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Laws and Financial Alternatives for Condominiums and Cooperatives on the Journey to Net-Zero

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Introduction



Board Responsibilities

- **Exercise Good Faith Business Judgment**
- **Maintain the Physical Plant and the Value of the Units**
- **Rely on Advice of Experts**
- **Business Judgment Rule**
 - Board decisions will not be second guessed by the courts, and will stand, when made in the proper exercise of the Board's business judgment.
 - If the Board acts recklessly or in wanton disregard to the facts, it may be held that they did not act in good faith.
 - Does not apply if there is a breach of contract by the Board or when the Board is required to be reasonable (ex. consent to an alteration).

Obtaining Financing

- **Review organizational documents**
 - Condo Declaration
 - Condo By-laws
 - Co-op Proprietary Lease
 - By-laws of Co-op
 - Review Applicable Laws
 - Available Grants/City State Loans



Local Laws



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Greener, Greater Buildings Plan (GGBP)

- **Greener, Greater Buildings Plan (GGBP)** is part of PlaNYC, the most extensive plan to strengthen New York City's urban environment ever undertaken by an American city. Unveiled by Mayor Michael R. Bloomberg in April, 2007, the 127-point plan is designed to create the first environmentally sustainable 21st century city. PlaNYC focuses on every facet of New York's physical environment-its transportation network, housing stock, land and park system, energy network, water supply and air quality-and sets a course to achieve 10 aggressive goals to create a more sustainable New York by the year 2030.



- GGBP constitutes the most comprehensive set of energy efficiency laws in the U.S., targeting New York City's largest existing buildings which constitute half its built square footage and 45 percent of citywide energy use. For these buildings, the policies require an annual benchmarking of energy and water use with public disclosure; an audit and retro-commissioning every ten years; for non-residential spaces, upgrades for lighting to meet the energy code, and the installation of electrical meters or sub-meters for large tenant spaces.
- GGBP is estimated to cost \$5.2 billion while saving \$12.2 billion, for a net savings of \$7 billion.
- New York City set an ambitious goal to reduce overall carbon footprint by 80% by 2050 and passed various Local Laws to force buildings to improve efficiency for buildings above 25,000 square feet. The next slide will summarize all current legislation and topics we will discuss.

NYC Energy Local Laws

Local Law 84 / 133 - Benchmarking:

Size: All Buildings in NYC over 25,000 square feet (LL133). All Buildings over 50,000 Square feet (LL84)

Requirement: Report all energy consumption to the city using the EPA portfolio manager annually by 5/1

Fine: \$500 per quarter if not filed (\$2000 per year)

Local Law 33 / 95 - Energy Efficiency Rating Labels:

Size: Applicable Buildings over 25,000 square feet

Requirement: Post an Energy grade at each public entrance of the property. This grade (from A to D) is based on the energy consumption filed in your annual LL84/133 benchmarking report

Fine: The fine for not posting and/or posting past the 10/31 deadline is \$1250

Local Law 87 - Audits and Retro Commissioning:

Size: All Buildings over 50,000 square feet

Requirement: Energy audit and retro commissioning report once every 10 years

Fine: \$3000 fine for the first year of noncompliance, \$5000 each additional year

Local Law 97 – Carbon Emission limit (Climate Mobilization Act):

Size: All Buildings over 25,000 square feet

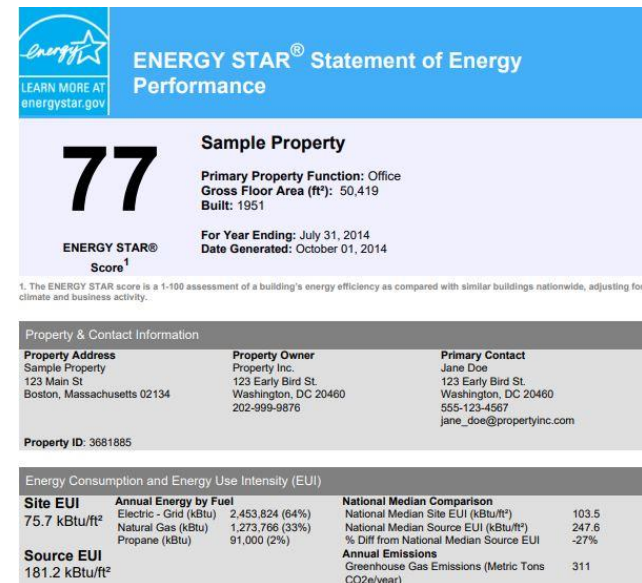
Requirement: Requirement for buildings over 25,000 square feet to keep energy consumption below certain levels by 2024 and 2030

