GANFER SHORE LEEDS & ZAUDERER LLP

CLIENT ADVISORY

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GOVERNOR'S EMERGENCY DECLARATION IS TERMINATED: REMOTE NOTARIZATION ENDS, VIRTUAL ANNUAL MEETINGS CONTINUE

Effective June 25, 2021, Governor Cuomo has terminated the state of emergency that was in effect in New York State since March 2020 as a result of the coronavirus pandemic. As a result, the executive orders modifying or suspending various provisions of law and regulations have also terminated. These include the authorization for notarization of documents to be conducted by video conference. Although permanent legislation to authorize remote notarization has been proposed, it has not been enacted.

Cooperatives are permitted to conduct shareholder meetings, including annual meetings, by fully remote means until December 31, 2021, under an amendment to the Business Corporation Law (BCL) that was enacted last year. Although the legislation does not specifically mention condominiums, we are not aware of any instance in which a condominium unit owners' meeting has been challenged on the ground that it was conducted remotely. Permanent legislation authorizing fully remote shareholder meetings has not been enacted. However, another amendment, adopted before the pandemic, permanently authorizes *partially* remote shareholder meetings, in which the meeting is conducted in a physical location but shareholders who do not attend in person can participate remotely and be counted toward a quorum.

The end of the state of emergency does not limit the authority of cooperative or condominium boards to voluntarily continue reasonable restrictions motivated by health and safety considerations. It also does not affect other state or federal regulations that continue in effect, including those mandating mask-wearing in certain locations including on public transportation.

LEGISLATION WOULD RELIEVE COOPERATIVES OF MOST RESTRICTIONS IMPOSED UNDER THE HOUSING STABILITY AND TENANT PROTECTION ACT

Since 2019, cooperatives have been subject to several burdensome restrictions imposed by the New York State Housing Stability and Tenant Protection Act. This law was drafted with rental tenants in mind, but because of the way it was drafted, many of its provisions applied to cooperatives as well.

On June 10, 2021, the New York State Legislation passed legislation that would exempt cooperatives from many, although not all, provisions of this law. If the bill is signed by the Governor, cooperatives will no longer be subject to restrictions (1) limiting security deposits or maintenance escrows to one month's rent or maintenance; (2) capping fees that can be charged to applicants at $20 (the actual cost of processing the application or obtaining a background check could be charged); (3) capping late fees at $50 or 5% of the monthly maintenance (the new limit would be 8%); and (4) forbidding the Housing Court from awarding attorneys' fees and costs to a cooperative if it prevails in a litigation. We will provide an update on the status of this legislation in a future issue of this *Client Advisory*.

LANDLORDS AND BOARDS ARE NOT LIABLE FOR TENANT-ON-TENANT HARASSMENT

In April 2021, we reported on a recent decision of the federal Court of Appeals in New York holding that a landlord is not liable under the federal civil rights laws when one tenant harasses another.

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More recently, a New York State appellate court in Manhattan has reached the same conclusion under the New York State and Human Rights Laws. In **Edstrom v. St. Nicks Alliance Corp., 2021 N.Y. App. Div. LEXIS 3186, 2021 N.Y. Slip Op. 03112 (1st Dep't May 13, 2021)**, the plaintiff tenants alleged that the landlord failed to respond to reports of sexual-orientation and race-based harassment by a fellow tenant. The court held that plaintiffs could not prevail under the federal Fair Housing Act because there was no evidence that the landlord had "substantial control" over the tenant who allegedly perpetrated the harassment.

For the same reasons, the court dismissed plaintiffs' claim that the same conduct violated the New York State Human Rights Law, and refused to allow plaintiffs to amend their complaint to assert a similar claim under the New York City Human Rights Law. Although the state and city anti-discrimination laws are sometimes interpreted more broadly than the corresponding federal laws, the court declined to apply them to hold a landlord liable for conduct committed by one tenant against another without the landlord's participation.

COOPERATIVES IN WESTCHESTER COUNTY WILL SOON HAVE TO EXPLAIN REASONS FOR DENYING AN APPLICATION

Under current law, it is well-settled that a cooperative board may generally decline to approve a purchase application "for any reason or for no reason," so long as unlawful discrimination or self-dealing is not involved. Boards are also generally free to establish their own procedures for receiving and processing applications and timetable for doing so. Over the years, the New York State Legislature and the New York City Council have considered numerous proposals that would set deadlines within which boards must act on an application before it is deemed approved, and would require boards to provide their reasons for denying an application. Many cooperative boards have expressed concern that imposing these requirements would invite substantially more litigation by rejected applicants. Thus far, these proposals have not been enacted.

The Westchester County Legislature has enacted legislation that will require cooperatives to provide reasons for rejecting an applicant. The county will create a standard form that boards will be required to provide to the Westchester County Human Rights Commission when they reject an applicant, setting forth the reason or reasons for the rejection. Boards will also be required to specify their minimum financial qualifications for buyers, or if they do not have strict minimums, their "preferred" criteria for factors such as income, debt-to-income ratio, total assets, and credit score. The new law takes effect on August 1, 2021.

CONDOMINIUM BOARD RECOVERS LEGAL FEES FOR PROCEEDING TO ENJOIN TRANSIENT USE OF UNIT

A condominium board of managers sued a unit owner for violating the condominium's prohibition against transient occupancy of units. The New York City Environmental Control Board subsequently determined that the unit owner had unlawfully "permitt[ed] its unit to be used as a timeshare among its shareholders with no natural person in permanent occupancy."

The board then filed another action seeking to recover its legal fees from the unit owner, relying on by-laws authorizing the board to address violations of the by-laws through "appropriate legal proceedings" and to abate "the continuance of any such breach [of the by-laws] at the expense (including attorneys' fees) of the breaching Unit Owner." The trial court's decision awarding the board attorneys' fees was affirmed. Although ordinarily an award of attorneys' fees would be based on a "judicial determination" of a breach, here it was sufficient "the ECB decision squarely determined the question of transient occupancy at issue in the earlier action." "While it would have been the better course for [the board] to have sought its fees in the [court] action predicated upon the same violation," the court properly treated the fees as part of a common charges lien that the board was seeking to enforce in the second action. **Board of Managers of the Peregrine Tower Condominium v. New York City 2014 LLC, 143 N.Y.S.3d 199 (App. Div. 1st Dep't May 4, 2021).**