

DANIEL M. BERNSTEIN

MEMBER - Tax Incentives & Affordable Housing

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DANIEL M. BERNSTEIN 2027 RECOGNIZED BY Best Lawyers

Practice Areas

- Due Diligence in connection with Multifamily Purchases, Sales and Financing: Rent Regulation and Affordability Analysis and Risk Assessments
- Filings and Analysis of Property Tax and Financial Incentive Programs (467-m/ AHCC for commercial converstions, 485-x/ ANNY for new developments, 421-a, ICAP/ ICIP, 420-c, J-51, 420-a, PHFL Art. XI, IDA, PILOT, FRESH)
- Rent Stabilization Issues: Coverage, Rent Overcharge, Substantial Rehabilitation and Regulatory Compliance
- Affordable Housing Financing and Compliance
- Wage Compliance Obligations under 421-a Tax Exemption and other Programs
- Article 78 Proceedings and Appeals Challenging Agency Orders
- Zoning Resolution Regulatory Agreements (Voluntary & Mandatory Inclusionary Housing, Senior Housing, FRESH)
- Regulatory Agreements Generally, including Financing and Tax Benefits
- No Action Condominium Formation and Filings, including as needed to Qualify Units for Property Tax Incentives
- Certificates of No Harassment

Bar Admissions

- New York
- U.S. District Court Eastern District of New York
- U.S. District Court Southern District of New York
- U.S. Court of Appeals 2nd Circuit
- U.S. Supreme Court

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Daniel M. Bernstein joined Rosenberg & Estis, P.C. in 2017 and is a Member and Leader of the firm's Tax Incentives & Affordable Housing Department. Bernstein's practice involves affordable housing and urban development issues in New York, obtaining property tax exemptions and abatements (485-x / ANNY for new development; 467-m / AHCC for commercial conversions; new and old 421-a including requests for extension of 421-a(16) Completion Date, ICAP/ICIP, 420-c, 420-a, J-51, Article XI, etc.), development rights bonuses and incentives / zoning requirements (Voluntary and Mandatory Inclusionary Housing, FRESH program, Zoning for Quality and Affordability) for New York City projects. Bernstein is experienced in the assessment and taxation of real property in New York, as well as acquisition, financing, leasing, Declarations of Condominium, and condominium offering plans. Bernstein also has extensive experience helping real estate developers obtain economic incentives for their residential, commercial, or mixed-use projects. Bernstein also performs diligence on such matters for lenders and purchasers of such NYC properties.

Prior to joining Rosenberg & Estis, Bernstein spent over a decade at two New York City real estate law firms representing some of the city's major residential, commercial, and mixed-use real estate developers. Bernstein began his career working on immigration, healthcare, and public benefit issues at a major New York labor union and for New York not-for-profit organizations, where he handled litigation in U.S. District and Circuit Courts.

Notable NYC Legal Work

- Represent many residential developers using the 485-x tax incentive program by itself and also combined with either the Universal Affordability Preference (UAP), Mandatory Inclusionary Housing (MIH) or Voluntary Inclusionary Housing (VIH) zoning affordability program.
- Represent many residential developers of office to residential conversion projects using the 467-m tax incentive program.
- Represent many 485-x developers complying with NYC Minority / Women Owned Business Enterprise ("MWBE") requirements of the 485-x program.
- Represent 485-x developers of Large Rental Projects (100 or more rental units) or Very Large Rental Projects (150 or more rental units located within Zone A or within Zone B)

