New Research Shows Regulations Account for 40.6 Percent of Apartment Development Costs

WASHINGTON, D.C.

Regulation imposed by all levels of government accounts for an average of 40.6 percent of multifamily development costs across the U.S., according to new research released on Jun. 9 by the National Association of Home Builders (NAHB) and the National Multifamily Housing Council (NMHC).

"The U.S. is facing a serious housing affordability crisis, in part, because of this overly burdensome regulatory environment," said Doug Bibby, NMHC president. "We need to do all we can to lower the cost of housing, and that should start with eliminating duplicative and unnecessary regulations. Those extra costs make many projects financially unviable given that housing providers are already dealing with sky-high land, materials and labor costs."

"This study clearly shows how burdensome regulations are exacerbating the nation's housing affordability crisis and that officials at all levels of government need to make it a priority to reduce excessive regulatory costs to allow developers and builders to boost housing production and ease affordability challenges," said NAHB Chairman Jerry Konter, a home builder and developer from Savannah, Ga.

Apartment developers are subject to a variety of regulations at all levels of government. Among others, they include zoning requirements, building codes, impact fees, permitting requirements, design standards, public land requirements, and federal Occupational Safety and Health Administration (OSHA) regulations and other labor requirements. Smart regulations play an important role in ensuring the health and well-being of the American public, but many regulations such as design standards go far beyond those important goals and impose costly mandates on developers that drive housing costs higher. Others are duplicative and require resources to confirm compliance with multiple regulators, the research said.

The new research, based on a survey of 49 developers across the U.S., also examined regulations and other factors that can impact whether development even occurs. Three quarters (74.5 percent) of respondents said they encountered "Not on My Backyard" (NIMBY) opposition to a proposed development. Confronting that opposition adds an average of 5.6 percent to total development costs and delays the completion of those new properties by an average of 7.4 months.

The research asked detailed information about affordability mandates. Slightly less than half (43.8 percent) of respondents said their typical project was in a jurisdiction with inclusionary zoning, a regulation that requires developers to offer a certain number of apartments at below-market rents. Covering the costs of those lower rents, on average, resulted in a 7.6 percent rent increase, the research said.

As a result, 47.9 percent of developers said they avoid building in a jurisdiction with inclusionary zoning requirements. A total of 87.5 percent avoid working in jurisdictions with rent control. This translates into housing not being built in many areas where it is so desperately needed, the research added.

Identifying duplicative and unnecessary regulatory costs is a critical factor as the work of addressing the critical shortage of affordable housing facing the U.S. continues, the research said.

REPORT:

Rising Interest Rates and Higher Construction Costs Are Slowing Housing Production Across the U.S

WASHINGTON, D.C.

Rising interest rates and ongoing building material supply chain disruptions that raise construction costs continue to act as significant headwinds on the housing market, according to a recent report.

Overall housing starts across the U.S. fell 14.4 percent to a seasonally adjusted annual rate of 1.55 million units in May from an upwardly revised reading the previous month, according to a report from the U.S. Department of Housing and Urban Development (HUD) and the U.S. Census Bureau. The findings of the report are contained in a recent analysis by The National Association of Home Builders (NAHB). The analysis was released on Jun. 16.

The May reading of 1.55 million starts is the number of housing units builders would begin if development kept this pace for the next 12 months. Within this overall number, single-family starts decreased 9.2 percent to a 1.05 million seasonally adjusted annual rate. The multifamily sector, which includes apartment buildings and condos, decreased 23.7 percent to an annualized 498,000 pace, the NAHB analysis said.

"Single-family home building is slowing as the impacts of higher interest rates reduce housing affordability," said Jerry Konter, chairman of NAHB and a home builder and developer from Savannah, Ga. "Moreover, construction costs continue to rise, with residential construction materials up 19 percent from a year ago. As the market weakens due to cyclical factors, the long-term housing deficit will persist and continue to frustrate prospective renters and home buyers."

"In further signs that the housing market is weakening, single-family permits are down 2.5 percent on a year-to-date basis and home builder confidence has declined for the last six months," said NAHB Chief Economist Robert Dietz. "Due to the acceleration in construction activity in recent quarters, housing completions are rising. Single-family completions were up 8.5 percent in May of 2022 compared to May of 2021 as inventories rise."

On a regional and year-to-date basis, combined single-family and multifamily starts are 2.1 percent higher in the Northeast, 1.2 percent higher in the Midwest, 12.9 percent higher in the South and 4.3 percent higher in the West, the NAHB analysis said.

Overall permits decreased 7.0 percent to a 1.70 million unit annualized rate in May. Single-family permits decreased 5.5 percent to a 1.05 million unit rate. This is the lowest pace for single-family permits since July of 2020. Multifamily permits decreased 9.4 percent to an annualized 647,000 pace, the NAHB analysis added.

The NAHB analysis noted that, looking at regional permit data on a year-to-date basis, permits are 8.3 percent lower in the Northeast, 5.2 percent higher in the Midwest, 4.6 percent higher in the South and 1.6 percent higher in the West.

Construction Compensation Insurance Group Reports a 25 Percent Dividend for Its Members, Continued from p. 1

Group 530 Announces Its Dividend

New York State Workers Compensation Group 530, the compensation insurance group for The Cooperative and Condominium Advisory Council (CCAC), The Apartment Owners Advisory Council (AOAC) and The Advisory Council of Managing Agents (ACMA) of The Building and Realty Institute (BRI), recently announced a 25 percent dividend for the policy year ending June 1, 2021. Group spokesmen said that the dividend is in addition to the Advance Discount of 25 percent that group members are eligible to receive. The announcement was made during the group's Annual Meeting on Apr. 5. A total of 475 cooperatives, condominiums, apartment buildings and office buildings participate in the program, spokesmen said. Group 530 was formed in 1990.