Fine: Varies by building use / Occupancy Group type

Local Law 84/133 Annual Benchmarking

- Local Law 84 impacts buildings larger than 25,000 square feet or if you have two or more buildings in a single lot that are larger than 100,000 square feet. You can see if your building falls under this requirement by checking the LL84 Covered Building List. Covered buildings that have an Automatic Meter Reader installed are required to submit water consumption reports in addition to energy consumption.
- In order to comply with Local Law 84, building owners must report energy and water usage to EPA's Portfolio Manager platform, a reporting tool that allows building owners to compare their building's energy efficiency with similar buildings. A unique report must be submitted for each building covered by the law.

Sample ENERGY STAR statement of energy performance:



Local Law 84/133 (contd.)

- LL84 requires reports to be submitted by May 1 of each year. If you miss the May 1 deadline, the next quarterly deadlines for compliance are August 1, November 1, and February 1.
- Failure to comply by the aforementioned deadlines will result in a fine. There is a \$500 penalty for missing the May 1 deadline, and failure to comply by the following quarterly deadlines will result in additional penalties of \$500 each, with a maximum of \$2,000 in fines.

NYC Department of Buildings

DOB Violation Display for 080221BENCH00396

Premises: [REDACTED]		BIN: [REDACTED]	Block: [REDACTED]	Lot: [REDACTED]
Issue Date:	08/02/2021	Violation Category:	V - DOB VIOLATION - ACTIVE	
Violation Type:	BENCH - FAILURE TO BENCHMARK			
Violation Number:	[REDACTED]	Device No.:		
OATH/ECB No.:				
Infraction Codes:				
Description:	FAILURE TO FILE BENCHMARKING REPORT OF ENERGY USE AS PER AD. CODE SEC. 28-309.4			
Disposition:				
Code:	Date:			
Inspector:				
Comments:				

Local Law 33/95 Energy Efficiency Rating Labels (EERL)

- All applicable buildings over 25,000 square feet are required to post a letter grade on the front of the buildings (similar to restaurant grade).



- This letter grade is intended to shame Landlords. It is graded on a curve and not necessarily a reflection of the buildings performance.
- Buildings exempted from benchmarking or not covered by the Energy Star program:
 - Multifamily buildings with less than 20 units, enclosed parking, or other property types that are not eligible to receive a 1-100 ENERGY STAR Score
 - Some mixed-use buildings; a multi-use property can receive the ENERGY STAR Score, but these two conditions apply:
 - 75% of the property's Gross Floor Area (GFA) must be comprised of property types that are eligible for an ENERGY STAR Score; and
 - more than 50% of the GFA must be comprised of one eligible property type (excluding parking)
- Buildings that contain a data center, television studio, and/or trading floor that together exceed ten percent of the GFA.
- Letter grades must be hung up before October 31st, in the entrance way visible to the public or else its a \$1,250 yearly violation per building.

Local Law 87 Audits and Retro Commissioning

- Local Law 87 mandates that buildings over 50,000 gross square feet undergo periodic energy audit and retro-commissioning measures, as part of the Greener, Greater Buildings Plan (GGBP). The intent of this law is to inform building owners of their energy consumption through energy audits, which are surveys and analyses of energy use, and retro-commissioning, the process of ensuring correct equipment installation and performance.

