

GUIDELINES FOR REVIEWING LEGISLATION

In reviewing proposed legislation, rather than trying to formulate an opinion on public policy, we at the Real Property Law Section can bring our legal expertise to bear on the legislation. We can act as experts giving advice to the policymakers. We don't have to just consider whether we support or oppose the legislation. We can say that we "support if amended" or "oppose if not amended." And we can always decline to comment.

Some questions to ask yourself in reviewing legislation:

1. Will the legislation do what it purports to do?" (rather than "Should this policy be enacted?")
2. Are key statutory terms defined?
3. Is there a better way to do what it purports to do?
4. Do we foresee unintended consequences?
5. What is the effective date? Should it be delayed (e.g. until after the January NYSBA meetings to allow time to make it known to our members)?
6. Is the statute retroactive?
7. Does the legislation give rise to a private right of action? Should it?
8. Who has standing to sue?
9. Is there a statute of limitations? If so, what is the limitations period?
10. What types of relief are provided for? What types of relief are/will be available?
11. If a federal statute, is it intended to preempt state law?

Format for legislation memos:

Memorandum in [Support] [Opposition] [Support if Amended] [Opposition unless Amended]

[Assembly and/or Senate bill number(s)] By: [Assemblyman and/or Senator]

AN ACT to [amend the ____ Law], in relation to [state subject matter]

LAW AND SECTION REFERRED TO: [____ Law Sections ____]

THE REAL PROPERTY LAW SECTION [SUPPORTS][OPPOSES][SUPPORTS IF AMENDED][OPPOSES UNLESS AMENDED] THIS LEGISLATION

[First paragraph of one or two sentences should succinctly state the position and reasons therefore]

[Body of memo]

The Real Property Law Section [Supports] [Opposes] [Supports if Amended] [Opposes unless Amended] this bill.

Person(s) who prepared this Memorandum: [insert name of preparer(s)]

Section Chair: [insert name]

[Guidelines drafted by Karl Holtzschue and Kathleen Lynch 03/06/09]