

April 2017

Affordable New York Housing Program Revived

In late 2016, New York Governor Andrew Cuomo announced a deal between the Real Estate Board of New York (REBNY) and the Building and Construction Trades Council of Greater New York (BCTC) to restart the recently expired 421-a New York City real estate tax abatement program. The Governor's Executive budget proposal released in January included a plan to implement this deal, and the budget finally agreed to last week, after contentious negotiations, included an extender of the program formerly known as 421-a, now called the Affordable New York Housing Program, until June 15, 2022. The new program is retroactive to projects that commenced on or after Jan. 1, 2016. Projects that commenced after Jan. 1, 2016 and prior to the effective date of Affordable New York that have not received benefits and that comply with the provisions of the Affordable Housing New York Program may, nonetheless, receive benefits pursuant to this program.

Pursuant to the new law, a builder of **rental housing** in New York City may select from the following affordability options:

- > **Affordability Option A:** the property must include 10 percent of the units at no more than 40 percent of Area Median Income (AMI); 10 percent of the units at no more than 60 percent of AMI; and five percent of the units at no more than 130 percent of AMI. During years one through 25 the property would have a 100 percent tax exemption, during which period only the "mini tax" (the assessed value of the site prior to construction not exempt from taxation) would be paid. In years 26-35 there would be a 25 percent tax exemption, requiring that 75 percent of the taxes plus the mini tax would be paid. Projects would be eligible to receive tax exempt bonds and tax credits.
- > **Affordability Option B:** the property must include 10 percent of the units at no more than 70 percent AMI; and 20 percent at no more than 130 percent AMI. Again, for the first twenty-five years, the property would have a 100 percent tax exemption, with only an obligation to pay the "mini tax." In years 26-35, there would be a 30 percent exemption, requiring that 70 percent of the taxes plus the "mini tax" would be paid. These projects would be eligible for substantial government assistance.

- > **Affordability Option C:** the building must include 30 percent of the units at no more than 130 percent AMI. As a result, for years one through 25 there would be a 100 percent exemption, and only the “mini tax” would be paid. In years 26-35, there would be a 30 percent exemption, requiring that 70 percent of the taxes including the “mini tax” would be paid. These projects would not be eligible for substantial government assistance. Also, this option is not available in Manhattan south of 96th Street.

The program also includes a **homeownership option—Affordability Option D**—which would provide 421a benefits for condominium or cooperative housing projects that: (i) contain no more than 35 units; (ii) are located outside Manhattan where the average assessed value for 100 percent of the units shall not exceed \$65,000 upon the first assessment following the completion date; and (iii) where each owner of any unit shall agree in writing to maintain the unit as their primary residence for no less than five years from the date of acquisition. A homeownership project that meets the eligibility requirements receives a 20 year benefit. Years one through 14 would have a 100 percent tax exemption, during which only the “mini tax” would be paid. For the final six years there is a 25 percent exemption that would require 75 percent of the taxes plus the “mini tax” to be paid. However, no exemption shall be given for any portion of a unit’s assessed value that exceeds \$65,000.

Enhanced Affordability

Enhanced Affordability Areas

The statute establishes three “enhanced affordability areas” wherein certain properties would be eligible for a 35 year benefit:

1. The Manhattan enhanced affordability area is the area located entirely south of 96th Street.
2. The Brooklyn enhanced affordability area is generally the area one mile in from the bulkhead in Community Boards 1 and 2.
3. The Queens enhanced affordability area is generally the area one mile in from the bulkhead in Community Boards 1 and 2.

(Street boundaries are contained in the law which can be found [on the Real Estate Board of New York’s website](#).)

Eligible Projects

New residential buildings with 300 or more rental units developed in an enhanced affordability area are eligible for the Affordable New York Housing Program and the “enhanced thirty-five year benefit” provided they meet the average hourly construction work wage requirement applicable to each area and the affordability requirement. The enhanced thirty-five year benefit will provide a 100 percent exemption, except for the “mini tax,” for 35 years.

Wage Requirements

The average hourly wage is the aggregate amount of all wages and all employee benefits (such as vacation benefits, holiday pay, life insurance, apprenticeship training, and payroll taxes) paid to construction workers for construction work divided by the aggregate number of hours of construction. In the Manhattan enhanced affordability area the average hourly wage is \$60 per hour; in the Brooklyn and Queens enhanced affordability areas the average hourly wage is \$45 per hour. (The minimum average hourly wage will be increased five percent three years from the effective date of this law.)

Affordability options in Enhanced Affordability Areas

- > **Affordability Option E:** 10 percent at no more than 40 percent of AMI, 10 percent at no more than 60 percent of AMI, and 5 percent at no more than 120 percent of AMI. Eligible sites must be developed without substantial government assistance, except eligible sites may receive tax exempt bond proceeds and four percent tax credits.

- > **Affordability Option F:** 10 percent at no more than 70 percent AMI; 20 percent at no more than 130 percent AMI.
- > **Affordability Option G:** 30 percent at no more than 130 percent AMI; Eligible sites must be developed without substantial government assistance. This option is only available in the Brooklyn and Queens enhanced affordability area.

The enhanced thirty-five year benefit includes an “extended restriction period,” meaning that the affordable units must remain affordable for forty years.

