

REAL ESTATE WEEKLY

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New Lobbying Law Could Hurt Development in New York City



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as part of the City's regulatory building scheme.

Owners wishing to keep pending real estate transactions confidential or who already feel burdened by New York City's labyrinth of endless regulatory obstacles face potentially crippling new requirements.

The mechanism for this added complication is the little-understood and less appreciated New York City Lobbying Law being applied, for the first time, to private sector architects and engineers who typically appear before various agencies and boards

The aforementioned appearances may render architects and engineers "lobbyists" and trigger the need for filings and disclosures by both the design professionals and their clients, who will be required to file under the law because they are deemed clients of lobbyists.

The Office of the City Clerk, advised by its legal counsel, previously determined that certain activities, regardless of who undertakes them, are deemed to be "lobbying." But other activities are unclear.

So if an architect or engineer is appearing before the Department of Buildings in connection with obtaining approvals for various aspects of their plans for a project, according to a recent meeting with the Deputy City Clerk, such appearances may or may not constitute lobbying. These interactions will have to be reviewed and evaluated on a case-by-case basis. With this lack of clarity at the onset, design professionals, owners and developers may unwittingly become undone by the rules of the lobbying process.

Broadly speaking, any attempt to influence the decision of public officials may be deemed lobbying and so a pre-filing with the City Clerk, with the State Joint Commission on Public Ethics (JCOPE), or with both, could be required for almost any project.

For instance, in addition to interactions with the Department of Buildings, if architects or engineers are involved in appearances before the New York City Planning Commission, the Landmarks Preservation Commission, the Department of Housing Preservation and Development, the Department of Cultural Affairs, the Department of Environment Protection, the Fire Department, the Department of Transportation, the New York Loft Board or any borough or community board, such interactions, which typically and commonly occur in the design and planning of a project, may, according to as yet illdefined and little-understood rules, render such activity "lobbying."

In this scenario, all such activity will be subject to a pre-filing requirement with the City Clerk or on the State level with JCOPE,

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which will include, among other things, disclosure of the reasons, goals, compensation and contracts related to such activity, as well as the identification of the underlying project, the entity lobbied, the relief or action sought, the client and the compensation for that activity.

Given the breadth of the required disclosures that become public record at what may very well be a premature stage, the impact on planned real estate transactions could be significant and harmful to long-term accumulations of property or activities related to real estate development.

The filing process itself is cumbersome and if not followed, the penalties can quickly add up. Currently, requirements call for an initial filing of a lobbying disclosure and five subsequent bi-monthly statements per year for that particular activity alone.

There easily could be numerous such activities per project per year or years, which require public disclosure as lobbying.

The volume of lobbying-related filings by architects and engineers, for which there must be corresponding filings by their clients, is potentially overwhelming for any organization, which the City Clerk and JCOPE may not fully appreciate.

As you may have guessed, there are substantial penalties for failing to make the required filings that include significant monetary sanctions and some failings may cross into the realm of criminal conduct.

Unwitting or uninformed owners and developers will face the same penalties as those who knowingly retain lobbyists and do not properly disclose such activity to the New York City and New York State authorities that vigilantly monitor such practices.

Oh yes, the State lobbying statute and those that enforce it are following along with the City Clerk and are now imposing their regulations, which are not well suited to actual design and construction projects, on architects, engineers and their clients.

The penalties for non-compliance with the filing requirements for the State are perhaps even more severe than those for the City.

With the amnesty period coming to a close, the development community and the architectural and engineering communities need to co-operatively address the requirements at both the City and State level before they create far more difficulties for design professionals — now branded as lobbyists — and their clients.

The effect of dragging architects and engineers into the sphere of "influence peddling," for what are longstanding and routine business practices and for which copious disclosures are required, may have the unintended consequence of significantly and adversely affecting the progress, risks and costs of development projects in New York City.