LL87's energy audit and retro-commissioning process requires the following:

1. Determine if a building needs to comply, and what year it is due based on last digit of tax Block #
2. Similar to the benchmarking, there is a covered building list.
3. The audit outlines all building systems and recommendations to improve efficiency. Retro commissioning is testing and verification that all major systems (boilers, pumps, fans, controls, etc) are operating efficiently. All information is filed by licensed professionals (PE, CEM, CEA, EBCP) with the DOB for review
4. Submit the Energy Efficiency Report (EER) once every 10 years to the City by December 31

Exemptions:

- One to three family dwellings that are not condominiums or one to three family condos of three stories or less
- Earned a U.S. Environmental Protection Agency (EPA) ENERGY STAR® certification for at least two of the three years prior to filing the EER
- Earned the Leadership in Energy and Environmental Design (LEED®) for Existing Buildings certification within four years prior to filing the EER, or Simple buildings (without central cooling or chilled water systems) that complete six out of seven “simple retrofits”:
 - ◆ Individual heating controls, Common area and exterior lighting in compliance with the NYCECC, Low flow fixtures, Insulated pipes, Insulated hot water tanks, Front-loading washing machines, Cool roofs.

Local Law 87 (contd.)

Penalties for LL87 Noncompliance:

The City is authorized to issue a violation for any listed building that has not filed an EER by December 31 of the year in which the EER is due. The City will not accept outstanding EERs until penalties are paid in full.

1. The first year of non-compliance with Local Law 87 results in a Class 2 violation and a penalty of \$3,000
2. Every subsequent year of non-compliance with Local Law 87 results in \$5,000 violation

Sample EARCx violation:

NYC Department of Buildings	
DOB Violation Display for 062021EARCX10211	
Premises: 605 25th Avenue Brooklyn	BIN: 200000 Block: 0000 Lot: 0000
Issue Date: 06/20/2021	Violation Category: V - DOB VIOLATION - ACTIVE
Violation Type: EARCX - FAILURE TO SUBMIT EER	
Violation Number: 00000	Device No.:
OATH/ECB No.:	
Infraction Codes:	
Description: FAILURE TO SUBMIT AN EER PER AD. CODE SEC. 28-308.4 IN 2020	
Disposition:	
Code:	Date:
Inspector:	
Comments:	

Local Law 97 Climate Mobilization Act

- Beginning in 2024, emission limits will affect the most carbon-intensive 20% of buildings. These buildings are over 25,000 square feet and must meet carbon intensity limits depending on the occupancy group of the building. Building emission intensity is measured as the number of metric tons of carbon dioxide equivalent per square foot per year. By 2025, building owners must issue an annual emissions intensity report or will be subject to steep fines. Emission caps will change in the years that follow: limits set from 2030-2034 will affect the most carbon-intensive 75% of buildings.
- Local Law 97 will further the goal of achieving a 40 percent reduction in aggregate greenhouse gas emissions from covered buildings by calendar year 2030 and an 80 percent reduction in citywide emissions by calendar year 2050
- Certain types of affordable housing, including “rent regulated accommodations,” can install prescribed energy conservation measures instead of meeting the caps

Compliance:

- By May 1, 2025, and by May 1 of every year thereafter, the owner of a covered building must file an annual Greenhouse Gas Emission report showing that, for the previous calendar year, such building is either:
 - ◆ In compliance with the applicable building emissions limit or Not in compliance with such applicable building emissions limit, along with the amount by which such building exceeds such limit.

Sample Local Law 97 Analysis Report

*Please note the potential fines are applicable for only free market building(s) and are just estimates.



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Address	Current Grade	Current Score	Occupancy Group	GHG Emissions Intensity (kgCO ₂ e/ft ²)	2024 - GHG Emissions Intensity Limit (kgCO ₂ e/ft ²)	LL97 2024 Goal	Potential Fines (2024)*	2030 - GHG Emissions Intensity Limit (kgCO ₂ e/ft ²)	LL97 2030 Goal	Potential Fines (2030)*
Building A	A	98	R-2	4.12	6.75	39%	\$0	4.07	-1%	\$485
Building B	A	85	R-2, U	3.41	6.59	48%	\$0	3.88	12%	\$0
Building C	B	82	R-2, B	3.78	6.92	45%	\$0	4.11	8%	\$0
Building D	C	69	B, U	3.90	8.39	54%	\$0	4.47	13%	\$0
Building E	C	57	R-2, M	5.18	6.75	23%	\$0	4.07	-27%	\$13,587
Building F	D	54	R-2, S, B	4.74	6.64	29%	\$0	3.86	-23%	\$43,292
Building G	D	45	R-2, B	7.09	6.80	-4%	\$2,996	4.08	-74%	\$29,859
Building H	D	28	R-2	9.56	6.75	-42%	\$26,336	4.07	-135%	\$51,430
Building I	D	1	R-2, A	12.85	7.23	-78%	\$52,522	4.09	-215%	\$81,911
Building J	N	N/A	B, A	7.56	8.81	14%	\$0	4.48	-69%	\$29,713

