



New York State bill would require recording and taxation of mezzanine debt and preferred equity investments

Real Estate Alert

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A New York State bill that would require the recording and taxation of mezzanine debt has been substantively revised to address a potential loophole.

The bill, Assembly Bill A9041A, was introduced in the New York State Assembly in January this year, aiming to amend the real property law, uniform commercial code and tax law.

The original version of the proposed bill specifically targeted debt that is subordinate to a primary lien on the real property. Notably, this language created a potential loophole whereby recording and taxation of mezzanine debt could be avoided through a preferred equity investment instead of mezzanine debt.

This month the proposed bill was revised to address this loophole by expanding the language to include both mezzanine debt and preferred equity investments. In the bill, the definition of mezzanine debt has been revised to include debt that is subordinate to the primary lien, but senior to common shares of an entity or the borrower's equity.

Consequently, the proposed bill creates two significant requirements: (i) mezzanine debt and/or preferred equity investments related to real property would have to be recorded in the county in which the real property is located; and (ii) upon recording of a UCC financing statement to perfect a security interest in mezzanine debt and/or preferred equity investments, mortgage recording tax (2.80 percent in the City of New York^[1]) would have to be paid on the amount of the debt and/or investment.

The bill remains in the committee stage.

Learn more about its implications by contacting either of the authors.

[1] In the City of New York, the mortgage recording tax rate for mortgages on commercial property securing an indebtedness of \$500,000 or more is 2.80 percent.

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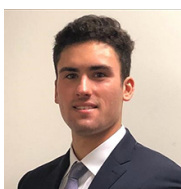


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