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The Institutional Investor '90-Day Rule' Under Real Property Law Article 16

By Peter E. Fisch & Salvatore Gogliormella
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In an effort to address the affordability of housing, federal and state governments have proposed or adopted various measures that restrict or discourage the acquisition of one and twofamily homes by institutional investors (so as to reduce the competition faced by individuals and families in the market for those homes).

At the federal level, for example, the President signed an executive order in January 2026 directing federal agencies supporting homeownership to refrain from providing such support to (or entering into related transactions that involve) large institutional investors, and the Senate passed (by a vote of 89-10) and returned to the House in March 2026 a bill that would limit to 350 the number of single-family homes that a large institutional investor can own.

Legislatures in a number of states, including California, Georgia and Virginia, have also introduced laws targeting the acquisition of one and twofamily homes by institutional investors.

A law introduced for this purpose in New York was among the first to be passed. In adopting its 2025-2026 budget, New York added a new Article 16 to the Real Property Law that effectively conditions certain acquisitions of one and twofamily homes on a 90-day minimum period of public marketing.

Peter E. Fisch

Salvatore Gogliormella

While this particular method of targeting institutional investments in residential property (i.e., imposing a marketing condition) differs from those under consideration in a number of other states (which generally involve caps and tax disincentives), the policy objective is largely the same.

New York's statute reaches both the act of acquiring and the act of *offering* to acquire, requires a signed and notarized status disclosure in prescribed form, and authorizes significant civil penalties of up to $250,000 per violation.

In a market where speed and streamlined diligence have been competitive advantages—

particularly for professional buyer platforms—the law creates a timing issue.

At its core, Article 16 restricts the acquisition of single and twofamily residences by a defined category of "covered entities." A "covered entity" is generally an entity or group of affiliated entities that, directly or indirectly:

· Owns 10 or more single or twofamily residences (whether directly or through indirect ownership of 10% or more);

· Manages or receives funds pooled from investors and acts as a fiduciary with respect to those investors; and

· Has at least $30 million in net value or assets under management on any day during the applicable tax year.

The statute looks through affiliates and covers indirect ownership. A buyer that is, for example, a newly formed singlepurpose limited liability company may still be treated as a covered entity if it is part of a larger platform that satisfies the ownership, fiduciary/pooling, and asset thresholds.

The statute's focus on both direct and indirect ownership of homes implicates minority positions, joint ventures, and structures in which a sponsor holds an economic interest while third parties hold record title.

The statute also contains targeted exemptions, including certain notforprofit entities (i.e., those described in Section 501(c)(3) of the Internal Revenue Code), land banks, community land trusts, and creditors acquiring property through foreclosure or similar enforcement of remedies.

The operative restriction is straightforward in concept but complex in execution: a covered entity may not "purchase, acquire, or offer to purchase or acquire" a one or twofamily residence unless that property has been listed for sale to the general public for at least 90 days.

Several features of this requirement are critical for transactional planning:

- The prohibition applies not only to closing, but also to making an offer.
- The 90day period runs from a property's being listed for sale to the general public. For practice purposes, parties will want a record that can be verified (e.g., MLS history, broker documentation, and screenshots/exports).
- The clock resets if the listing price is changed: routine price reductions (or even increases to test demand) can restart the 90day period and, in turn, affect bid deadlines, contract dates, and ratelock and financing timelines.

The combined effect is to blunt the speedtomarket strategies that have characterized large buyer platforms—preemptive bids, offmarket sourcing, and rapid allcash closings—by forcing those strategies, if used at all, to wait until the property has experienced a defined period of public exposure.

The statute also places pressure on common bidprocess mechanics (e.g., "best and final" rounds within days of listing) because a covered entity cannot lawfully participate until the waiting period is satisfied.

When a covered entity does make an offer, it must provide the seller (or the seller's agent) with a signed and notarized statutory notice disclosing its status as a covered entity, using the form prescribed by the statute, and file such form with the attorney general's office.

From a process standpoint, the notice should be treated as a deal deliverable—collected with the offer package, retained in the broker's file, and (where counsel is involved at signing) included in the contract file so there is a clear record of compliance at the "offer" stage.

Violations carry severe consequences: (i) up to $250,000 per violation for failure to comply with

the 90day waiting period; (ii) additional penalties of up to $10,000 for failure to deliver and file the required notice; and (iii) exposure to civil enforcement actions by the state.

Although the statute is directed principally at investor conduct, its enforcement posture inevitably affects the broader transaction ecosystem. An open question for practitioners is what level of inquiry and documentation will be expected of professionals who structure, paper and close transactions that implicate Article 16.

