



## **Recent developments in the leasehold condominium space - What New York landlords and nonprofits need to know - by Dena Cohen**

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New York City real estate taxes are among the highest in the United States, impacting both landlords and tenants alike. The rise of remote work in 2020, coupled with many businesses shutting their doors, has led to a rapid increase in real estate inventory throughout the city. That's why landlords should be aware of an exemption that removes the burden of high property taxes on prospective tenants.

New York State Real Property Tax Law (RPTL) § 420-a qualifies eligible not-for-profit organizations (NFPs) for an exemption on their property taxes. Qualifying NFPs include charities, hospitals, educational institutions, and more. In 2009, the New York Department of Finance (DOF) issued a private letter ruling extending the exemption to include eligible NFP owners of units in a leasehold condominium. Don't be fooled by the term "owner." An "owner" of a leasehold condominium unit is the tenant under a lease. A "leasehold condominium" means that the lease is divided into multiple units that are assessed separately for determining real estate taxes. Once the lease has been changed to this form, the remaining term must be at least 30 years and the owner of the unit must pay all associated real estate taxes. The use of the premises must be non-residential. Throughout the past 11 years, many landlords and NFPs have taken advantage of this structure to create attractive conditions for NFPs to enter into long-term leases of their properties. New York City DOF has issued several updates and clarifications to the exemption:

A 2018 ruling addressed a common complication for NFPs who lease a portion of a building rather than an entire building (as was the case in the 2009 ruling). Leasing a portion of a building is much more complex than when the NFP is leasing an entire property. Before July 2018, the process required that the landlord create was time-consuming and costly:

Since all condominiums, including leasehold condominiums, must include the land and the improvements, the building owner would ground lease the land and the building to an affiliate.

This affiliate, as declarant, would form the leasehold condominium containing two or more units.

The affiliate would "sell" one or more unit(s) to the NFP with the balance of the units remaining under the declarant's ownership (to be leased out in the ordinary course).

The landlord would control the condominium through the affiliate.

The above structure resulted in the anomalous situation of the tenant owning a leasehold condominium unit(s) without technically being the “tenant” under the lease; a scenario that is difficult for anyone who is not well versed in the leasehold condominium process to understand. The 2018 ruling alleviated the problem by introducing the “condo within a condo” option. In this case, the landlord creates a fee condominium and leases one or more units to the NFP. The NFP then creates a leasehold condominium structure for its units in the same way as an NFP that leases an entire building. In this way, instead of applying the leasehold condominium structure to the entire property, it could be applied to only the unit(s) that the NFP was leasing.

In October 2019, a private letter ruling confirmed that the exemption applies where a for-profit affiliate of the landowner also owns a leasehold condominium unit in the building. That ruling also permitted an NFP leasehold condominium unit owner to sublease the unit to its wholly owned subsidiary that is also an NFP without jeopardizing the exemption.

A March 2020 private letter ruling enables certain foreign government tenants to benefit from the same property tax exemption as qualifying NFPs. These tenants must meet the following requirements:

- Be a member of the United Nations or another qualifying worldwide organization.

- Hold the title in the name of the government or a certain representative of the government to the United Nations or other qualifying organization.

- Use the space exclusively as offices for staff or quarters for representatives.

- File a leasehold condominium declaration and lease the building for 30+ years after the filing date.

- Pay all taxes attributed to its unit(s).

Landlords should take note of this expansion, as they can now offer the same tax incentive to foreign government tenants as they can to NFPs.

For landlords and tenants facing high property taxes, the New York State Real Property Tax Law offers a respite for not-for-profits and foreign governments. A competent commercial real estate lawyer can help them navigate their options and create the right structures.

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