

Governor Cuomo Signs Law to Clarify Real Property Tax Exemption for Certain City Affordable Housing Projects

The New York City Department of Finance (“DOF”), as part of its audit of affordable housing projects which receive a New York City real property transfer tax (“RPTT”) exemption, began to disallow the exemption for specific projects using housing development fund companies (“HDFCs”) due to a lack of statutory authority to provide such an exemption where there is a “nominee” agreement. The determination by the City not only impacted the audited projects, but threatened the exemption provided to other projects that claimed the exemption as well as future affordable housing projects which partner with HDFCs.

With the City believing only a statutory amendment would address the issue and end of the state legislative session quickly approaching, DOF proposed legislation, A.10512-A/S.8088, which NYSAFAH supported to remedy the most pressing RPTT liabilities facing its members. The bill was introduced and passed just prior to the State Legislature adjourning for the year.

On August 19, 2016, Governor Andrew Cuomo signed the legislation into law (Chapter 264 of the Laws of 2016). Specifically, the new law provides:

- A partial exemption from the RPTT to the conveyance of real property or economic interest therein to an HDFC, or to an entity in which a controlling interest is held by an HDFC.
- Conveyance must be accompanied by a regulatory agreement that satisfies the following conditions:
 - Restricts more than 50 percent of total floor area to residential use;
 - Restricts at least two-thirds of the *residential* floor area to low-income families (i.e., at least one-third of the total floor area excluding common areas must be for low-income households);
 - Is in effect for 30 years or more; and,
 - Is revocable by mutual consent.
- The bill exempts a share of the total consideration equivalent to the percentage of the total floor area, other than common areas, that is restricted to low-income residential use. For example, if 60% of the total floor area, less common areas, is set aside for low-income households, then 60% of the consideration is exempt from the RPTT.
- If the conveyance is not accompanied by a regulatory agreement, but one goes into effect within two years of conveyance, then DOF may issue a refund back to the date of conveyance. Application must be made within one year of the effective date of the regulatory agreement.
- The regulatory agreement may be with the State, or the City, or a government related public corporation (e.g., Housing Development Corp.).

- The law took effect on August 19, 2016 and is retroactive, and applies, to all eligible conveyances dating from January 1, 2010.

DOF is now planning to implement the new law. The agency has agreed to meet with NYSAFAH in early September to discuss its implantation, and we welcome any questions or input you would like for us to raise during those discussions.

If you have questions regarding this new law otherwise, please do not hesitate to contact me.