

THE ANNUAL REPORT FROM THE CHAIRMAN AND THE PRESIDENT



Mary Ann Tighe
Chairman



Steven Spinola
President

INTRODUCTION

In 2009 the real estate industry faced the most challenging economic climate in two decades. Throughout the year the Real Estate Board of New York was engaged in a wide range of legislative activities in Washington, Albany and City Hall aimed at improving the market for the industry and our members. At the same time we continued to assist members with a wide range of real estate questions, public policy issues and problems with municipal government. In addition, we continued to expand our services and technological capability to better serve our members; to offer educational courses, seminars and luncheons on current events; to host social events that raised money for charitable causes and organizations. We present below the many highlights of our activities in 2009.

WASHINGTON

We worked diligently with our elected officials and the Real Estate Roundtable in Washington in shaping the various initiatives to improve our economy. The Economic Stimulus Bill included an \$8,000 tax credit for homebuyers; accelerated depreciation of depreciable property acquired in 2009; a provision that would provide significant tax relief for businesses

that discharge debt at a discount in 2009 and 2010. The provision would defer taxes on this income until 2014. We also advocated effectively for the extension and expansion of the homebuyer's tax credit program.

Another Washington initiative that we advocated would provide assistance to commercial property. We supported, along with the Real Estate Roundtable, efforts to encourage the Federal Reserve Board to make Commercial Mortgage-Backed Securities (CMBS) eligible collateral under the Term Asset Backed Securities Loan Facility (TALF). Although the program started slowly, it has enabled investors to purchase highly-rated CMBS which are important for the financing of real estate. At the end of 2009, the first funding under TALF to purchase securities was completed for \$400 million.

To draw more capital into the real estate market, we supported legislation introduced by Congressman Joseph Crowley that would amend the Foreign Investment in Real Property Tax Act (FIRPTA) and encourage foreign investment in real estate.

We opposed legislation that would treat partnership carried interest as ordinary income. Carried interest is now treated for tax purposes as capital gain and taxed at 15 percent. This legislation would increase the tax to 35 percent by treating it as ordinary income. This change would apply to all transactions past and future. Although purportedly aimed at hedge funds, the bill would have significant impacts on real estate partnerships at a time when the industry is faced with a credit crunch and a weak economy. Also, this tax increase would impact adversely New York where many of these transactions occur.

ALBANY

We vigorously and steadily opposed a package of rent regulation bills that passed the Assembly in the 2009 legislative session. These bills would have returned the city to the failed housing policies of the 1970's which led to abandonment, disinvestment and the lack of housing production. The amendments to the rent regulation system that these bills were trying to enact would undo important improvements in the system that led to significant capital investment in existing housing, major improvements in the quality of the city's housing stock and an increase in property tax revenue. The current rent regulation system has provided a slow and gradual process for apartments to leave rent stabilization while protecting low income households and encouraging ongoing capital improvements. We will continue to oppose rent regulation changes that would put all the benefits of the current system at risk and would lead to a decline in the quality of our housing stock.

Another troublesome legislative proposal that we successfully fought back would have imposed a state sales tax on the labor portion of a capital improvement. This change would

have increased the cost of renovation work. This bill would deter the type of work that we expect to occur in this recession and would have slowed our recovery.

We waged a campaign to control government spending as the primary way to address the state's budget deficit, and not raise taxes. Though the state dropped the sales tax proposal noted above, they enacted a personal income tax (PIT) increase. The proposed rates were lowered and a three year sunset of these new rates adopted in part to respond to our campaign. As a result, the PIT increase will raise \$4 billion, not \$6 billion. This is still a significant tax increase and will impede our economic recovery.

We successfully opposed an Industrial Development Agency (IDA) bill that would require that the tenants or occupants of facilities funded through IDA, in addition to the construction workers and building service employees, pay prevailing wages. This requirement would further dilute the economic value of this benefit, threaten the financial feasibility of many projects, and make it impossible to compete for tenants who could find comparable locations without these mandated higher wage and benefit costs.

Another area in which we have been active was in the numerous proposals to change the Mitchell-Lama program. We maintained that the contractual agreements that owners and the government signed to build housing should not be unilaterally modified, changing the basic provisions of the agreement. In general, some state legislators would like to halt an owner's ability to withdraw from the program at the end of the agreement period and place these units into rent stabilization. We successfully opposed these bills. There have been proposals that would place a moratorium on withdrawing buildings from the program. We opposed such proposals, but we have worked to amend these bills. Our changes would allow any building which has begun the withdrawal process would not be covered by a moratorium in the event that a moratorium bill is enacted.

