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REAL ESTATE ADVISORY

Property Resilience Assessments and ASTM Standard (E 3429-24): A Potential New Due Diligence Option for Real Estate Transactions

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In order to address the growing challenges posed by escalating climate uncertainties in the real estate sector, ASTM International (ASTM) published in October 2024 the "Standard Guide for Property Resilience Assessments," Standard E 3429-24 (Standard E 3429-24). Standard E-3429-24 is designed to assess how properties withstand and adapt to evolving environmental threats. By way of background, for over a century, ASTM has created and published various consensus standards that guide "best practices" in industries such as construction, real estate, engineering and environmental management. These standards are widely used in regulatory compliance, contractual agreements and industry best practices, with the aim of ensuring a consistent and reliable framework for evaluating risks and assessing performance. Real estate industry professionals have long relied on ASTM's Standard E 1527-21 for Phase I Site Assessments to ensure that "all appropriate inquiries" are met under environmental statutory requirements. Standard E 3429-24 is intended to constitute a forward-looking "resilience assessment" for a property and to provide a new tool known as "Property Resilience Assessments (PRAs)." A PRA is intended to assess potential climate-related threats, evaluate a property's vulnerabilities and recommend strategies to enhance resilience.

In practice, a PRA may be organized into up to three distinct stages:

Stage 1 – Hazard Identification: This stage identifies potential natural hazards that may affect a property. The PRA process includes evaluating a broad range of hazards and risks that may affect the property, including, among others, (i) extreme temperature fluctuation, (ii) geologic phenomenon such as earthquakes and coastal erosion, (iii) flood or drought conditions, (iv) wildfires and (v) wind related threats, including tropical cyclones, tornadoes and hurricanes. The findings are intended to provide a qualitative assessment of risk levels associated with each applicable hazard (e.g., an indication of severity and relative frequency of each identified hazard).

Stage 2 – Risk Evaluation: This stage evaluates the risks posed by the hazards identified in Stage 1. It includes an assessment of potential safety concerns, structural vulnerabilities and functional recovery time. The analysis incorporates both qualitative assessments (e.g., damage risks can be expressed on a multi-level system of "high, medium or low") and quantitative assessments (e.g., damage risks can be expressed on the potential monetary value of repair or ratio of damage to the overall property) of potential harm that could be caused by such risks.

Stage 3 – Resilience Measures: This stage identifies conceptual resilience measures to enhance property-level performance and recovery. In Stage 3, information from Stages 1 and 2 is analyzed to identify potential measures to enhance a property's ability to endure the risks identified in Stages 1 and 2, and to provide certain resilience measures that may be taken by the property owner, broken into three distinct categories: (i) Accommodate (e.g., elevate buildings and mechanical systems), (ii) Protect (e.g., build seawalls around the subject property), and (iii) Retreat/Relocate (e.g., remove or relocate a building and related infrastructure).

Importantly, ASTM clarifies that the development and use of PRAs is intended to provide a "flexible approach" to facilitate property-level decision-making, rather than prescribe a particular course of action with respect to the subject property. In contrast to traditional due diligence tools used in real estate transactions that assess pre-existing property conditions, such as a Phase I or a Property Condition Report, a PRA offers a forward-looking perspective that is inherently more subjective. The subjectivity of the PRAs may lead to additional negotiations among the parties involved with a property transaction (e.g., a borrower and its lender), but the PRAs will provide all parties with a more comprehensive understanding of future property risks and therefore enable more informed decision-making regarding investments in the property.

While the application and use of PRAs and Standard E 3429-24 have not yet been widely adapted as market standard in the real estate industry, a growing number of third-party providers are actively marketing services to produce these reports. Some providers note that the anticipated cost for a PRA is similar to that of a Property Condition Assessment, although it varies based on the size of the property, complexity of the asset and the number of hazards that are being considered. Standard E 3429-24 recommends that these providers possess a professional designation in architecture, engineering or science, along with three to five years of experience in building performance, natural hazard mitigation or resilience fields, applicable to the subject property.

As PRAs become more commonplace, they could be of assistance and provide guidance for real estate professionals who look to participate in transactions in markets that face perceived environmental threats or hazards, and if a particular property faces potential future environmental risks.

A link to ASTM's Standard E 3429-24 may be accessed here.

CONTACTS

For further guidance on how this evolving standard may affect your real estate transactions and due diligence practices, please contact your Katten attorney.

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