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Education

Benjamin N. Cardozo School of Law

- J.D. - 1996

Carleton College, Northfield, Minnesota

- B.A. (*cum laude*) - 1993

- Represent many residential developers in preparing and filing 421-a(16) construction wage related Project-Wide Certified Payroll Reports with the NYC Comptroller and undergoing audits.
- Represent developers of conversion and ground up new construction projects within the rezoned Midtown South Mixed-Use Area satisfying MIH requirement and, where applicable, either 467-m or 485-x tax incentive program requirements.
- Represented multiple NYC developers in closing Mandatory Inclusionary Housing Restrictive Declarations (with 421-a property exemptions) to build major residential projects in re-zoned areas.
- Represented not-for-profit owners in obtaining and maintaining eligibility for 420-a property tax exemptions.
- Formed fee and leasehold condominiums for developers of NYC properties, to allow their properties to optimize eligibility for property tax incentives (421-a, 420-c, Art. XI, ICAP, 420-a, etc.) and to align with business / financing goals.
- Amended Regulatory Agreements for affordable rent stabilized NYC properties allowing them to utilize Private Housing Finance Law (PHFL) Section 610 to collect rent subsidies in excess of Legal Rents.
- Represented developers including FRESH zoning benefits in their mixed-income predominantly residential projects, qualifying for Affordable New York Housing Program Benefits aka 421-a property tax benefits and creating a condominium structure to align property tax incentive and business / ownership / leasing objectives.
- Represented developer making units affordable under both the 421-a program and Privately Financed Affordable Senior Housing to achieve both property tax and zoning benefits as well as deeper affordability of certain units.
- Diligenced countless Regulatory Agreements and Property Tax Incentive programs for potential lenders and purchasers.
- Represented purchasers of residential development rights generated via the Inclusionary Housing program.
- Represented early adopters of the new “Affordable New York Housing Program” who switched to this program from the old 421-a tax exemption program.
- Prepared and filed applications for development rights under the NYC Inclusionary Housing Program, including for projects qualifying for tax exemption under both the Affordable New York Housing Program and the “old” 421-a program.
- Represented NY Affordable Housing developer in connection with 420-c property tax exemption program for project receiving low income housing tax credits.
- Represented national residential developer on New York City residential and mixed-use rental projects in connection with applications for 421-a property tax exemptions, analyses of maximum allowable rents under the 421-a tax exemption program, and preparation of 421-a lease riders for market-rate and affordable units.
- Represented national residential developer on New York City residential condominium and cooperative projects through property tax exemption and condominium offering plan work. This involved guiding the client through the 421-a property tax exemption program

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and including for sale affordable units in mixed-income projects.

- Represented New York developer on several of their mixed-income mixed-use projects, which included market-rate residential condominium units and rentals, affordable rental units, and retail/commercial space consisting of hundreds of residential units. This involved managing property tax exemption and abatement applications (421-a property tax exemption, 420-c property tax exemption, and ICAP property tax abatement), refining Declaration of Condominium to maximize property tax exemption and abatement programs, coordinating with Offering Plan counsel, and more.
- Represented New York developer of new-construction hotel and medical office property in connection with ICAP property tax abatement program and projection of property taxes with and without ICAP benefits.
- Represented developer of new-construction retail property in connection with ICAP property tax abatement program and coordination with leasing counsel regarding tax escalation clauses for tenants.
- Represented New York developer of existing hotel property in connection with ICAP property tax abatement program and projection of property taxes with and without ICAP benefits.
- Represented purchaser of existing residential property and conducted due diligence regarding 421-a property tax exemption benefits and the potential value of the property tax benefits at issue.
- Represented seller of hotel property with pending application for ICAP property tax abatement benefits. Coordinated with seller's transactional counsel and with purchaser's transactional counsel.
- Represented developer of new-construction commercial property in request to have the New York City Department of Finance remove building assessed value under Administrative Code provisions.
- Projected assessed value and net operating income of major residential projects with and without various property tax exemption (421-a) and abatement (ICAP) programs. Assisted developers in making determination whether to make residential units affordable under the 421-a program.