CITY HALL

Working collaboratively with the New York City Department of Finance we simplified the Statement of Audit Procedure (SAP) for the Unincorporated Business Tax, eliminating a number of requirements such as the prohibition on employee expenses and advertising. These changes to the safe harbor provisions increased the number of real estate agents who would be exempt from this tax. In addition, these simpler safe harbor requirements adopted in 2009 applied to all open tax years, meaning if an agent were eligible under the new safe harbor but paid taxes in the last three years they may be eligible for a refund.

When REBNY members contacted us about exorbitant increases in assessments of vacant land based on recent sales, we contacted the Department of Finance (DOF) to ques-

tion the valuation and the methodology. At the time of the assessments the value of vacant land was plummeting and sales prices even six months old were irrelevant. Also we added in our discussion with DOF, that according to case law, it was unlawful to assess individual sites based on their recent sales. The courts had ruled that this method of valuing property failed to treat these parcels the same as those which had not had a recent sale. As a result of our intervention, the valuations were reduced by two thirds. These owners still were able to seek additional assessment reductions at the Tax Commission.

The administration introduced a series of bills as a result of the Deutsche Bank fire which would markedly increase the regulations and the cost of demolition and asbestos abatement. These bills would require interagency approval of asbestos and demolition work, permitting of abatement work, and regulation of the work site including maintenance of sprinkler and standpipes and egress on work floors. As a result of our efforts the interagency process is being phased in over a period of time, and the prohibition on simultaneous abatement and demolition has been modified. The adopted legislation restricted, but did not prohibit, simultaneous demolition and abatement on the same building. Our objection also prevented requirements for additional personnel on an abatement site.

As part of PlaNYC, the administration proposed four energy efficiency bills with major impacts on the real estate industry. REBNY worked closely with both the administration and the Council to reshape the bills so that the final bills, passed at the end of 2009, were more practical and less costly to implement. As originally proposed, expensive mechanical system retrofits were required. These requirements would have often resulted in owners not being able to recoup their capital expenses. In the final version, buildings are required to have energy audits performed once a year and to retro-commission, in effect fine tune, their mechanical systems once every ten years. REBNY was able to get an exemption from the audit requirement for many, if not most, apartment buildings.

In lieu of retrofits, buildings are required to upgrade their lighting to energy efficient lighting and to sub-meter tenant spaces greater than 10,000 square feet by 2025. The sub-metering was originally proposed to be done by 2015 but REBNY successfully argued that it should occur on tenant turnover or alterations and therefore a longer period was necessary.

Additionally, REBNY supported the adoption of a New York City Energy Code and a new requirement that buildings over 50,000 square feet benchmark their energy and water use. We worked with the Mayor's Office, City Council and environmental groups to adjust the reporting requirement for buildings with large trading floors, data centers and TV stations.

In the absence of financing, many new development projects were forced to suspend construction. As a result of this suspension of construction, the building permits for these

projects were going to lapse. The Council passed stalled sites legislation with our support which would allow the permits for these projects to be extended for up to four years. Without this legislation, most of these development sites would have to redesign their project to comply with the new building code now in effect. This law enables them to proceed under the code in which the permit was granted provided they prepare a site safety plan that is approved by the Building Commissioner. This legislation will ensure the safety of the sites while construction is suspended and allow the developers to resume work much more quickly when the economy improves.

The City Council introduced a commercial rent control bill that would require a mandatory renewal of commercial leases at a rent determined by arbitration. REBNY successfully opposed comparable legislation 20 years ago. We conveyed to the City Council the problems with this proposal and the adverse impact to the city, neighborhoods and building owners as a result of this legislation. In addition, we believe that the City Council lacks the authority to pass this legislation and that it would constitute a taking of property. The administration also opposes this bill. We launched an e-mail campaign using our newly-created REBNY Action Center site (described below) that helped halt the progress of this bill.

The City Council introduced a mandatory paid sick leave bill that would require all businesses in New York City to provide paid sick leave to all full- and part-time employees. Businesses that employ fewer than 10 people would have to provide 5 paid sick days; all other businesses would provide 9 paid sick days a year. The bill set forth reasons for using this paid leave that go beyond personal illness and permits the carryover of unused days. REBNY vigorously opposed to this bill whose opponents include the Chamber of Commerce in each borough.

