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New York's Pied-à-Terre Tax Has a Renovation Problem

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New York City's new pied-à-terre surcharge has generated significant attention since Governor Hochul signed it into law this past May. Much of that attention has focused on the rollout process and broader policy debates. Almost no attention has been paid to a specific and consequential gap in the law: its treatment of properties undergoing renovation. Even those who agree with the law's objectives may not be focusing on this aspect. Clients who are considering purchasing or renovating may want to review these issues in the course of their property search and tax planning. Real estate and construction industry professionals, as well as co-op and condo boards, will want to keep these considerations in mind when drafting their respective agreements, as a few months' difference in timing of a closing or job completion may result in sizable financial consequences.

The gap is fairly straightforward to describe, even if its legal implications are not fully resolved. Based on the most recent guidance, the surcharge appears likely to apply to any residential property that does not serve as an owner's primary residence as of January 5 of the applicable tax year. According to the same guidance, the available exemptions are occupation-based, which means the property must be occupied by the owner, an immediate family member, or a qualifying tenant. Properties that are actively under renovation however, may find themselves subject to the tax – even though in many cases they cannot legally be occupied at all. This leads to an upside-down outcome, where the only category of second-home owners with no ability to mitigate the surcharge through occupancy is the category least able to occupy the property in the first place.

Understanding The Renovation Trap

Consider a common scenario: a full-time New York City resident purchases a co-op apartment above the assessed value threshold with the intention of making it their primary residence after a gut renovation. As is all too common, the renovation, when factoring in the time required for Department of Buildings approvals, co-op or condo board review, and permitting, means the property is not habitable as of January 5.

Under the current rules, the buyer may well be out of luck.

Before the final rules were adopted, the Real Estate Board of New York submitted comments directly addressing this situation, noting that construction work "can take several months, if not years, to complete" and calling the application of the surcharge to renovating owners "deeply unfair." The Department of Finance declined to create an exception. Its final rules confirm that the surcharge is not prorated for part-year changes in use and that "contemplated use," typically referring to a buyer's intent to occupy the property as a primary residence, does not establish primary residence status for purposes of the surcharge.

Inconsistent and Uneven Results

The renovation gap produces results that appear inconsistent with the stated purpose of the law, to collect tax from out of state owners and increase occupancy. First, renovating owners – even those who pay New York City tax and reside in the City fulltime – are uniquely disadvantaged compared to other categories of owners affected by the tax. Other owners subject to the surcharge have a straightforward path to avoid it: get the property occupied. A non-resident owner can rent the unit to a qualifying tenant, or have a family member move in, and eliminate the surcharge entirely. A renovating owner has no equivalent option. The property cannot legally or safely be occupied during a major gut renovation.

Second, a buyer who purchases a move-in-ready property far above the threshold value – even tens of millions of dollars above the threshold – and immediately occupies it, or has someone else occupy it, pays no surcharge. But a buyer who purchases property at a lower price point that requires substantial renovation, and who intends to make it their primary residence, may face annual surcharge liability for the duration of the work, with no opportunity for relief.

Third, renovating owners face radically different consequences based on the timing of when a home becomes habitable after renovation – something that is not typically within most City homeowners' control, given permitting, board approvals, asbestos, and other uncertainties of renovation.

The consequences extend beyond individual buyers. Renovation activity may slow or stall due to buyers reconsidering purchases that trigger unavoidable surcharge liability, or because existing owners defer projects to manage costs. The impact of this then moves downstream through the broader construction ecosystem. Contractors, electricians, plumbers, brokers, and the union workers who make up a significant portion of New York's renovation workforce all absorb that slowdown – on top of challenging cost pressures from tariffs, rising labor costs, and inflation. A tax structure that creates a disincentive to renovate, even unintentionally, adds another obstacle to an ecosystem already operating under strain.

A Question Worth Examining

The surcharge is framed as a tax on the non-occupancy of a second home. But there is an important legal question embedded in its application to gut-renovated properties: can a property be a "home" or a "residence" for purposes of the surcharge when it does not meet the basic legal requirements for habitation?

The New York City Housing Maintenance Code defines an apartment as a unit with "lawful sanitary facilities and a lawful kitchen or kitchenette." The Administrative Code requires that every residential dwelling unit contain functioning plumbing fixtures including a water closet, lavatory, sink, and bathtub or shower. During a gut renovation, these requirements are typically not met. The property retains its certificate of occupancy at the building level, but the individual unit is not legally habitable.

The law's own logic is instructive here: it expressly exempts new construction properties that lack a certificate of occupancy, specifically because it would not be legal to occupy them. Whether a comparable rationale should extend to individual units that are legally uninhabitable during renovation is a question that, to date, does not appear to have received a clear answer.

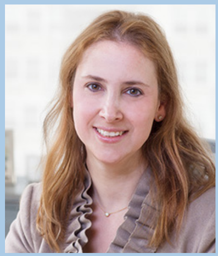
What Owners and Their Advisors Should Do Now

The appeal deadline for surcharge valuations has been extended to September 18, 2026. But the currently available grounds for appeal are limited. Based on current guidance, appeals must be either a challenge to the valuation or a claim of exemption based on primary residence status, and they currently do not include a renovation-based argument. Owners who believe they may be affected should consult with counsel now, both to evaluate their specific circumstances and to monitor how the law and its implementing guidance continue to develop. Going forward, purchasers and renovators should carefully plan to address the relevant timing cutoff. Boards should be aware that delays may expose renovators to new financial consequences. Contractors may want to discuss with clients how they will manage the tax, especially in the event of unanticipated delays.

The renovation gap in New York's pied-à-terre surcharge is real, it is confusing, it is underreported, and it is likely to impact more buyers than currently estimated. Whether it is ultimately addressed through administrative guidance, legislation, or legal challenge remains to be seen, but the question is worth asking.

Why This Matters, and How Cohen & Gresser Can Help

New York's pied-à-terre surcharge is newly enacted, actively evolving, and generating legal questions that published guidance has not yet fully resolved. Cohen & Gresser is actively monitoring developments in this area and available to assist property owners, real estate professionals, co-op and condo boards, and construction industry clients in evaluating how the surcharge applies to their specific circumstances, as well as what options may be available to them.



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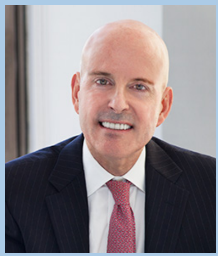

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