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Top 2016 legal developments affecting New York real estate industry by Kearns

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Kristine Wolf

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2016 brought a number of incremental developments in the laws affecting New York's commercial real estate industry (and some notable inaction!), including the following.

Zombie Law: No, it's not a law prohibiting you from coming back from the dead to haunt your neighbors. It's a new State law requiring first mortgagees of 1 to 4 family homes which are in foreclosure to continually inspect and repair abandoned homes so that the homes don't violate local codes and become "zombie" homes.

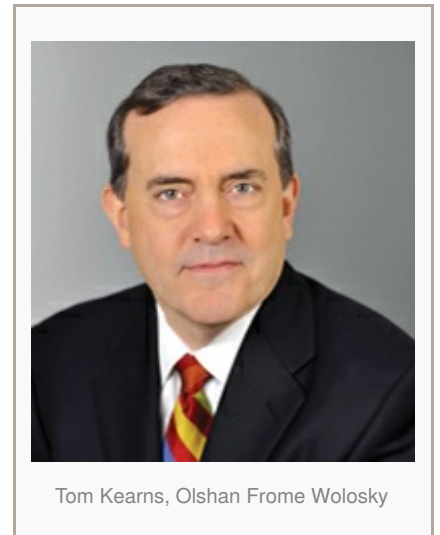
Commercial Tenant Harassment: The New York City Council passed a law protecting commercial tenants from harassment by their landlords. The law provides for damages including punitive damages and fines up to \$10,000.

Books and Records: Not a year goes by without significant court rulings in the law governing books and records of New York entities. This year it's New York condominiums that are in the spotlight. The opinion in *GSLC v. Toren Condominium* upheld the commercial unit owner's right to see settlement documents between the sponsor and the condo board over the sponsor's alleged defective design and construction over the objection of the Board that it had determined in its business judgment that the settlement should be kept confidential.

LLC Mergers: Section 1002(g) of the New York LLC law permits "freeze-out" mergers of LLCs designed to cash out minority members as long as the minority member has the right to have its interest appraised in a court proceeding. The latest court decision to uphold a freeze-out merger is *Huang v. Northern Star Management* which upheld a merger over the plaintiff's argument that only "disinterested" members had the right to vote for the merger.

Attorney General Approves Specific Disclaimers: The New York Attorney General reversed a prior position and agreed that sponsors of condominium offering plans may include disclaimers warning purchasers that the sponsor is not making representations other than as expressly set forth in the plan. Previously the AG viewed disclaimers as an impermissible limit on liability.

FinCEN Disclosure: The Financial Crimes Enforcement Network or FinCEN adopted rules requiring disclosure of



Tom Kearns, Olshan Frome Wolosky

the identity of LLC members who hold 25% or more of an LLC that is purchasing real estate on an all cash basis in six metropolitan areas in four states: New York, Florida, California and Texas.

421a: The law granting tax exemptions to newly constructed housing expired in early 2016 and, despite much political maneuvering, remains expired as of the writing of this article.

In addition to the *New York Real Estate Journal*, here are a few resources to keep up on the constantly evolving legal environment affecting New York's commercial real estate industry:

- Mike Berry's Current Developments newsletter for First American Title,
- Peter Mahler's NYBusinessDivorce.com,
- JoshuaStein's website,
- The attorney general's email list,
- @REBNY and
- @TDKearns on Twitter.

Happy New Year!

Thomas Kearns is a partner with Olshan Frome Wolosky LLP's real estate department, New York, N.Y.