Officials for Group 458 and Group 530 added that that the upfront discount for both groups increased five percent from last year.

Counsels' Corner

Two Recent Areas of Interest in Co-op/Condo Law


Ken Finger


Dorothy M. Finger


Carl Finger


Dan Finger

By Kenneth J. Finger, Esq., Dorothy M. Finger, Esq., Carl L. Finger, Esq., and Daniel S. Finger, Esq.

WHITE PLAINS

Reasonable Accommodation, once again.

The State of New York, in 2020, enacted into law a requirement that housing providers notify all residents of their potential rights to a Reasonable Accommodation.

At the time of the enactment of the law, the New York State Division of Human Rights (DHR) then published a sample form of notice. Thereafter, in 2021, the state repealed the 2020 law and enacted a new law requiring again that housing providers notify all residents of their potential rights to a Reasonable Accommodation. While the essence of the notification did not significantly change, there were sufficient changes to require that a new notice be sent out to the residents.

Once again, the state promulgated a new form. The promulgation of a new form raised questions in the minds of some landlords, such as do we again have to go to the time and expense of sending out a notice advising the residents of their potential rights to reasonable accommodations? The answer is simply yes. Since the old law was repealed and there was a new law and new form, even though the basic concept is the same, strict compliance with the requirements of the law is necessary.

While one might argue that the form was perhaps more detailed than the legal requirements, and a notice could be fashioned that technically complies with the requirements of the law, the safest route to take is to send out the notice that the DHR promulgated and thereby avoid any complaint that the requirements of the law were not followed.

Housing providers should consult with their own counsel if they have not as of yet complied with the law, and take steps to do so immediately. It is noted, among other things, that if your building was constructed on or prior to March 13, 1991, the building owner might not be required to meet the accessibility standards that are required for all buildings constructed after March 13, 1991. It is also noted that a complaint must be filed with DHR within one year of the alleged discriminatory act or within three years if in court. It is strongly suggested that if there is any question, that the particular building owner / manager consult with counsel. A link to the form can be found at www.dhr.ny.gov.

Electronic Procedures Approved by the Court

The Pandemic resulted in many changes in Cooperative and Condominium procedures, among which were virtual Board meetings and modification of the Annual Meeting Procedure.

A case recently was decided (Lifesavers Bldg. Homeowners Group v. Bd. of Mgrs. of the Landmark Condo, Supreme Court, Westchester County, May 23, 2022) that dealt with a board's ability to create new electronic procedures for voting, specifically related to verification of votes by email, pursuant to recently amended New York Non-Profit Corporation Law (NPCL) §603 (whose language mirrors that of the New York Business Corporation Law (BCL) §708).

The Pandemic caused many Co-ops and Condominiums to either delay or postpone Annual Meetings for fear of spreading COVID-19. The state, in response, and understanding the frequent use of "Zoom" meetings or virtual meetings by some other form, caused a statutory change to certain methods of meetings which had been promulgated by Executive Order. That change allowed Condos and Co-ops to hold "virtual" shareholder and unit owner meetings. The statute also allowed the utilization of electronic methods to verify participation of shareholders and unit owners and to conduct virtual meetings (avoiding in-person meetings). Thus, the use of email, and virtual meetings, with appropriate safeguards, has now been court approved and can give comfort to those Condos and Co-ops that want to continue using virtual meetings to use electronic means to document action by written consent by boards and to hold virtual shareholder meetings.

The laws permit the board to conduct electronic meetings and to implement "reasonable measures" to "verify that each person participating electronically is a member or a proxy of a member."

***Editor's Note:** The authors are attorneys with Finger and Finger, A Professional Corporation. The firm, based in White Plains, is Chief Counsel to The Building and Realty Institute of Westchester and the Mid-Hudson Region (BRI) and its seven component associations.*

A Warning: Workers Comp Rates Might Skyrocket!

By Ken Fuirst and Jason Schiciano, Co-Presidents, Levitt-Fuirst Insurance

TARRYTOWN

Workers Compensation Bill A1118/S768 has passed both houses in Albany. This is a major change to workers compensation law and would drastically alter the costs of insurance in New York State!

One of the key goals of the Workers Compensation system is to help an injured worker return to work. For example, if a warehouse worker has injured their shoulder, and can no longer lift heavy objects, then a different suitable job should be found for them, like lifting smaller boxes or operating the forklift or an office job. If a secretary develops Carpal Tunnel and can no longer type, maybe they can answer phone calls. Or what if a salesperson gets hurt and can no longer drive to appointments - can they get an inside sales job?

Under the current Workers' Compensation system, an injured employee who can't return to their pre-injury employment must seek new work within their medical restrictions. That worker will be paid wage replacement benefits so that if the new role has a lower salary, the WC Insurance Company makes up some of the difference.

The new bill on the Governor's desk eliminates that requirement to seek work. WC Bill S768 will now place an injured worker on Total Disability if they cannot perform the exact responsibilities they were doing prior to the injury, or if the current employer cannot provide light duty. So, in the examples we just listed, those employees will now collect full WC benefits, possibly for the rest of their lives, just because they cannot do exactly what they used to do! Basically, someone with a five percent degree of disability will now be allowed to collect 100 percent of the benefits.

Specifics

PROBLEM 1

Total Disability pays the Employee more than Partial Disability, so this law will drive up Insurance Premiums!

Continued on p. 11