We were active on a wide range of land use and landmark issues important to our industry, testifying at public hearings and submitting written testimony on numerous items. On all these matters we articulated a reasonable position that balances the rights of property owners, the well-being of the industry and the overall good of the city. Here are some issues in which we were involved. We supported the zoning change that would mandate bike parking in new buildings and provided the city with the results of our survey which indicated that the space requirements for bikes exceeded current and future demands in some building types. To encourage the establishment of supermarkets in underserved neighborhoods, we supported a city zoning proposal that would provide a floor area bonus for the creation of space for a supermarket in these areas of the city. We also supported the Fordham Lincoln Center Master plan, the Museum of Modern Art (MOMA) special permit that would permit the transfer of development rights from landmarked buildings for the construction of a mixed use building on a MOMA owned site, and the DUMBO Dock Street rezoning that would allow

for the construction of a residential and community facility building in DUMBO Brooklyn that would reinforce the character of the area. All these items were approved.

The City Council introduced landmark legislation that would revoke validly issued permits for a building, if it is designated or considered for designation. The issuance of a permit and its irrevocability has been a crucial component in real estate and real estate lending. The only basis for such revocation has been for life threatening safety issues. We vigorously opposed this dramatic change in the building permit process and have been successful in halting its progress.

On other landmark issues we organized a successful turnout of property owners to the Landmarks Preservation Commission's (LPC) public hearing on the proposed extension of the SoHo Cast Iron Historic District. These owners spoke in opposition to the designation and provided detailed information about their building, such as the year built and its architectural style, and how it failed to meet the architectural and historical standards required for designation. The size of the owner turnout and the quality of their testimony represented significant opposition to the proposed designation. No date has been set for the LPC to act on this item.

We also opposed the LPC's proposed designation of 1780 Broadway and 225 West 57th Street which are part of a development site. These properties were built by B. F. Goodrich in the 1920s when the section of Broadway was part of Automobile Row. LPC had reviewed the architecture and the history of these two buildings twice, in the 1970s and again in the late 1990s, and decided not to designate. We spoke out against revisiting this issue a third time and more importantly revisiting it now that it is included in a development site. In the end, the LPC voted to designate 1780 Broadway which the developer did not object to since this building could be incorporated in the new project. Our participation was instrumental in achieving the acceptable outcome in this matter.

OTHER ACTIVITIES

We worked with other organizations to promote a project labor agreement (PLA) that would lower labor costs on new projects. The high cost of construction and the declining rents and sale prices for new commercial and residential developments have stalled many projects. An industry-wide PLA has been negotiated and is available to new and existing projects upon application to the Joint Labor Management Committee of the NYC BCTC and the BTEA on a project-specific basis. The contractors who negotiated the agreement caution that the estimated 15 percent savings may not be realized by every trade.

When some attorneys representing condominium purchasers sought to rescind the

contract using the Interstate Land Sales Act (ILSA) we contacted both Attorney General Andrew Cuomo and HUD Secretary Shaun Donovan asking that New York State filings under the Martin Act, which actually offers greater disclosure than ILSA filings, be considered an ILSA equivalent. At the same time, we filed an ethics complaint against the attorneys engaged in this practice, maintaining that the method of soliciting clients and the conduct of these attorneys are unethical.

With the nearly virtual absence of leasing activity at the beginning of 2009, REBNY prepared an economic development proposal that highlighted the tax revenue benefits that would occur if the city provided a leasing incentive program for small- to medium- sized tenants citywide, expanded the Relocation and Employment Assistance Program (REAP) that offers tax benefits for tenant retention and expansion, and modified the Industrial and Commercial Incentive Program/ Industrial and Commercial Abatement Program (ICIP/ICAP) to make it an inducement for capital investment in existing buildings. These proposals were presented to the administration and the city council that showed interest in stimulating economic activity once they believed we have staunched the city's revenue losses.

We filed an amicus in the successful defense of a lawsuit brought by a purchaser of a condominium at 515 Park Avenue from the sponsor. New York's highest court, the Court of Appeals, concluded that "a purchaser of a condominium apartment may not bring a claim for common-law fraud against the building's sponsor when the fraud is predicated solely on alleged material omissions from the offering plan amendments mandated by the Martin Act . . . and the Attorney General's implementing regulations." Citing our brief the Court noted that to amend the plan every time a problem was corrected during construction would make the process unworkable.