OTHER KEY PROVISIONS

- > New residential buildings with 300 rental units or more outside of an enhanced affordability area can elect the enhanced thirty-five year benefit, provided they comply with the wage and additional affordability requirements.
- > For an applicant receiving an enhanced thirty-five year benefit, an independent monitor (a licensed accountant in good standing) must be contracted by the owner to monitor compliance with the wage requirements.
- > Within one year from the building’s completion, the independent monitor must submit to the fiscal officer (New York City Comptroller) a project-wide certified payroll report. In the event the report is not submitted within the designated time period, the applicant shall be fined \$1,000 per week, up to a maximum of \$75,000.
- > Not later than 90 days after the completion of their construction work, each contractor and sub-contractor shall submit to the independent monitor a certified payroll report. In the event the report is not submitted within the designated time period, the independent monitor shall notify the fiscal officer. The contractor or sub-contractor shall be fined \$1,000 per week, up to a maximum of \$75,000.
- > In the event that the project-wide certified payroll report shows that the applicable wage was not paid and if the average hourly wage paid was within fifteen percent of the wages required, then no later than 120 days from the submission of the project-wide certified payroll report, the applicant shall pay to the third party administrator an amount equal to the amount of the deficiency as set forth in the project-wide certified payroll report. The third party administrator shall distribute such payment to construction workers who performed construction work on the site in accordance with a plan approved by the fiscal officer. In the event the applicant fails to make such payment within the prescribed time, the applicant shall be subject to a fine of \$1,000 per week, up to a maximum of \$75,000.
- > In the event that the project-wide certified payroll report shows that the applicable wage was more than fifteen percent below the wages required, then no later than 120 days the applicant shall pay to the third party administrator an amount equal to the amount of the deficiency as set forth in the project wide certified payroll report. The third party administrator shall distribute such payment to construction workers who performed construction work on the site in accordance with a plan approved by the fiscal officer. In addition, the fiscal officer shall impose a penalty on the applicant in an amount equal to 25 percent of the deficiency, provided that the construction of the building was not the subject of a job action that resulted in work delay. In the event the applicant fails to make such payment within the prescribed time, the applicant shall be subject to a fine of \$1,000 per week, up to a maximum of \$75,000.

This *GT Alert* was prepared by **Sam NeJame** and **Joshua L. Oppenheimer**. Questions about this information can be directed to:

- > [Sam NeJame](mailto:nejames@gtlaw.com) | +1 518.689.1424 | nejames@gtlaw.com
- > [Joshua L. Oppenheimer](mailto:oppenheimerj@gtlaw.com) | +1 518.689.1459 | oppenheimerj@gtlaw.com
- > Or your [Greenberg Traurig](#) attorney

Amsterdam + 31 20 301 7300	Denver +1 303.572.6500	Northern Virginia +1 703.749.1300	Tallahassee +1 850.222.6891
Atlanta +1 678.553.2100	Fort Lauderdale +1 954.765.0500	Orange County +1 949.732.6500	Tampa +1 813.318.5700
Austin +1 512.320.7200	Houston +1 713.374.3500	Orlando +1 407.420.1000	Tel Aviv[^] +03.636.6000
Berlin⁻ +49 (0) 30 700 171 100	Las Vegas +1 702.792.3773	Philadelphia +1 215.988.7800	Tokyo[¤] +81 (0)3 4510 2200
Berlin-GT Restructuring⁻ +49 (0) 30 700 171 100	London[*] +44 (0)203 349 8700	Phoenix +1 602.445.8000	Warsaw[~] +48 22 690 6100
Boca Raton +1 561.955.7600	Los Angeles +1 310.586.7700	Sacramento +1 916.442.1111	Washington, D.C. +1 202.331.3100
Boston +1 617.310.6000	Mexico City⁺ +52 55 5029.0000	San Francisco +1 415.655.1300	Westchester County +1 914.286.2900
Chicago +1 312.456.8400	Miami +1 305.579.0500	Seoul[∞] +82 (0) 2.369.1000	West Palm Beach +1 561.650.7900
Dallas +1 214.665.3600	New Jersey +1 973.360.7900	Shanghai +86 (0) 21.6391.6633	

This Greenberg Traurig Alert is issued for informational purposes only and is not intended to be construed or used as general legal advice nor as a solicitation of any type. Please contact the author(s) or your Greenberg Traurig contact if you have questions regarding the currency of this information. The hiring of a lawyer is an important decision. Before you decide, ask for written information about the lawyer's legal qualifications and experience. Greenberg Traurig is a service mark and trade name of Greenberg Traurig, LLP and Greenberg Traurig, P.A. ⁻Greenberg Traurig's Berlin office is operated by Greenberg Traurig Germany, an affiliate of Greenberg Traurig, P.A. and Greenberg Traurig, LLP. ⁻ Berlin - GT Restructuring is operated by Köhler-Ma Geiser Partnerschaft Rechtsanwälte, Insolvenzverwalter. ^{}Operates as a separate UK registered legal entity. ^{**}Greenberg Traurig is not responsible for any legal or other services rendered by attorneys employed by the strategic alliance firms. ⁺Greenberg Traurig's Mexico City office is operated by Greenberg Traurig, S.C., an affiliate of Greenberg Traurig, P.A. and Greenberg Traurig, LLP. [∞]Operates as Greenberg Traurig LLP Foreign Legal Consultant Office. [^]Greenberg Traurig's Tel Aviv office is a branch of Greenberg Traurig, P.A., Florida, USA. [¤]Greenberg Traurig Tokyo Law Offices are operated by GT Tokyo Horitsu Jimusho, an affiliate of Greenberg Traurig, P.A. and Greenberg Traurig, LLP. [~]Greenberg Traurig's Warsaw office is operated by Greenberg Traurig Grzesiak sp.k., an affiliate of Greenberg Traurig, P.A. and Greenberg Traurig, LLP. Certain partners in Greenberg Traurig Grzesiak sp.k. are also shareholders in Greenberg Traurig, P.A. Images in this advertisement do not depict Greenberg Traurig attorneys, clients, staff or facilities. No aspect of this advertisement has been approved by the Supreme Court of New Jersey. ©2017 Greenberg Traurig, LLP. All rights reserved.*