GANFER SHORE LEEDS & ZAUDERER LLP

CLIENT ADVISORY

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LANDLORDS, INCLUDING COOPERATIVES, MUST ADVISE TENANTS OF THEIR RIGHT TO REQUEST A REASONABLE ACCOMMODATION

A recent amendment to New York State's anti-discrimination statute, the Human Rights Law, requires that residential landlords must advise tenants of the right to request a reasonable accommodation if they have a disability. This notice must be given to all tenants in writing. For existing tenants, the notice is to be given this month. For new tenants, it must be given within 30 days after the tenancy commences.

The definition of "tenant" for these purposes is broad. In addition to conventional residential tenants and their subtenants, it includes tenant-shareholders in cooperatives and their subtenants. It does not include condominium unit owners, but does include tenants who rent condominium units from their owners.

New York State has provided a sample form of notice for landlords to provide to their tenants. This form of notice can be found online at https://dhr.ny.gov/requirednotice. However, several commentators have noted that this notice form is not completely accurate with respect to tenants located in New York City, because it states that it is the tenant's responsibility to pay the costs of a reasonable accommodation. Under New York City's own Human Rights Law, it is often the landlord's responsibility to pay these costs.

The amendment does not affect the definition of what constitutes a disability under the State and City Human Rights Laws or what types of reasonable accommodations a landlord is required to provide.

EMPLOYERS MUST GRANT PAID TIME OFF FOR WORKERS TO GET COVID-19 VACCINATION

New York State law now requires that employers grant up to four hours of paid time off for an employee who has an appointment to receive a COVID-19 vaccination during the work day. This time off is not to be deducted from any other form of leave the employee may be entitled to, such as sick, personal, or vacation time. This leave must be provided only to employees whose shot appointments are during working hours; employees who are vaccinated on a day off or in the evening are not entitled to leave. Employees are also prohibited from discriminating or retaliating against an employee for requesting or taking leave under this provision. This law took effect in March and will expire on December 31, 2022.

NEW YORK CITY WILL OFFER LOANS FOR A NEW CLEAN ENERGY PROGRAM

New York City's Property Assessed Clean Energy (PACE) is set to be unveiled during April. This program will offer financing for energy efficiency and renewable energy projects. The hope is that property owners will use PACE loans to fund improvements that will help them comply with the emissions limits mandated by the Climate Mobilization Act (CMA), which we have discussed in last month's and previous *Client Advisory*.

PACE loans are non-accelerating and instead create a lien on the underlying real property similar to an ordinary tax lien, based on the property owner's agreement to have a separate charge placed on its annual tax bill. Because the lender's security is provided by the real property itself, PACE financing may become

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attractive to some cooperatives (subject to the consent of existing mortgage lenders) and rental buildings. It is unlikely to be a feasible option for most condominiums.

New York City's PACE program was originally authorized as a cornerstone of the CMA. The rulemaking process was delayed, in part due to COVID, but in February 2021 the Department of Finance issued final program rules, and NYCEEC, the "green bank" that administers the program, has indicated that PACE should be up and running on or about April 22, 2021 – *i.e.*, Earth Day, and exactly two years after the CMA was passed.

In addition, the New York City Council recently passed an amendment expanding eligibility for PACE loans to new construction projects. That amendment awaits the Mayor's signature. We will report on important developments concerning the CMA and PACE in future issues of this *Client Advisory*.

LANDLORDS ARE NOT LIABLE FOR RACIAL DISCRIMINATION OR HARASSMENT BY THEIR TENANTS, FEDERAL APPEALS COURT HOLDS

In January 2020, we reported on a recent decision by the Second Circuit Court of Appeals (the federal appeals court for New York) addressing racial harassment of a tenant by fellow tenants. Landlords have a clearly established legal duty not to harass tenants based on their race or any other legally protected characteristics. But what if the person committing the harassment is not the landlord, but someone else, such as a neighbor? If the landlord knows of the harassment, does it have a duty to protect the tenant? The answer is generally no, according to a recent decision by the Second Circuit, which is the federal court of appeals sitting in New York.

The plaintiff in this case, who is African-American, alleged that a neighbor subjected him to a "brazen and relentless" pattern of racial harassment, including abuse and threats. The plaintiff filed a lawsuit under the Fair Housing Act (FHA) and other federal and state laws, naming not only the neighbor but also the landlord and the property manager. A three-judge panel allowed the plaintiff to proceed with the lawsuit, given the allegations that plaintiff was subjected to a "brazen and reckless" pattern of racial harassment by a neighbor, and that the landlord knew of the harassment but did nothing to stop it.

This decision was considered important enough that the entire Second Circuit reconvened in what is termed an "en banc sitting" to reconsider it. By a vote of 7 to 5, the full Court disagreed with the panel decision and held that the landlord was not legally responsible for harassing or discriminatory actions or statements by one tenant against another. The court held that "a landlord cannot be presumed to have the degree of control over tenants necessary to impose liability under the FHA for tenant-on-tenant harassment" and that the plaintiff did not have a valid claim against the landlord under the federal and state civil rights laws. The decision is **Francis v. Kings Park Manor, Inc., No. 15-1823-cv, 2021 U.S. App. LEXIS 8761 (2d Cir. Mar. 25, 2021).**

DEADLINE FOR PAYROLL PROTECTION PROGRAM LOANS IS EXTENDED

The deadline for cooperatives and other eligible entities to apply for forgivable loans under the Payroll Protection Program (PPP) has been extended. Applications must now be submitted by the borrower and approved by the lender by May 31, 2021, and approved by the Small Business Administration by June 30, 2021. This extension will benefit borrowers whose applications had not been processed by the prior deadline of March 31, 2021 or which were still considering whether they should apply. The eligibility requirements and other terms and conditions of the loans for cooperatives and business entities have not been changed. However, there have been some recent changes to the PPP guidelines for sole proprietors of a business, some of whom may now be eligible for a greater forgivable loan amount than previously.