

CLIENT ADVISORY

MID-MONTH EDITION

APRIL 2020

The Past Six Weeks

Six weeks ago, we released the March 2020 edition of our *Client Advisory*, which included a short discussion about the coronavirus and suggested that co-op and condo boards should “begin considering how they would handle the potential effects on their buildings of residents’ being confined at home for long periods if there is a serious outbreak, even though everyone hopes this will never become necessary.” At the time the March *Advisory* went to press, there had not been a single confirmed case of COVID-19 syndrome in New York and most public officials were actively encouraging citizens to go on with their “normal lives.”

Not only have our worst fears about the virus pandemic been confirmed, but events have unfolded in ways that anyone scarcely could have imagined. Everyone reading this will be intimately familiar with recent events, but it is worth pausing to reflect on just how much our clients have been asked to handle in recent weeks.

We have been advising our clients on countless problems arising from the pandemic, not only in our monthly *Client Advisories*, but also in interim releases and in calls and e-mails with all of you. Future editions will focus on problems arising from the pandemic faced by many of our other clients, including real estate developers and commercial landlords, but this edition focuses on particular problems faced by co-op and condo boards.

Every co-op and condo board has had to weigh and implement new policies on issues ranging from closing or limiting access to some common spaces, elevator usage, access by non-residents to the building (whether for social visits, deliveries, dog walkers, housekeepers, etc.), repairs, construction, closings and move-ins/move-outs, making insurance claims, and scheduling of annual meetings, that cannot be held as usual during the pandemic, just to name a few. Boards have had to move quickly from considering “what if” scenarios about someone showing symptoms of illness in the building, to the reality of over 100,000 confirmed cases in New York.

It is all quite a lot to ask a group of unpaid volunteers. That our co-op and condo board members have tackled all of this while dealing with their own health issues, their families, their jobs, and sometimes their personal tragedies, is remarkable and humbling. We have been sincerely impressed by the solidarity, cooperation, and empathy exhibited by all of the co-op and condo boards with whom we have worked with during this period.

Where We Are

The legal and regulatory landscape has also changed dramatically over the last six weeks, and we expect more changes in the weeks and months to come. Not only has public health guidance evolved, but there have been major new laws and emergency orders implemented at every level of government to try to combat the coronavirus and subsequent economic problems. This firm has released newsletters and memoranda recently discussing many of the public health, employment, and economic issues raised by the coronavirus pandemic. At the moment, for example, the eligibility of co-ops and condos for PPP loans or other economic benefits under the Federal CARES Act – both categorically and with regard to the economics of specific buildings – is one major legal question our

GANFER SHORE LEEDS & ZAUDERER LLP ---

boards are addressing. Time is of the essence because we have already seen that the City of New York has stopped taking applications for small business loans and grants, and there is increasing concern that the PPP loan program will run out of funds to disburse in the near future. If you need advice on these issues, please let us know.

Where We May Be Going

Rather than describing the details of any specific new legislation or executive orders (which we will continue to do in our monthly *Advisories* and interim memoranda), we believe there is value in taking time to anticipate some issues that boards may face in the near future.

One such issue will be how to deal with unpaid maintenance or common charges during the crisis. Until this point, our anecdotal impression is that co-ops and condos generally have weathered the initial economic upheaval of the pandemic better than commercial landlords. However, some co-ops and condos have already suffered significant financial impacts predicated on, among other things, loss of commercial rents and construction shutdown expenses, and we believe that increasing numbers of shareholders and unit owners are likely to begin withholding maintenance and common charges soon absent additional governmental intervention. The entire situation will require boards to balance the very real human and economic problems created by the health and economic emergency with their fiduciary duties to enforce their owners' financial obligations.

Delays and inefficiencies in governmental action will continue to be a big issue. We have been monitoring the implementation of all of the different relief programs enacted thus far, and we all anticipate more legislative activity in the coming weeks. However, as we have seen from the loan programs that were supposed to disburse cash almost immediately, it remains to be seen whether any new programs will be available to co-ops, condos, or their shareholders and owners and how comprehensive and efficient they will be.

Throughout all this, co-ops and condos are going to have to figure out ways to conduct business despite the problems caused by the coronavirus. Boards need to be especially cognizant of deadlines that cannot be postponed indefinitely. For example, most by-laws call for distribution of annual certified financial statements, usually in the first quarter of each year. Boards also are obligated to release annual conflict of interest reports. These types of disclosures should be finalized and distributed wherever possible, even during the pandemic.

Non-essential construction activity continues to be shut down and it is not yet known whether the duration of that shutdown will be measured in weeks or months. On a more positive note, the Governor's emergency orders may help facilitate apartment closings by allowing steps such as notarization of legal documents to be accomplished, subject to specific regulations, electronically rather than in person.

Besides the virus itself, perhaps the greatest concern facing co-ops and condos (and all of us) is the increasing strain that mandates of public health will place on our economic and regulatory systems. The longer this goes on, the more these strains may impact decision-making at the co-op and condo level. The challenge will be for board members to continue to work collaboratively with their board colleagues – as well as with their shareholders or unit owners, residents, employees, managing agents, accountants, counsel, and other professionals – to make the best decisions that they can in unrelenting circumstances.

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It has become an instant cliché in coronavirus memos to say that “things are changing all the time,” but it does not make it any less true. So we will continue to update our clients and friends on the nuts and bolts of important legal developments as they happen. For as long as this ordeal continues, we also intend to send out mid-monthly communications like this one to remind our clients and friends that, not only are we learning with you, we are learning from you. As we all wait for a new “normal” to arrive, we will be here and happy to talk.