GANFER SHORE LEEDS & ZAUDERER LLP

CLIENT ADVISORY

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NEW YORK'S NEW TENANT PROTECTION LAWS WILL IMPACT RESIDENTIAL PROPERTY OWNERS

On June 14, 2019, Governor Cuomo signed the Housing Stability and Tenant Protection Act of 2019. This package of legislation will significantly affect all aspects of New York's housing industry. Public discussion of the new law has primarily focused on the residential rental market, and it is important for all landlords to familiarize themselves with the law, which has provisions applicable to both rent-stabilized and market-rate units. However, important provisions may affect cooperatives as well.

Among other things, the law adds a new section to the Real Property Law which prohibits the "landlord of a residential premises" from refusing to offer a lease to a potential tenant on the basis that the tenant was involved in prior or pending landlord/tenant litigation. In addition, the law prohibits landlords from relying on tenant screening databases in deciding whether to offer a lease. Because a cooperative board is a landlord, this provision may be interpreted as precluding cooperatives from requesting information about, considering, or relying on an applicant's history of litigation with prior landlords in rejecting a purchase application. In addition, the provisions of the new law will also apply to individual owners of condominium or cooperative units who wish to lease or sublease their units.

Another section of the law prohibits landlords from charging a fee of more than $20 for processing a purchase application or background check. Again, this may be interpreted to preclude cooperatives from imposing application fees or passing on even the actual cost of background checks. Similarly, the law now precludes landlords from charging late fees in excess of $50, or 5% of the monthly rent, whichever is less. The provision may not have been written with cooperatives in mind, but may very well be applied to them.

Still other provisions will increase the cost and expense associated with evicting residential tenants who fail to pay their rent, including by increasing the length of notice requirements. These provisions will affect cooperatives that bring summary proceedings against defaulting tenant-shareholders. Another provision that may be applied to cooperatives limits any required security deposit to the amount of one month's rent.

The new law also modifies the requirements for cooperative and condominium conversions. Under prior law, for a non-eviction offering plan to take effect, the sponsor was required to enter into contracts covering 15% of the units, in which tenants or purchasers represented that they or an immediate family member intended to occupy the unit. For offering plans filed after the effective date of the legislation, this threshold is increased to 51% of actual tenants, a change that may make future conversions difficult or impossible.

We will be monitoring the new law's implementation and implications as well as court challenges that have been threatened by industry groups, and will report on them in future issues of this *Client Advisory*.

REMINDER: SEXUAL HARASSMENT TRAINING DEADLINE IS APPROACHING

As a reminder, all employers in New York must provide their employees with training on the prevention of sexual harassment and discrimination. The deadline for employers to provide the first round of training is October 9, 2019 in New York City and December 31, 2019 elsewhere in the state.

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The training may be provided in a variety of formats, but an interactive element must be involved. All employees must receive the training and attendance records need to be maintained. For buildings with union employees, the labor unions are making training programs available. Employers may require their union employees to attend this training. Training programs for non-union employees or employers are offered by law firms (including Ganfer Shore Leeds & Zauderer), managing agents, and other providers.

Existing law also requires that employers have written policies and procedures prohibiting sexual harassment and addressing how incidents are to be reported and investigated. These policies should be periodically reviewed and updated to ensure that they satisfy evolving legal standards and best practices. Employers should also be aware of legislation recently passed by the New York State Legislature that further strengthens New York law against sexual harassment by eliminating the current requirement under federal case law that sexual harassment in the workplace must be "severe or pervasive" in order to violate the law.

NEW INSPECTION PROCEDURES FOR BUILDINGS WITH WATER TOWERS

Recently enacted New York City legislation is tightening the inspection requirements for buildings with water-cooling towers. Legislation previously adopted in 2015 enacted new requirements for cleaning and maintaining such towers, in the wake of several deaths from Legionnaires' disease associated with them. These regulations also require that buildings have a maintenance program and plan for each cooling tower and inspect them every 90 days. Effective September 21, 2019, inspection results will have to be uploaded to both New York City and New York State portals, and the inspections will include an audit of record-keeping relating to the water tower as well as a visual inspection. Boards and landlords should consult with their managing agents and engineers to ensure they are prepared for these new requirements, as well as the many other new laws and regulations governing such subjects as elevators, garage inspections, smoke detectors, freon gas in air conditioners, and other matters that continue to be issued by the federal, state, and city governments.

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CONFLICT OF INTEREST CERTIFICATION AND SMOKING POLICY REQUIREMENTS IMPOSE ANNUAL OBLIGATIONS ON BOARDS

By this time, all New York City cooperatives and condominiums should be in compliance with two important pieces of legislation that have previously been discussed in this *Client Advisory*. One of them requires boards to report annually to shareholders or unit owners on any contracts to which the cooperative or condominium is a party and as to which any board member has a conflict of interest. The second, which also applies to rental buildings, requires that each building adopt and publicize a smoking policy.

Board members who ensured that their buildings complied with these new requirements last year might now assume that this responsibility is behind them, but this is not the case. The conflict-of-interest legislation requires that boards report to their shareholders or unit owners *annually* on any contracts involving a director's or manager's conflict of interest. Even if there are no such contracts, a report must be distributed saying so. This report must be provided at least once each year. Thus, if a board issued its first conflict-of-interest report in December 2018 (which was the initial deadline), this year's report will be due in December 2019. As numerous questions continue to arise as to what types of contracts give rise to conflicts of interest that must be disclosed, board members should raise any questions with their counsel well in advance of the deadline.

Similarly, boards and landlords are also required to disseminate the building's smoking policy to residents at least annually, unless they are taking the alternative approach of posting the policy in a prominent place in the building. In addition, a copy of the policy must be provided to a prospective purchaser or tenant whenever a unit is sold or leased, whether by the cooperative or condominium itself or by an individual tenant-shareholder or unit owner.