Classes & Seminars

- In-person CLE: "Current Issues in Affordable Housing in New York City," Organizer, NYC Bar Association, May 2026
- In-person CLE: "Current Issues in Affordable Housing in New York City," Organizer, NYC Bar Association, May 2025
- R&E Webinar: "J-51 Reform Program: April 30 Filing Deadline," Co-Presented with R&E Member Benjamin M. Williams, March 2025
- R&E Webinar: "Midtown South Mixed-Use Plan (MSMX)," Co-Presented with R&E NYC Development Group Member Adam R. Sanders and Counsel David J. Rosenberg, March 2025
- R&E Webinar and In-person CLE: "NYC Property Tax Incentive and Regulatory Due Diligence 101: Important Updates for NYC Purchasers and Lenders," December 2024
- In-person CLE: "Introduction to NYC Property Tax Incentives for Affordable Housing", Program Instructor, NYC Bar Association, November 2024

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- In-person CLE: “2024 Update: NYC Affordable Housing Property Tax Incentives”, Co-Presenter, Rosenberg & Estis, October 2024
- “Investment Outlook: Strategies To Offset Smaller Margins On Affordable Housing,” Moderator, Bisnow, August 2024
- R&E Webinar: “Meet the new New York Development Incentives: 421-a, 485-x and 467-m,” May 2024
- In-Person CLE: “Current Issues in Affordable Housing in NYC: The Migrant Surge”, Organizer, NYC Bar Association, May 2024
- R&E Webinar: “NYS PHFL Create Affordable Housing Opportunities,” December 2023
- “Investment Outlook: Strategies To Offset Smaller Margins On Affordable Housing,” Moderator, Bisnow, August 2023
- Inside R&E Podcast: “The Empire State Development Gowanus Program - Gov. Hochul’s Plan to Replace 421-a(16) for Residential Gowanus,” Speaker, July 2023
- In-Person CLE: “Current Issues in Affordable Housing in NYC,” Organizer, NYC Bar Association, May 2023
- R&E 421-a Webinar: “Affordability, Rent Stabilization, Deregulation and Recent Litigations,” March 2023
- R&E Webinar: “Housing New York – Law Changes In Gov. Hochul’s Budget Proposals,” March 2023
- R&E Webinar: “421-a Buildings: Wage Issues,” December 2022
- “Affordable Housing Pipeline,” Bisnow’s Affordable Housing Summit, August 2022
- “Affordable Housing Pipeline,” Moderator, Bisnow’s Affordable Housing Summit, August 2020
- “NYC Residential Developer & Operator Lunch-and-Learn,” Speaker, March 2020
- “Housing Stability and Tenant Protection Act of 2019 (‘HSTPA’) - What Owners and Tenants (And Their Counsel) Need to Know,” Speaker, October 2019
- “Affordable Financing and Regulation Strategy,” NYC Affordable Housing Summit, Moderator, August 2019
- CLE: “Current Issues in Affordable Housing in New York City,” Speaker, May 2019
- “New Housing Tax Incentives,” Speaker, NYC Bar Association, 2017
- “In the Zone: Updates on Mandatory Inclusionary Housing in NYC,” Speaker, Venable LLP, 2016
- “Development in The Wake of 421-a,” Speaker, NYC Bar Association, 2016

Published Works

- Critical Tax Incentives for NYC Residential Development in 2025 and Beyond: 485-x, 467-m, and 421-a, Traded: New York, January 2025
- NYC Affordable Housing; The End of 421-a and the future of housing incentives, Real Estate Weekly, January 2022
- Looking ahead to the challenges and opportunities coming in 2020, Real Estate Weekly, January 2020

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- Updated Rules For NYC's 421-a Tax Exemption Beneficiaries, Law360, October 2018
- 2017 Was the Year of New York City Real Estate Disruption, Commercial Observer, January 2018
- Paths Forward for Multifamily Properties and Conversions to Residential Use, New York Law Journal, June 27, 2016
- Brace for Impact of 421-a Statute, MIH and Issue of Subsidies, Real Estate Weekly, December 2, 2015
- Tax Break Could Impact Housing, New York Daily News, May 25, 2011

Professional Associations

- New York State Association for Affordable Housing, Member, Legal Committee
- Real Estate Board of New York, Member, Economic Development Committee
- NYC Bar Association, Member, Committee on Housing and Urban Development
- Real Property Tax Review Bar Association, Member

Honors & Awards

- New York Super Lawyers, 2023 - Present