

CLIENT ADVISORY

JANUARY 2022

HAPPY NEW YEAR

Ganfer Shore Leeds & Zauderer LLP wishes all of our clients and friends a very happy, healthy, and safe 2022.

MANY TENANT PROTECTION ACT PROVISIONS NO LONGER APPLY TO CO-OPS

In July 2021, we reported that the New York State Legislature had passed a bill to exempt cooperatives from several burdensome restrictions imposed by the New York State Housing Stability and Tenant Protection Act of 2019 (HSTPA). This law was drafted with rental tenants in mind, but because of the way it was written, many of its provisions applied to cooperatives as well.

On December 22, 2021, Governor Hochul signed the amending legislation into law. As a result, cooperatives are no longer subject to restrictions that, among other things, (1) limited security deposits or maintenance escrows to one month's rent or maintenance; (2) capped fees that can be charged to applicants at \$20 (the actual cost of processing the application or obtaining a background check may be charged); (3) capped late fees at \$50 or 5% of the monthly maintenance (the new limit is 8%); and (4) forbade the Housing Court from awarding attorneys' fees and costs to a cooperative that prevails in a litigation with a tenant-shareholder. The new law takes effect immediately and applies in all court proceedings commenced after the effective date.

In a separate legislative development, the Governor has clarified that cooperatives are not covered by new legislation limiting the types of legal fees that landlords of rental buildings may charge their tenants. In addition, the Governor also signed a bill exempting seasonal rentals from HSTPA provisions prohibiting landlords from requiring a deposit or advance in excess of one month's rent. Owners of luxury vacation properties typically seek as much as the entire seasonal rental up-front, and accommodating this practice should have little adverse effect on the HSTPA's overall goal of protecting tenants in affordable housing

OLDER CO-OP OWNERS ARE NOW ELIGIBLE FOR REVERSE MORTGAGES

In another piece of legislation signed in December 2021, New York now permits co-op tenant-shareholders age 62 and older to take out reverse mortgages on their apartments. A co-op reverse mortgage (formally, a "reverse cooperative apartment unit loan") is a loan that is secured by a borrower's co-op shares. The proceeds of the loan are advanced to the borrower, but the loan does not have to be repaid until the borrower either dies or vacates the apartment. Reverse mortgages enable seniors to tap into their home equity for living expenses while allowing them to stay in their residences. Reverse mortgages have long been available to single-family homeowners and condominium unit owners, although these mortgages are not FHA insured, and the new law extends eligibility to cooperative owners as well.

The new legislation also contains robust consumer protections intended to avoid the specter of predatory lenders swindling elderly borrowers out of their cooperatives based on trumped-up loan defaults. In light of the new legislation, co-ops should review their underwriting procedures to determine whether they are willing to permit their shareholders to enter into these loans and on what terms.

NEW YORK WILL AGAIN ALLOW REMOTE NOTARIZATIONS

New York law and regulations have historically required that when a document is to be notarized, the signer and the notary must be in the same location. This can sometimes raise logistical issues, especially when notarization is required on short notice. During the first few months of the pandemic, when public health concerns shut down most offices and required social distancing, the Governor recognized that it would often be impossible or impracticable for the signer and notary to be in the same place. During this period, an Executive Order authorized remote notarization with the notary witnessing the signature on a document via video conference instead of in person, provided that both the signer and the notary were physically located within New York State. Many people found remote video notarization both convenient and safe, but the authorization for it terminated in June 2021.

The New York State Legislature has now adopted legislation that will authorize remote notarization permanently. This will occur in two phases. During an interim period that will begin on an upcoming date expected to be announced soon, remote notarization will again be allowed using the same procedures that were in effect from March 2020 to June 2021. We expect to report soon when this authorization takes effect. Once effective, it is expected to continue until January 31, 2023.

Beginning in February 2023, the New York State Department of State, which regulates notaries, will establish new procedures to ensure the integrity of remote notarizations using electronic signature technology. The regulations will require notaries wishing to perform remote notarizations to register and undergo training on the new procedures. We will provide further information on the requirements when it becomes available.

COURT DISMISSES DISCRIMINATION CLAIM BROUGHT BY APPLICANTS WHO REFUSED TO PROVIDE PROOF OF INCOME

A couple sought to purchase a cooperative unit that was subject to an income limitation. They claimed they met the income requirements and were eligible, and sued the cooperative when their application was denied. However, even during the litigation, the plaintiffs failed to submit evidence such as income tax returns, proof of employment or income, or information needed to conduct a credit check, even after being afforded multiple chances to do so. The court held that in light of their failure to submit evidence, plaintiffs had failed to establish they were qualified for an apartment. The court also noted that plaintiffs had failed to submit any evidence that defendants had discriminated on the basis of the alleged disability of one of the plaintiffs, because he had merely alleged that he was disabled without providing any supporting details. Accordingly, plaintiffs' claims were dismissed. **Wood v. Mutual Redevelopment Houses, Inc., No. 19 Civ. 9563 (AT), 2021 U.S. Dist. LEXIS 177565 (S.D.N.Y. Sept. 17, 2021).**

GANFER SHORE PROVIDES ANNUAL LEGISLATIVE UPDATE FOR COOPS AND CONDOS

Near the end of each year, Ganfer Shore Leeds & Zauderer provides its clients in the cooperative and condominium community with an update on recent legislative developments, often covering additional topics beyond those reported in this *Client Advisory*. Our December 2021 memorandum is entitled "What to Expect in 2022: Important Legislative Developments Affecting Cooperatives and Condominiums." It reports on significant legislative activity in 2021, as well as some potential developments that we are following for 2022. If you have not received a copy of this memorandum and would like one, please contact William D. McCracken or your contact person at the firm.