



3 Areas In Real Estate To Watch During The Trump Transition

By [Andrew McIntyre](#)

Law360, Minneapolis (November 22, 2016, 3:43 PM EST) -- The real estate community is closely watching developer turned President-elect Donald J. Trump's every move for hints about how his coming presidency may impact U.S. commercial real estate, attorneys say, from whether he will make good on infrastructure spending campaign promises to the effect of his presidency on foreign investment.

"Those of us who are in this field will be diligently watching to see what the president-elect's next move is, to see if he can uphold the promises he's made throughout his campaign," said Keith Poliakoff of [Arnstein & Lehr LLP](#).

The president-elect during his campaign vowed to undertake a massive program of road and bridge work during his first 100 days in office. Attorneys say their clients are watching whether he'll make good on that promise, in addition to trying to gauge how foreign investors — a major source of capital for U.S. real estate — will react to a Trump presidency.

Lawyers are also looking for hints on what sorts of federal support the president-elect may provide for affordable housing.

Here, Law360 looks at these three areas of real estate that lawyers and their clients are monitoring as Trump prepares to take office in January.

Affordable Housing

Cities across the country and developers who do work in affordable housing are now all eyes on Trump.

Sens. Maria Cantwell, D-Wash., and Orrin Hatch, R-Utah, in May introduced a bill in Congress that would increase the number of available tax credits for affordable housing by 50 percent. Should it gain support in Congress, it would then be up to Trump to sign it.

While that bill, the Affordable Housing Credit Improvement Act, would significantly increase federal funding, it would also allow developers to do more mixed-rate development as it allows developers to calculate the rental cost of the project as an average across all units, a change from the current policy, Poliakoff says.

"I hope that that bill gets legs and is supported by the Trump administration," Poliakoff said.

But given that Trump largely avoided the topic of affordable housing during the campaign and given that his planned tax cuts overwhelmingly favor the wealthy, it's unclear if Trump will seek to make a dent in the nation's affordable housing crisis.

Poliakoff said he "remains hopeful."

"It's incumbent on the government to supply an adequate number of [affordable] units," he said.

There are other affordable housing programs for which the next president could potentially provide more funding, including the National Housing Trust Fund and HOME Investment Partnerships Program, which provide money to states for low-income housing.

In April, the [U.S. Department of Housing and Urban Development](#) apportioned roughly \$174 million for the NHTF.

"This is the first year, 2016, that that National Housing Trust Fund had been funded in years," Poliakoff said, adding that if the Trump administration were interested in helping, "they could increase the allocation to the National Housing Trust Fund."

Trump, though, has a checkered past when it comes to past housing projects, going back to 1973 when the Justice Department sued him for discriminating against black

people at multiple properties in New York. That case, which settled two years later when Trump tried to countersue, came up repeatedly in the 2016 campaign.

Building affordable housing is partly a function of the broader question of getting financing for residential building.

If Trump is able to roll back portions of the Dodd-Frank Wall Street Reform and Consumer Protection Act, lawyers say, it may make residential construction financing more easy to come by.

"If they're able to loosen the restrictions of Dodd-Frank, I tend to think that real estate lending and borrowing is going to be a lot easier. You're going to see more residential development," said David F. Neiers of [Sandberg Phoenix & von Gontard PC](#).

But it's not clear, however, if such additional housing stock would actually be affordable.

Some of it might actually be luxury development, Neiers says. And if Trump passes the massive tax cuts for the wealthy he's said he will, developers may be more inclined to build luxury housing, knowing that the wealthy have more money to put into real estate.

The Trump transition team couldn't be immediately reached for comment.

Infrastructure

Trump made job creation one of the keystones of his campaign. If the president-elect remains true to his promise, lawyers say, that could translate into significant federal funding for infrastructure projects early on.

"Where the Trump administration is heading, it looks like he wants to create a new New Deal, essentially," Poliakoff said. "He wants to do everything in his power to get Americans back to work."

