



## **Top 2018 legal developments affecting New York's real estate industry - by Thomas Kearns**

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Among the numerous legal developments of 2018 the standouts include the introduction of a new tax strategy for real estate investment and development, and a \$6.75 million verdict against a property owner for destroying street art, noted below with a few others of interest:

### **Opportunity Zones**

Federal tax law changes in 2018 grant tax advantages to investors who re-invest capital gains into tax businesses located in qualified opportunity zones designated by the states. While not limited to real estate, real estate is a likely target for the investments. Experts differ on whether using the program in lieu of a Section 1031 exchange is desirable but there is no doubt that if a 1031 exchange is not possible under the circumstances, the new program offers an alternative manner to defer income taxes on the gain. On October 19th, 2018, the IRS issued proposed regulations on the program but unanswered questions remain.

### **Title Insurance changes**

In 2017 State regulators enacted significant new restrictions on title insurance companies including eliminating the custom of tipping title closers and severely restricting inducements title insurance sales people may give industry executives and lawyers. The regulations were struck down by a lawsuit brought by the industry in 2018 but the ruling may be appealed.

### **5 Pointz Trial**

2018 brought an interesting verdict in a closely watched case following a trial of claims brought by various artists against a building owner in Queens who permitted street artists to paint the façade of his building, only to eventually whitewash and tear down the building. The jury found that the aerosol painting on the side of the building was indeed art, extinguishing any remaining doubt to the contrary. After refusing a request for an injunction to prevent the owner from demolishing the building, the court issued a damages award after a trial holding that the street art was protected by the federal Visual Artists Rights Act (VARA), which grants rights to artists when the building owner permits an art installation on their property. The court, finding that the developer acted willfully in destroying the works of art, awarded statutory damages of \$150,000 for each of 45 works of art for a total of \$6.75 million.

## New Smoking Disclosure

2018 brought a new New York City law requiring apartment buildings in the city (including cooperatives and condominiums) to adopt and post the building's smoking policy, which also has to now be included in every lease and contract of sale. The law does not require that the building prohibit smoking inside apartments (smoking is already prohibited in common areas) but that may ultimately be a result as building managers review and update policies.

## Expanded FinCEN Regulations

On November 15th, the federal financial crimes network extended and expanded the existing regulations requiring title company collection and disclosure of ownership of real estate entities purchasing real estate where the entity pays all cash. The threshold has been lowered to \$300,000 thereby covering many more transactions.

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