GANFER SHORE LEEDS & ZAUDERER LLP

CLIENT ADVISORY

DECEMBER 2021

VIRTUAL SHAREHOLDER MEETINGS ARE NOW AUTHORIZED PERMANENTLY

An important event in a cooperative's life each year is the annual meeting of shareholders, at which members of the Board of Directors are elected and important issues facing the cooperative may be discussed. When necessary, special meetings of shareholders may also be convened. During the coronavirus pandemic, it became impracticable and for a time unlawful for shareholders to meet in person. Today, some shareholders still may feel uncomfortable meeting in person, especially in larger cooperatives that may have dozens or hundreds of shareholders.

To address this problem, the New York State Legislature adopted temporary legislation that authorized New York corporations, including cooperatives, to conduct their shareholder meetings using a virtual format until December 31, 2021. Although many people initially questioned the practicality of conducting shareholder meetings online, especially when a contested election was involved, by now many of us have become more familiar with the logistics of holding a virtual annual meeting. Not only have virtual shareholder meetings become relatively routine during the pandemic, but holding the meetings online yielded unexpected benefits. A virtual meeting makes it possible for shareholders who could not attend a meeting in person, including those who may be ill or absent from New York, to participate in the meeting. Even some shareholders who could attend in person still find it easier to "attend" from their apartment rather than gathering in a meeting hall or conference room.

The Legislature has now amended the Business Corporation Law (BCL) to make the authorization of virtual shareholder meetings permanent. The decision whether to convene a shareholder meeting in person, online, or in a hybrid format (allowing both in-person and online participation) is the Board's, unless a given cooperative's By-Laws provide otherwise. Meeting notices to shareholders must indicate the format by which the meeting will be held, and if applicable, must advise the means of electronic communications by which shareholders or proxyholders may participate in the meeting and how they may vote or grant proxies at the meeting. For virtual or hybrid meetings, the Board must take reasonable measures to allow virtual participants a reasonable opportunity to participate in the meeting, including providing a live video or audio broadcast, providing a method for voting, verifying that those purporting to vote or give proxies are in fact shareholders, and keeping a record of all votes cast or other actions taken by shareholders at the meeting. If the Board wants to hold a conventional shareholders' meeting in person, it is still free to do so.

Many cooperatives will enlist the assistance of their managing agent or another commercial vendor in setting up the logistics for a virtual meeting, especially when a contested election is expected.

It should be noted that the BCL applies to the governance of cooperatives, but not to unincorporated condominiums. The Legislature has not yet addressed the question of whether condominium unit owners may also meet virtually. Another bill has been introduced in the Legislature that would confirm that they may, but it has not been enacted to date. In the interim, while there is no specific statutory authority for a virtual unit owners' meeting, the courts have historically applied relevant sections of the BCL to condominiums by analogy in many situations where the Condominium Act is silent, and it is likely they would again do so here.

360 Lexington Avenue, New York, New York 10017 Tel: (212) 922-9250 Fax: (212) 922-9335 http://www.ganfershore.com

COOPERATIVE IS ORDERED TO TURN OVER SHAREHOLDERS' CONTACT INFORMATION AND OTHER INFORMATION REQUESTED

Tenant-shareholders in a cooperative have the right to obtain certain documents and information concerning their cooperative. Disputes over the parameters of that right sometimes result in litigation, as occurred in **Westchester Portfolio LLC v. Board of Directors of Parkway Village Equities Corp., Index No. 714626/2021 (Sup. Ct. Queens Co. Sept. 7, 2021)**.

The petitioner, a tenant-shareholder, asked the cooperative and its managing agent to provide them with access to "a list of the names, mailing addresses and e-mail addresses of all Shareholders of the corporation, the number of shares held by each, and the dates when they respectively became the owners of record thereof; meeting minutes from any and all meetings and/or other proceedings of its shareholders during the period from January 1, 2016 through the date of the attached affirmation; and a list of the names of all current members of the Board, the commencement date and expiration date of their respective current terms, and whether they are serving terms as a result of being appointed by the Board or as a result of a duly held election by the shareholders of the corporation." The board and managing agent did not provide the information and the petitioner sought a court order requiring them to do so.

The petitioner asserted that it needed the requested information urgently, because the date of a special shareholders' meeting convened to elect directors was approaching. The board responded that petitioner's demand for access to the books and records was made in bad faith. The board asserted that petitioner was the sponsor of the cooperative, had sold 63 of the 64 units it originally owned, and allegedly retained its sole remaining unit for the purpose of being able to bring lawsuits like this one, in order to obtain leverage in connection with an unrelated litigation that was pending between the parties over a prior dispute.

The court sided with the petitioner and found that the board's allegation of petitioner's bad faith was "unsubstantiated." The fact that there was other litigation pending did not disqualify petitioner from exercising its statutory and common-law right of access to all the categories of books and records it had sought, including the names, mailing addresses, and e-mail addresses of the shareholders. The court did not address the possibility that some shareholders might consider disclosure of their e-mail addresses without their consent to be an invasion of privacy and might object to such disclosure. In addition, pursuant to the cooperative's proprietary lease, petitioner was also entitled to inspect "the cooperative's books of account," but the court did not discuss which specific records this included.

REMINDER: MANY COOPS AND CONDOS ARE DUE TO DISTRIBUTE THEIR ANNUAL CONFLICT OF INTEREST REPORTS AND SMOKING POLICIES

All cooperatives and condominiums should be aware of two laws that took effect in 2018 and require compliance annually. The first of these requires boards to report to shareholders or unit owners each year on any contracts to which the cooperative or condominium is a party and as to which any board member has a conflict of interest. Many boards have issued these reports in December of each year, in which case this year's report is due this month. Any questions concerning whether a given contract involves a conflict of interest requiring disclosure should be discussed with the board's legal counsel.

All residential cooperatives and condominiums, as well as the landlords of residential rental buildings, are also required to distribute their building's smoking policy to residents at least annually, unless they are taking the alternative approach of posting the policy in one or more prominent places 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.