EDUCATIONAL EVENTS, CHARITABLE ACTIVITIES, MARKET REPORTS AND MEMBER SERVICES

We offered a wide and diverse series of member events that were insightful, informational and entertaining. These included our popular member's luncheons, our well-subscribed State Qualifying and Continuing Education courses for brokers and salespersons, our interesting Crossfire and Top Brokers seminars and committee luncheons on current issues in the industry. These events also provided countless and fruitful networking opportunities. Throughout the year, these events were well attended, highly regarded and have been important and interesting activities for our members.

We offered more than 20 free seminars to enhance professional development, discounts from over 40 vendors and suppliers and help in obtaining health insurance and retirement planning, and a discount of up to 53 percent on continuing education classes.

Another way that we kept our members informed about current conditions is through the regular issuance of market reports. We issued quarterly reports on the New York City residential sales market that included a breakdown of sales by borough, neighborhood and property type. We inaugurated in 2009 a quarterly residential broker sales survey. The survey identified trends in the market and general buyer information. Our semi-annual retail report continued to provide comprehensive market information for Manhattan and detailed analysis of its major retail corridors.

Created two years ago, the New York Residential Specialist (NYRS) Designation has become a symbol of excellence in New York residential real estate. It is awarded to experienced associate brokers who have achieved rigorous production requirements and who completed an advanced "Masters" course of studies. This course continued to sell out and remained a highly beneficial educational experience.

Our property database contains voluminous current and historical information for property in all five boroughs. Accessible directly through our Members' Website, the database features property ownership, assessed value, and sales information for each parcel as well as a map search feature to easily find property. The database has been enhanced to search for a property using a primary or alternate address. Also, the search function has been simplified and includes a "tips" link that explains how to enter information for the best results. Landmark data has been clarified and expanded. We added a link to the database that provides you with property specific tax exemption benefit information (421a, ICIP, J-51) and the number of years remaining on the benefit. More importantly, REBNY staff was available to assist members with use of the database and provide guidance that would enhance the member's results.

Our free legal hotline remained a well-used service for REBNY members who have legal questions that arise in the course of their business activity. The Legal Line is manned by one of New York's most esteemed real estate lawyers, Neil Garfinkel of Abrams Garfinkel Margolis Bergson, LLP.

The REBNY Listing Service (RLS) allows for the sharing of exclusive listings among REBNY firms and RLS members after 24 hours.

ResidentialNYC.com, a collection of exclusive residential sale and rental real estate listings available to the public, remained a valuable service to the industry and the public. All the exclusive listings on the site which are updated every 3 hours are brokered by participating members of the REBNY Listing Service (RLS). Each member is licensed in the state of New York and held to a strict code of ethics.

We launched the REBNY Action Center in November and successfully opposed the City Council's commercial rent control bill (described above). The Action Center provides our members the opportunity to send e-mails to elected and government officials easily and quickly on an issue we are involved or an issue that concerns them. With the broad based support of our membership, the Action Center will enhance our effectiveness in supporting issues vital to the industry.

As part of our growing technological footprint, you can now follow REBNY on Twitter. On a continual basis, we post tweets on the latest industry news, current real estate issues and our events and services that would be of interest to our members.

REBNY members are extraordinarily philanthropic and active on behalf of many causes. In September, a Pro Am Tennis Tournament was held, which raised \$25,000 for the children's programs of the Big Apple Circus and for the Centurion Foundation which supports the NYPD. The Residential Brokerage Division held their annual gala at the 230 Fifth Penthouse and raised \$25,000 for the Member in Need Fund. Additionally, quite a few REBNY members joined the Skyscrapers for Life program by holding blood drives in their buildings, including some apartment buildings as well as office properties. A number of REBNY members made contributions to the REBNY Foundation to support the the NYPD's Crimestoppers Program.

Conclusion

Our achievements and successful advocacy in this difficult year were the result of the active and steadfast support of our members. We want to thank you for your support and assure you that REBNY will do everything in its power to improve economic conditions and to bring stability to our industry. That means we will continue our work in Washington with our elected officials to identify additional initiatives to promote economic stability and growth. Likewise, we will work with the State and the City to find the right solutions to their mounting deficit and strongly articulate our concerns about the current and future tax levels. The Board of Governors, the Divisions' Board of Directors and Committee Members generously gave their time, energy and talent in support of the Board's many activities. With their support REBNY has been referred to as the most influential real estate advocacy group in New York. The staff shares in this credit and worked tirelessly in this very busy and challenging year. All have our thanks and gratitude. In 2010 we will continue to strive to do more with less as we plan for the uncertain times ahead. In the new year, we will continue to be a strong, effective, and respected voice for our members, our industry and for the best interest of the city.

Mary Ann Tighe
Chairman

Steven Spinola
President