Notably, the statute's language imposing penalties for failures to deliver and file the required form states that any "covered entity's agent" violating this requirement may also be subject to those penalties. Under these circumstances, professionals will need to consider personal exposure as well as the interests of their clients.

Separately, even if the statute does not expressly provide a private right of action or contract remedy, parties should consider the collateral consequences of noncompliance: a transaction that closes in the shadow of an "offer" violation may invite postclosing scrutiny, complicate title (particularly for institutional dispositions), and create reputational and regulatory exposure for repeatplayer market participants. The risk of getting this wrong is significant.

Because the statute is triggered at the "offer" stage, there may be no practical cure once an offer is made too early, and the parties may find themselves deciding between unwinding a signed contract or proceeding in the face of potential enforcement risk.

Transactional lawyers should consider building a modest "Article 16" diligence module into residential acquisitions and determine what diligence is necessary where the buyer is not plainly an individual.Among other things, lawyers may want to:

- Obtain a written buyer certification addressing each component of coveredentity status (home count/portfolio, investor pooling/fiduciary status, and net value/AUM threshold).
- Where the buyer is a specialpurpose vehicle, request an affiliate/ownership chart sufficient to identify upstream sponsors and any indirect ownership that could trigger aggregation concepts.
- In the case of sellerside counsel (and brokers), treat "not an institutional buyer" as a negotiated representation rather than an assumption; if the deal is proceeding on that basis, the contract should state it clearly and allocate consequences if it proves incorrect.
- Consider whether the certification should be backed by indemnities.

Historically, residential acquisition diligence has focused on title, survey, zoning, and physical condition. Under Article 16, marketing history becomes a gating legal issue. Transactional lawyers must now verify: (i) the date the property was listed to the general public; (ii) the continuity of that listing; and (iii) whether any price changes reset the statutory clock. In practice, this pushes listing agreements, MLS records, and broker affidavits into the closing checklist—documents that previously lived firmly outside the legal diligence process. For coveredentity buyers, it may be prudent to require a listing history affidavit from the seller or listing broker, attaching MLS history and identifying any price changes (and their effective dates), so the parties are not reconstructing the timeline under time pressure shortly before signing.

The statute also requires changes in the drafting of residential purchase agreements, particularly where the buyer may plausibly be a covered entity. Key provisions may include:

- Representations by the buyer regarding coveredentity status and compliance with Article 16;
- Termination rights if compliance becomes impossible due to price changes or listing errors;
- Indemnification for penalties arising from false certifications or nondisclosure;
- Seller representations regarding listing history (including date first listed to the general public, continuity, and price changes); and
- Closing deliverables (e.g., the statutory notice, listing history evidence, and any certifications).

As noted above, because the statute applies to purchase offers, compliance must be achieved before the contract is signed, not merely before closing. Buyer's counsel should start with a threshold question: is the client plainly outside the definition (e.g., an individual buying for personal use), or is there enough institutional DNA that Article 16 diligence is warranted?

On the sell side, counsel should confirm early whether the listing broker intends to run a rapid bid process; if so, the pool of eligible bidders may be narrower than expected once covered entities are excluded for the first 90 days.

Because the statute turns on listing history, counsel should consider adding "Article 16 confirmation" to the presigning checklist. A conservative file would include: (i) MLS history (or other documentary evidence of the first public listing date); (ii) a written statement as to whether the listing price has changed and, if so, the effective date of each change; (iii) the coveredentity notice (where required) and proof of delivery with the offer; and (iv) a final buyer certification (or bringdown) as of signing/closing.

Although the statute has only recently taken effect, several market responses are already emerging. Some institutional buyers are simply waiting out the 90day period, accepting the loss of earlystage competition in exchange for compliance.

While straightforward, this strategy exposes buyers to greater price volatility and reduces their negotiating leverage.

Others appear to be reallocating capital toward asset classes outside Article 16's scope, including: (i) small multifamily (three units or more); (ii) mixeduse properties; (iii) condominium units; and (iv) purposebuilt rental developments. Of course, each of these shifts can have significant implications for investors (including financing, operational and zoning impacts), but would avoid the application of the statute.

Article 16 does not eliminate institutional participation in New York's residential market, but it fundamentally affects how and when that participation occurs. Parties to sales and acquisitions of single- and two-family homes in the state, and the professionals who represent them, must take the requirements of Article 16 into account in performing diligence and drafting and maintaining documents for these transactions at various stages.

Peter E. Fisch *and* Salvatore Gogliormella *are partners in the real estate department of Paul, Weiss, Rifkind, Wharton & Garrison*.Leila Shirian, *an associate at the firm, assisted with the preparation of this article*.