finance/Effective-memos/Occupied%20Buildings%20and%20Part%2020%20Plans%20Final.pdf](http://www.ag.ny.gov/sites/default/files/pdfs/bureaus/real_estate_finance/Effective-memos/Occupied%20Buildings%20and%20Part%2020%20Plans%20Final.pdf).

<sup>6</sup> Interim leases are discussed at 13 N.Y.C.R.R. § 20.3(n).