Local Law 97 Climate Mobilization Act (contd.)

- Buildings with at least one rent-regulated unit were originally exempt from the law, but now, buildings are only exempt if more than 35% of its units are rent regulated. This revision will require more buildings to comply with Local Law 97. Buildings under this category will not have to cap annual building emissions until January 1, 2026, and submission of a first report will not be required until May 1, 2027.
- Buildings that were covered under the prior definition of “rent regulated accommodations” but that no longer meet the definition under Int. No. 1947-A receive a two-year extension of time to meet the 2024 carbon emissions caps until January 1, 2026, as well as a two-year extension to submit the first annual compliance report until May 1, 2027. However, this delay in compliance will not give building owners much time before the emissions caps become much more stringent in 2030. A prudent compliance strategy will account for both compliance periods in financial planning and the installation of retrofits.

Link to legislation: <https://www1.nyc.gov/site/sustainability/legislation/legislation.page>

Occupancy Group	Space Use	Carbon Limit 2024-2029 *	Carbon Limit 2030-2034
B: Ambulatory Health	Medical Office	23.81	11.93
M: Mercantile	Retail	11.81	4.3
A: Assembly	Assembly	10.74	4.2
R1: Hotel	Hotel	9.87	5.26
B: Business	Office	8.46	4.53
E: Educational	School	7.58	3.44
R2: Residential	Multifamily Housing	6.75	4.07
F: Factory	Factory	5.74	1.67
S: Storage	Storage/Warehouse	4.26	1.1

*Carbon limits are set as kgCO₂e/sq. ft., or kilograms of carbon per square foot.



CIRA Loan Program



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A History of Driving Success – Capital One Bank

- 1988 Capital One is founded - Monoline credit card company
- From modest beginnings, we have grown into a Fortune 100 financial service provider in less than 30 years.
- Currently A Top-10 US Bank
- Largest U.S. direct bank
- \$256.1B Loans
- \$306.3B Deposits
- \$423.4B TOTAL ASSETS
- Business Banking Partnered with over \$1.9 million businesses
- 200+ business bankers to offer guidance
- One of the largest U.S. issuers of small business credit cards

CIRA LOAN PROGRAM – Capital One Bank

- Condominium and Homeowner Associations can receive long-term financing for property repairs, maintenance or additions with a Common Interest Realty Association loan from Capital One.
- History of 40 years of CIRA Loans dating back to North Fork Bank
- This type of loan offers financing for up to 100% of project costs and repayment terms of up to 10 years, which can make it easier to pay for improvements.
- Loan funds can be withdrawn over a period of up to 24 months to help keep up with improvement costs. Afterwards the outstanding balance is converted to a term loan with fixed monthly payments and a fixed interest rate.

Borrow up to \$5 million for:

- Exterior Repairs, such roofs, building facades, irrigation systems
- Interior and mechanical system repairs, such as elevators, plumbing, boiler conversions, and security systems

Benefits of CIRA Loans with Capital One

- Fixed interest rate at the time of acceptance with interest-only payments due monthly during the draw period.
 - This helps to lower costs since you only pay interest for what is borrowed and makes improvement expenses predictable throughout the repayment period
- Prepayment penalty
 - There is no prepayment penalty if the source of the funds used to prepay the loan is generated from internal sources and not a third-party lender.
- No Real Estate Collateral or Personal Property Pledged by Unit Owners
 - The loans is secured by collateral assignment of all regular and special assessment rights, maintenance charges, and all other revenues and income of Borrower



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