

## REAL ESTATE

# Top 10 Real Estate Laws of 2017

By Andrew Lieb

Now that 2018 is here it is important to be aware of the changes in the law for our industry. This is not a list about the best events from 2017, but instead, a list that highlights the new legal landscape that you face as real estate attorneys in 2018. Being familiar with these laws, regulations and opinions may help you to better address your client's goals and make you money while helping you avoid malpractice.

### SALT and Mortgage Deductions

26 United States Code §163 has been amended by lowering the mortgage debt that can be utilized as an itemized deduction from \$1,000,000 to \$750,000. Additionally, 26 United States Code §164 has been amended by capping the State and Local Tax Deduction at \$10,000, while completely eliminating foreign real property tax deductions. It is noted that property taxes, as well as state and local sales taxes, may nonetheless be deducted if paid or accrued in carrying on a trade or business. As such, clients should be counseled to allocate their resources to income producing property rather than to residential / vacation property.

### Estate Tax Exemptions

Pursuant to amended 26 United States Code §2010(c)(3), the unified credit against federal estate tax has increased from a "basic exclusion amount" of \$5,000,000 to a new exclusion of \$10,000,000. Now, married couples can pass assets of up to \$20,000,000 without exposure to federal estate tax. However, the New York State exemption remains at \$5,250,000 in 2018. As such, estate tax planners should concentrate their practice in educating New Yorkers of the need to avoid state estate tax.

### Familial Exception to Summary Proceeding

In *Heckman v. Heckman*, the Appellate Division, Second Department, rejected the existence of a blanket "familial exception" to the validity of a summary proceeding brought pursuant to Real Property and Proceedings Law 713(7). In *Heckman*, the licensee was the daughter-in-law of the deceased former owner and therefore a familial relationship existed. However, the Appellate Division differentiated *Heckman* from the First Department's precedent in *Rosenstiel v. Rosenstiel* because unlike *Rosenstiel*, *Heckman* did not involve a support obligation. As



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such, the availability of summary proceedings to familial licensees has been clarified and clients should be counseled to proceed with such evictions immediately.

### Title Insurance Regulated

The New York Department of Financial Services, by way of Insurance Regulations 206 and 208, has capped title company's ancillary search fees, created fee disclosure requirements, mandated affiliated referral requirements, eliminated tips provided to title closers, limited the availability of payoff fees to title closers and redefined the long-understood interpretation of Insurance Law §6409(d), which is the anti-inducement statute. Shockwaves have resonated throughout the title industry causing the introduction of new legislation, which is expeditiously making its way through the legislature. Expect many more changes to the title industry in 2018 as the industry's lobbyists and attorneys respond to the department. Title counsel is going to have a busy year.

### Residential Lease CO Disclosure Requirement

Pursuant to new Real Property Law

§235-bb, owners of real property, with three or fewer units, are required to provide notice to their tenants as to whether a certificate of occupancy is currently valid for the dwelling unit subject to the lease. This requirement cannot be waived by the parties in their lease or otherwise. As a result, landlords must update their leases immediately.

### Rescission Action – Anticipatory Repudiation

In *Princes Point LLC v. Muss Development LLC, et al.*, the New York Court of Appeals, held that the mere commencement of an action seeking "rescission and/or reformation" of a contract does not constitute an anticipatory breach of such agreement. In so holding, the court reiterated the "positive and unequivocal" standard that it utilizes to find the existence of an anticipatory repudiation. As a result, real estate transactional counsel should collaborate with litigation counsel to leverage client's positions while negotiating major real estate purchase / sale transactions.

### Videotaping Neighbor Cause of Action

Pursuant to new Civil Rights Law §52-a, residential property owners and

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tenants enjoy a private right of action for damages against their neighbor(s) when such neighbor(s) install(s) video equipment on the neighbor(s) property "for the purpose of videotaping or taking moving digital images of the recreational activities which occur in the backyard of such owners' or tenants' property if the video recording is done "with the intent to harass, annoy or alarm" or threaten such owners or tenants. Expect counterclaims to trespass actions to follow.

### Condominium / Cooperative Conflict of Interest Disclosure

Pursuant to both new Not-For-Profit Corporation Law §519-a and new Business Corporation Law §727, at least once a year, condominiums and cooperatives directors must both receive a copy of the law concerning related party transactions / interested directors and disclose to their

members / shareholders of such transactions that were undertaken by the building in the prior year. Such disclosure shall include the "contract recipient, contract amount, and the purpose of entering into the contract," "record of each meeting including director attendance, voting records for contracts, and how each director voted on such contracts," the dates for the vote, commencement of the contract and its termination. Counsel must promptly notice their client's managing agents of these new disclosure requirements to facilitate compliance. More so, all votes concerning conflicted transactions must be 100 percent above-board because members/shareholders will be dissecting every transaction moving forward.

### First Time Home Buyer's Savings

Pursuant to new Private Housing Finance Law Article 28, the New York

State First Home Savings Program was established. Such Program is like a 529 College Savings Account, providing tax incentivization in the form of exemptions from personal income tax for monies saved towards the purchase of a first home within the state. Annual tax-deductible deposit limits are \$5,000 per individual and \$10,000 per married couple. The total account contribution limit is set at \$100,000, excluding interest.

### Vaping is Smoking

Public Health Law §1399-o was amended to prohibit vaping, in addition to the existing prohibition against smoking, subject to expressly set forth exceptions, at places of employment, bars, food service establishments, enclosed public indoor swimming areas, mass transit, public transportation terminals, youth centers, child care facilities, group

homes, residential treatment facilities, colleges, hospitals, commercial establishments, arenas, zoos, bingo facilities, MTA platforms, and elementary / secondary schools. Additionally, Public Health Law §1399-p was amended to include vaping on no smoking signage and policies for hotels / motels, which had each previously been required. Counsel must be reminded that business law is all about compliance. Counsel will be called upon to develop business policies, language for signage and trainings for staff.

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