One of the ways Trump may jump-start infrastructure projects is through an increase

in public-private partnerships, or P3 projects. Public-private partnerships, through which the government and a private sector company or companies collaborate on a public use project, happen at all levels of government, from federal to local.

"The president-elect's decision to use the P3 delivery model and incentivize private financing is an important step in rebuilding our nation's infrastructure," said William T. Eliopoulos of [Rutan & Tucker LLP](#). "Trump's infrastructure proposal has the potential to yield benefits for both corporate and public interests by encouraging the private sector to provide much-needed infrastructure improvements."

There are other avenues Trump could explore when it comes to infrastructure, lawyers say.

Developers will be looking for movement from the president-elect when it comes to transportation investment generating economic recovery grants, or TIGER grants, which have funneled money to infrastructure projects. The [U.S. Department of Transportation](#)'s TIGER program has pumped roughly \$5.1 billion into programs in all 50 states and the District of Columbia since 2009.

"There's been several years of TIGER grants," said Shiraz Tangri of [Meyers Nave Riback Silver & Wilson PLC](#). "Capital grants that went to specific local projects all around the country. Many were urban-focused."

Another thing that could result in more infrastructure projects, lawyers say: the potential loosening of regulations.

"If he's successful in getting Congress behind him, looser government regulation is probably going to benefit real estate development and construction," Neiers said. "Developers will be able to do projects that might have taken longer or they might not have gotten the financing for otherwise."

Of course, much of the regulation Trump seeks to undo was put in place as a result of the last real estate crisis.

According to Gregg Loubier of [Alston & Bird LLP](#), the administration could "loosen regulations affecting environmental and labor protections" to spur development, but

such a move could have adverse consequences.

"For every regulatory burden removed, there may be negative impacts which will vary widely," he said.

Poliakoff says it's important that even looser regulations "provide some safeguards."

Foreign Investment

While developers are optimistic about the creation of capital for new U.S. construction projects under the Trump administration, experts say just how foreign investors will react to the new administration remains an unknown.

South Florida, which continues to benefit from an influx of capital from Latin America, could see a pullback in foreign investment thanks to Trump's string of derogatory campaign comments aimed at Mexicans, his intention to build a wall along the U.S.-Mexico border and his talk of deporting millions of workers who are in the U.S. without legal permission, according to [Marcus & Millichap](#) investment broker Alex D. Zylberglait.

"That could cause some concern from immigrants and foreigners wanting to bring their equity here," Zylberglait said. "That could put a damper on foreign investment, especially from places like Mexico."

There's also, though, a separate question about China.

China accounts for the vast majority of participants in the EB-5 investment program, a visa program that allows foreign nationals to become eligible for legal permanent residency should they invest in a U.S. commercial enterprise that will generate jobs. Trump may actually increase the number of investors that can participate annually under the program, said Jim Butler of [Jeffer Mangels Butler & Mitchell LLP](#).

Butler, citing Trump's prior usage of EB-5, says Trump could issue an executive order to raise the annual visa quota under EB-5 from the current 10,000 visas — which includes investors and dependents — to 10,000 investors, which would roughly triple the number of investors per year that could use the program.

Such an increase could result in hundreds of millions of additional foreign investment, since the investment threshold is \$500,000.

"Trump is a businessman. He has used EB-5. His comments on immigration don't appear to be on EB-5," Butler said. "The belief is he will be a supporter of EB-5."

However, EB-5 is just one of the ways Chinese capital has been flowing into U.S. real estate, with real estate companies, financial conglomerates and insurance companies having poured billions into U.S. trophy assets over the past several years.

That, though, may change, since Trump's comments on Chinese trade and currency may negatively impact investment from Chinese companies, Tangri said.

He believes the rate of foreign investment in U.S. real property will continue to slow, thanks in part to Trump's comments.

"The slowdown [in foreign investment] is likely to accelerate over the next few years," Tangri said.

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