

# NOW & NEXT

## Real Estate Alert

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### DOF ruling clarifies homeless shelters qualify for 420-a tax exemption

By Erica F. Buckley, Ruben M. Ravago, and Ari Glatt

New York's Department of Finance (DOF) ruling confirms that a leasehold condominium operating as a homeless shelter is eligible to apply for a tax exemption under RPTL Section 420-a.



#### What's the Impact?

- / The DOF recently clarified that a leasehold condominium that is owned by a nonprofit entity and operated as a homeless shelter is eligible to apply for a tax exemption under RPTL Section 420-a
- / Careful planning and execution are still required when restructuring a leasehold condominium project to allow nonprofits to take advantage of RPTL § 420-a, including nonprofits that serve the unhoused population of New York City

New York Real Property Tax Law § 420-a (RPTL § 420-a) exempts real property taxes for properties in New York owned by qualifying nonprofit organizations (organized for the religious, charitable, hospital, educational, or for the mental and moral support of men, women, and children). Typically, a property tax exemption under RPTL § 420-a is generally not available for properties leased by nonprofits since, as tenants, they do not "own" the real property. This is true even if a nonprofit is a lessee of an entire property under a net lease or ground lease and, therefore,

under typical ground or net lease terms, the nonprofit would still have to pay all of the property's real estate taxes. Many homeless shelters are operated by nonprofits on leased property with support from the New York City Department of Homeless Services (“DHS”). Absent an exemption, shelter projects are harder for developers to build, harder for lenders to finance, and harder for nonprofits to operate.

A solution to the lease ineligibility under RPTL § 420-a is the use of a commercial leasehold condominium. When a leasehold interest is converted into one or more condominium units, nonprofit tenants can benefit from this innovative arrangement to obtain exemptions from real property taxes, including RPTL § 420-a. Learn more about the history of the use of leasehold condominiums to obtain real property tax exemptions in our prior alert discussing [leasehold condominium property-tax exemptions](#).

Before a nonprofit can qualify for the RPTL § 420-a tax exemption for leasehold condominium units, the leasehold condominium must be created. Critically, New York’s Condominium Act requires that the leasehold condominium must be “*devoted exclusively to non-residential purposes*” under a lease or sublease with an unexpired term of at least thirty years from the recording of the condominium declaration.<sup>1</sup> In recent years, the Department of Finance (the “DOF”) had raised concern that shelter projects might not qualify as non-residential. Recently, the DOF clarified the scope of what constitutes a “non-residential” use and confirmed RPTL § 420-a eligibility for a nonprofit entity dedicated to serving the unhoused population of New York City.

## DOF private letter ruling regarding “non-residential purposes”

In a November 2022 private letter ruling,<sup>2</sup> the DOF was presented with the question of whether the use of property as a homeless shelter would constitute an eligible “non-residential purpose.” The DOF looked to the legislative intent of the phrase “devoted exclusively to non-residential purposes” and noted that this language was added to the Condominium Act in 1974 to allow developers increased flexibility in utilizing space for commercial purposes.

The DOF ultimately confirmed that shelter use is not residential use and that a shelter operator could, therefore, form a leasehold condominium and be eligible for a tax exemption under RPTL § 420-a, noting that “a nonprofit corporation that provides temporary emergency housing and housing support . . . may be formed as a leasehold condominium.” Although individuals may be housed in a shelter for a period of time, shelter use is not “residential” per se. Rather the charitable use of supporting New York City’s unhoused population puts the goal of operating a shelter squarely in line with the 1974 amendments to the Condominium Act, which again were meant to provide increased flexibility to property owners looking to devote parts of a condominium to non-residential purposes.

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<sup>1</sup> See New York Real Property Law § 339-e (11).

<sup>2</sup> FLR-22-5024, November 4, 2022.

The ruling upheld both the reasoning and the outcome on similar issues found in the DOF's [2009 private letter ruling](#), [2018 private letter ruling](#), and [2019 private letter ruling](#) on similar facts—that a nonprofit holding title to a unit in a leasehold condominium with at least a 30-year lease term for non-residential purposes may be eligible for the real property tax exemption under RPTL § 420-a.

## Structuring leasehold condominiums takes careful planning.

Structuring a leasehold condominium project in a way that allows a project to take advantage of RPTL § 420-a, while ensuring other development objectives and timing requirements are met, takes careful planning and execution. Ensuring the lease is drafted appropriately, obtaining the “no action” letter from the New York Attorney General, and making sure the condominium documents and tax lot drawings align with legal and operational goals all benefit from the guidance of experienced professionals.

Qualified members of Nixon Peabody's full-service [Cooperatives and Condominiums team](#) and [Leasing team](#) stand ready to work with eligible nonprofits in exploring the feasibility of forming a leasehold condominium for various reasons, including eligibility for the exemption under RPTL § 420-a. Our [Affordable Housing team](#) has worked on a wide variety of shelter financing transactions, many of which depend upon 420-a tax exemptions and leasehold condominiums. Our Affordable Housing and Cooperatives and Condominiums team work closely together to provide full service advice on all issues presented in financing, building, and operating homeless shelters.

For more information on the content of this alert, please contact your Nixon Peabody attorney or:

[Erica F. Buckley](#)

212.940.3733

[ebuckley@nixonpeabody.com](mailto:ebuckley@nixonpeabody.com)

[Ruben M. Ravago](#)

212.940.3735

[rravago@nixonpeabody.com](mailto:rravago@nixonpeabody.com)

[Ari Glatt](#)

212.940.3732

[aglatt@nixonpeabody.com](mailto:aglatt@nixonpeabody.com)

[Aaron J. Yowell](#)

212.940.3161

[ayowell@nixonpeabody.com](mailto:ayowell@nixonpeabody.com)

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