

April 1, 2024

New York's Law: Is This the Beginning of Carbon Regulation for Condos/HOAs Across the Nation?

Condos in New York City must now work to reduce their carbon footprint as a result of the Climate Mobilization Act. What's included in the legislation? And perhaps more importantly, do our experts see this type of ordinance affecting condos in other big cities? Here's what we know.

What New York Now Requires

The Climate Mobilization act, including Local Law 97, was passed by the New York City Council in 2019. Its requirements are kicking in this year.

Most buildings of at least 25,000 square feet must, starting this year, meet new energy efficiency and greenhouse gas emissions limits. They'll also need to begin working now to meet the next phase of the limits—which are, as you might expect, tighter—which take effect in 2030. Specifically covered under the law are "two or more buildings held in the condominium form of ownership that are governed by the same board of managers and that together exceed 50,000 gross square feet."

The law is pretty complex and also vague at the same time. But at the very least, it requires condos that fall under its provisions to begin monitoring and reporting their energy use and to conduct inspections and energy audits.

We reached out to four New York City condo lawyers to gather more information. Only one responded—and said she didn't have expertise in the law. We'll provide additional information as we learn more.

Is This the Future?

The good news—at least in terms of the burden on condos of complying with these kinds of laws—is that New York City appears to be the only city that's forcing community associations to begin tracking, reducing, and reporting their carbon footprint. However, other states do seem to be taking more and more steps to push condos and HOAs into environmentally sustainable practices.

"Florida, as a state, turned down funds from the federal Carbon Reduction Program," says Zuly Maribona, LCAM, the Bonita Springs, Fla.-based senior vice president and partner at KW Property Management who oversees the company's southwest Florida, Jacksonville, Orlando, Tampa, and North Carolina operations. She's referring to the \$324 million offered by the federal government to reduce carbon emissions in the state.

"That doesn't mean the state or individual entities here aren't working toward that, but sometimes what gets forced is what gets done," she says. "Currently, we seem to be focused on insurance challenges here in Florida. But plenty of developers today in dense cities here are working toward greener buildings. So it's happening. But it's just not the priority here."

No California cities have gone as far as New York City. "I don't really see anything similar bubbling in California," says James R. McCormick Jr., CCAL, a partner at Delphi Law Group in Carlsbad, Calif., who has represented association clients for nearly 30 years. "The closest I've seen is that we just had legislation passed that's going into effect next year saying that associations aren't allowed to use potable water to water nonfunctional grass. However, the law doesn't define nonfunctional. I guess it means ornamental.

"Frankly, I'm surprised this type of law didn't happen in California," he adds. "The difficulty I see is that condos and HOAs can't afford to do all the things they're obligated to do now. In California, many communities are now required to do inspections of their exterior elements that they can't even afford. Insurance on everyone has gone up. So where are community associations going to get the money to do whatever this is?"

Incentives, Not Mandates

What's more common than the mandates imposed in New York City are incentives to act and laws prohibiting associations from keeping homeowners from taking steps toward sustainability.

"I'm not seeing laws like this in Colorado, not as part of our state law," says Elina Gilbert, a shareholder at Altitude Community Law in Lakewood, Colo., who has specialized in community association law for 24 years. "But the state does provide rewards if you install energy-efficient devices. We also have a law that prohibits associations from not letting homeowners use energy-efficient measures or devices, which includes things like solar panels, wind generators, and swamp coolers. But there's nothing that specifically requires us to do anything."

Note that it's not just homeowners who qualify for rewards for energy efficiency, says Gilbert.

"Associations can qualify if they have a clubhouse and they're using energy-efficient measures for that," she says. "Or if associations are responsible for paying all the utility charges for a community or facility, they'd qualify for any kind of a rebate that applies."

As States Differ, So Do Laws

Maribona makes a point that may be important in this discussion of where states will be heading in the future when it comes to sustainability requirements. "Every state has their own unique climate challenges," she states.

Indeed, while New York City is focused on air, Arizona is focused on water. "I'm not seeing any movement here on clean-air emissions," says Melissa S. Doolan, an attorney at The Travis Law Firm in Phoenix, who has represented community associations for the

last 15 years. "But we have a lot of water-rights issues, and a lot of cities and municipalities here are trying to get communities to reduce their water usage.

"Many communities are working with their city to make sure the community has the minimal landscape requirements, and many communities are going to xeriscaping," she states. "Cities are offering a lot of incentives right now, such as offsets on water bills and flat out offering money back when you switch to low-water-use plants.

"I've seen those incentives offered both to individual homeowners and associations," says Doolan. "Some municipalities are offering both.

"Also, last year, the state mandated that associations are required to allow artificial turf in their community," she states. "So now communities are required to allow artificial turf and solar panels, which have been permitted for a few years now.

"I could also see more water mandates coming from the state down if owners and communities don't do them on their own," says Doolan. "Water is pretty much anybody's biggest concern here in Arizona."