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Cooperative Leaders Challenge Local Law 97 in Lawsuit

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As we are all aware, the New York City Council passed Local Law 97 in 2019 to great fanfare. The so-called Climate Mobilization Act is landmark legislation requiring extensive retrofits in an effort to address global warming and climate change. This legislation is designed to combat climate change by setting strict caps on carbon emissions from real property and imposing substantial penalties on property owners throughout New York City. The goal of Local Law 97 is to reduce the emissions produced by the city's buildings 40 percent by 2030 and 80 percent by 2050.

When the details of Local Law 97 became apparent, it raised tremendous concern in the Cooperative Community. Although the law is designed to reduce carbon emissions, the law only applies to approximately 60% of the buildings in the City of New York. The law specifically exempts City owned buildings; New York City Housing Authority-owned land, buildings with more than 35% rent regulated units and buildings under 25,000 square feet, which means most one to four family buildings are exempt from the reaches of this statute. Essentially, Cooperative and Condominium homeowners are the only homeowners in New York City who will be required to comply with Local Law 97. This makes no logical sense and has added to the ire in the Cooperative community that other housing sectors were excluded for political expediency.

In addition, as the price tag of compliance or non-compliance of the law becomes clearer, the leaders in the Cooperative Community decided to take a stand and filed a lawsuit against New York City in an effort to overturn Local Law 97. The lawsuit specifically states that the Plaintiffs in this action are not "climate deniers" and understand the impact of global warming. They agree that something needs to be done, but the costly and onerous requirements of Local Law 97 are not the answer.

As a result, on May 18, 2022, a lawsuit was filed entitled **Glen Oaks Village Owners Inc. etal v. City of New York, New York City Department of Buildings, and Eric Ulrich, in his official capacity as Commissioner of the New York City Department of Buildings**, Supreme Court, New York County, Index number 154327/2022. The lead plaintiffs in this case include Robert Friedrich and Warren Schreiber. They are the Presidents of Glen Oaks Village Owners Inc. and Bay Terrace Cooperative Section 1, Inc. respectively. They are well known leaders in both the Cooperative Community and as civic leaders.

The complaint outlines five basic principles for overturning Local Law 97. We will review each point briefly, but suggest you review the statute for more detail. The complaint alleges that Local Law 97 is unconstitutional based on the following five independent reasons listed below

1) Local Law 97 is preempted by New York State law. In 2019, New York State enacted the Climate Leadership and Community Protection Act ("CLCPA") with the intent that it would provide a comprehensive regulatory framework to reduce greenhouse emissions across New York State.
2) Local Law 97 violates due process through the excessive penalties it imposes. As stated above this law will subject Cooperatives to potential devastating civil penalties if they cannot reach compliance with the law, despite their best efforts. The "tribunal" to prosecute these non-compliance cases have not yet been promulgated. Even the most basic guidelines on how these penalties will be enforced and how to mitigate them are unknown, even though the penalties will be taking effect in 2024.
3) Local Law 97 is unconstitutionally retroactive in violation of property owners due process rights. The complaint states that in the last several years property owners have taken significant steps to comply with then current City laws to reduce carbon emissions. Many building owners, at great expense and with the encouragement of New York City, converted to natural gas to comply with New York City laws. Local Law 97 is blind to these prior efforts and only applies a one size fits all calculation of carbon emissions. The great expense of property owners to comply to prior New York City laws is not a factor at all when calculating Local Law 97 compliance.
4) Local Law 97 is impermissibly vague and ambiguous, in violation of due process. Essentially, the statute does not specify how penalties are determined and imposed, and how adjustments in the form of mitigating factors will be applied.
5) Local Law 97 operates as an unauthorized and improper tax. The income generated from Local Law 97 penalties are not required to be deposited in any designated fund by New York City, therefore giving the penalties the qualities of a "carbon emissions tax". The complaint further states that since New York State has not authorized New York City to tax greenhouse gas emissions, these penalties are an illegal tax, in violation of the Municipal Home Rule requirements, and therefore unconstitutional.

The litigation is ongoing, and the Defendants filed a motion to dismiss on July 28, 2022. It is expected to be heard by the end of September 2022. This lawsuit has many issues of first impression and it will be interesting to see how the Courts decide on this landmark piece of legislation. More to follow.