Legislation Details (With Text)

File #:	Res 1512-2020	**Version:**	*	**Name:**	Requiring the recording of mezzanine debt and including mezzanine debt in the mortgage recording tax. (A.9041-A/S.7231-A)
Type:	Resolution			**Status:**	Filed (End of Session)
				In control:	Committee on Finance
On agenda:	12/17/2020				
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Title: Resolution calling upon the New York State Legislature to pass, and the Governor to sign, A.9041-A/S.7231-A, in relation to requiring the recording of mezzanine debt and preferred equity investments and including them in the mortgage recording tax.

Sponsors:

Indexes:

Attachments: 1. Res. No. 1512, 2. December 17, 2020 - Stated Meeting Agenda with Links to Files, 3. Hearing Transcript - Stated Meeting 12-17-20, 4. Minutes of the Stated Meeting - December 17, 2020

Date	Ver.	Action By	Action	Result
12/17/2020	*	City Council	Introduced by Council	
12/17/2020	*	City Council	Referred to Comm by Council	
12/31/2021	*	City Council	Filed (End of Session)	

Res. No. 1512

Resolution calling upon the New York State Legislature to pass, and the Governor to sign, A.9041-A/S.7231-A, in relation to requiring the recording of mezzanine debt and preferred equity investments and including them in the mortgage recording tax.

By Council Member Rosenthal

Whereas, According to an article in the Stanford Journal of Law, Business & Finance, *What's in a Name: Mezzanine Debt versus Preferred Equity*, mezzanine debt and preferred equity interests are forms of investment in commercial properties, favored by commercial investors, who want a fixed, or at least floored, return and priority as to both their return on and return of investment; and

Whereas, According to an article in the Michigan Journal of Private Equity & Venture Capital Law, *Mezzanine Finance and Preferred Equity Investment in Commercial Real Estate: Security, Collateral and Control*, mezzanine debt and preferred equity investments evolved in the wake of the financial crisis of 2008 and were intended to fill a new equity gap, the difference between the outstanding balance of an existing senior

loan and the amount available from an alternative lender under a first mortgage loan to refinance the existing loan or fund the acquisition of a mortgaged property; and

Whereas, According to the Commercial Real Estate Transaction Handbook, 3rd edition, mezzanine debt is a form of junior debt that is not secured by a lien on the property but rather, an assignment of the borrower's interest in the entity that owns the property; and

Whereas, According to the Commercial Real Estate Transaction Handbook, mezzanine debt provides the owner of the property with the ability to improve the loan-to-value ratio of the senior debt without encumbering the property with a subordinate mortgage, and, because the holders of the senior debt and their regulators consider mezzanine debt to be equity rather than debt, mezzanine debt enables the owners to obtain greater amounts of leverage; and

Whereas, A preferred equity investment has many of the same characteristics as a mezzanine loan with one important difference, namely that a preferred equity investment is at least nominally an equity investment and not debt where the investor contributes capital in exchange for a preferred equity interest in the property, which entitles the investor to receive a preferred return on its investment, paid ahead of any distributions to common equity holders; and

Whereas, Given the risk of collecting on these two types of instruments, a higher interest is often imposed; and

Whereas, While traditional mortgages are publicly recorded, mezzanine debt and preferred equity investments are not thereby shielding them from public review and government oversight; and

Whereas, The lack of transparency associated with mezzanine debt and preferred equity investments is problematic as real estate speculators have a history of financing purchases of occupied rental housing with these high-interest investment vehicles, and then rapidly raising tenants' rental payments to pay back the debt obligations; and

Whereas, A.9041-A, introduced by Assembly Member Harvey Epstein and S.7231-A, introduced by

Senator Julia Salazar, would require that whenever a mortgage instrument is recorded, any mezzanine debt and/or preferred equity investments related to the property must also be recorded; and

Whereas, In addition, the legislation would require that the recording of mezzanine debt and/or preferred equity investments be subject to the mortgage recording tax; and

Whereas, According to the sponsor's memorandum, the legislation would create parity between debt instruments that serve the same purpose but are currently treated differently under the law with the goal of steering real estate speculators towards ostensibly less volatile instruments provided by banks rather than private equity: and

Whereas, The legislation would also create more transparency in the market, and raise badly needed tax revenue from corporations that can afford to pay their fair share; now, therefore, be it

Resolved, That the Council of the City of New York calls upon the New York State Legislature to pass, and the Governor to sign, A.9041-A/S.7231-A, in relation to requiring the recording of mezzanine debt and preferred equity investments and including them in the mortgage recording tax.

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11/30/2020