



NY Real Estate Regulation And Legislation To Watch In 2021

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Law360 (January 3, 2021, 12:02 PM EST) -- Pandemic-induced disputes between landlords and tenants, along with what role the government will play in those situations, will be top of mind for New York real estate lawyers in 2021.

Lawyers will also be monitoring continued attempts to rezone certain areas of New York City to encourage more density, and will be keeping a close eye on evolving emissions requirements.

Here, Law360 looks at the three areas of New York real estate legislation and regulation to watch in 2021.

Eviction Moratoria and Housing Policy

Moratoria on evictions and foreclosures at New York commercial and residential buildings are set to expire the end of 2020, and lawyers will be closely watching to see if those get extended. While the moratoria have given commercial and residential landlords and tenants time to try to work through some of their disputes, experts say it's unclear how the beginning of 2021 will play out.

"You can't go to courts right now, which has given people some breathing room to try to get stuff done," said Emilie Cooper, a partner at [Haynes and Boone LLP](#). "Many of our clients have been successful. Others have not been able to reach agreements."

While the question of keeping tenants in housing is one issue, another is the question of providing more affordable housing.

New York made sweeping changes to rent control laws in the summer of 2019 to control rising rents, but Massimo D'Angelo, a partner at [Akerman LLP](#), said the current population shift out of New York due to the pandemic is creating new questions about the city's need for affordable housing.

And lawyers will be watching the government's approach to the affordable housing in 2021 as the government focuses on both trying to keep tenants in properties but also make sure there's enough affordable housing.

"It will be interesting to see if we still have the level of need in terms of affordable housing that we had before," D'Angelo said.

SoHo, NoHo and Gowanus Rezoning

While the pandemic has slowed some rezoning efforts, New York is still pushing forward with efforts to rezone Brooklyn's Gowanus neighborhood as well as the SoHo and NoHo neighborhoods of Manhattan. Lawyers say such changes could usher in denser development there.

"I believe they see this area as being ripe for an increase in density, based on its access to mass transit," said Joshua Rinesmith, a partner at Akerman, speaking of the Gowanus area. The city sees "an increase in density as a way to help revitalize the Gowanus Canal, and help create a workable and usable waterfront."

Gowanus, roughly the size of Prospect Park, has historically has been a manufacturing area, and rezoning it comes with various environmental challenges. The area could receive federal "superfunds" for cleanup, given that it's listed as part of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980.

The idea for Gowanus is to allow for more density and to clean up areas along the canal.

Rezoning efforts in SoHo and NoHo are also targeting additional density, although the focus there is more with an eye toward retail development. Much of those neighborhoods are not zoned for retail and require zoning approval for such projects, and the proposed zoning changes would allow for retail as of right, meaning developers would not have to go through the lengthy and expensive process of getting local approval to build retail there.

Carbon Emissions Requirements

New York City's Local Law 97, which requires most buildings with more than 25,000 square feet of space to reduce emissions by 40% by 2030 and 80% by 2050, went into effect last year, and lawyers say many questions remain about compliance.

As more and more developers try to assess how to comply in the face of fines that could be imposed years from now, lawyers expect more clarity to come on the issue.

"I have questions about the commercial condo structure. You have multiple owners but it's one building. Is the association responsible for the fines?" said D. Hara Perkins, a director at [Goulston & Storrs PC](#), noting that there could be additional guidance next year. "In Midtown, a good number of the buildings are mixed-use. You have ground floor retail that might be owned separately, financed separately, from the office above. Given the different uses, they may have largely different carbon emissions."

And Esther Toporovsky, executive vice president of the non-profit NY Housing Partnership, said determining the greenhouse gas allowance for a mixed-use building "can get complicated quickly."

"Clarifying for owners, investors and developers which category their properties fall into, the emissions limits and reduction goals and penalties for compliance shortcomings will help developers avoid the range of fines that will be imposed if they do exceed carbon emissions limits," she said.