

pass the costs of legal fees along to all residents. In cases where shareholders and unit owners do not have the economic resources needed to pursue litigation, problems frequently remain unresolved for years.

Several other States, such as Florida, Nevada, Texas, and New Jersey have created Condominium Ombudsman offices to address similar challenges in their States. New York is unique among the States in having both cooperative and condominium housing. In 2008, the Florida Condominium Ombudsman's Office logged 16,000 phone calls regarding condominium owner disputes and questions. The Nevada Ombudsman Office also received a large number of requests for assistance. The Ombudsman Offices in these States provide general education to condominium owners, monitor board elections, and offer alternative dispute resolution processes that provide a fair and inexpensive means for unit owners to resolve disputes between one another or with their condominium associations. Responses to the Condominium Ombudsman Offices in these States have been overwhelmingly positive and has led both Florida and New Jersey to recently expand the powers of their offices. Additional states are in the process of considering legislation to create their own Condominium Ombudsman Offices.

New York State has one of the largest, if not the largest, number of cooperatives and condominiums in the nation. In parts of the State, cooperative shareholders and condominium owners substantially outnumber owners of single and two-family homes. These residents would see significant benefits from the creation of a New York State Cooperative and Condominium Ombudsman Office.

LEGISLATIVE HISTORY:

This is a new bill.

FISCAL IMPLICATIONS:

None. The Office of the Ombudsman will be fully funded by the creation of the six dollar residential unit fee.

EFFECTIVE DATE:

This act shall take effect on the one hundred eightieth day after it becomes law.

building by-laws and other corporate documents. Offerings of condominiums and cooperatives are regulated by the Attorney General under the General Business Law, a statute designed to protect potential buyers from fraud through detailed disclosure requirements. Once cooperative and condominium plans are declared effective, condominiums fall under the New York State Condominium Act and cooperatives fall under the State's Business Corporation Law - the same statute which regulates all the State's corporations. Although both of these statutes grant owners and shareholders some rights, their primary thrust is to require that coops and condos simply address certain issues in their operating documents: for cooperatives, the proprietary lease, house rules, certificate of incorporation and by-laws; for condominiums, the unit deed or declaration, house rules and by-laws of the condominium association.

These multiple laws and regulations governing the rights of cooperative and condominium residents, shareholders, unit owners, association members, and boards of directors are frequently difficult to navigate and comprehend. This is particularly true in the case of cooperative buildings since they are governed by New York State Business Corporation Law which was not designed to regulate residential real estate. Cooperative shareholders are often unaware that they do not own real property, and are considered tenants of the corporation that owns the building where they live.

The boards of directors in cooperatives, and boards of managers in condominiums, have a great deal of discretion over most issues involved in the daily management and operation of their buildings. While many cooperative and condominium boards act in the best interest of their buildings, are financially prudent, and responsive to the needs of shareholders and unit owners, significant problems arise for residents when this is not the case. Many difficulties also emerge when boards of directors and managers are unable or unwilling to remedy disputes between residents which often leads to the diminution of quality of life in the building and significant tension between neighbors. Disputes regarding transparency, finances, board elections, management decisions, rules and regulations, construction, and other issues between individual residents, as well as between residents and their boards, are all too common.

Because there is no government agency or other entity which oversees the operation of cooperatives and condominiums, shareholders and unit owners are left with only two options when serious problems develop: to organize other residents to change the board of directors or managers, or to initiate legal action against the board or another shareholder or unit owner. Understandably, neither of these options is easy or appealing for most residents. Changing the membership of the boards of directors or managers often takes an extended period of time, and is difficult or even impossible in buildings where the original building sponsor or other party controls the majority of votes. As a result, problems in cooperative and condominium buildings all too frequently result in lengthy, expensive, and acrimonious litigation which harms all parties involved. Such litigation diverts resources which could be better utilized to provide well maintained buildings and grounds for the common good of the residents. Litigation between neighbors frequently detracts from the quality of life in buildings, harms the sense of community, and ultimately results in greater expenses for everyone since boards have to

prospective shareholders and unit owners, boards of directors and managers, and other affected parties.

SUMMARY OF PROVISIONS:

Section 1 of the bill would add a new article 49-C to the Executive Law to create the Office of the Cooperative and Condominium Ombudsman within the Department of Law. The office would be headed by an Ombudsman who is appointed for a fixed term by the Attorney General. The office would work to educate shareholders of cooperatives and owners of condominiums, their boards of directors and boards of managers, professionals working with and for such boards, property managers, and other interested parties about their legal rights and responsibilities under federal, state and local laws and regulations. Other responsibilities of the office would include: to prepare educational and reference materials, to organize and conduct meetings and public hearings, to provide mediation and other forms of alternative dispute resolution, to offer monitors and vote counting services to assure fair elections for board membership, and to provide advice to the Governor and Legislature regarding new and existing legislation which affects cooperative shareholders or condominium owners. The Ombudsman would have the power to subpoena and enforce the attendance of witnesses, administer oaths or affirmations and examine witnesses under oath, and require the production of any books and papers deemed relevant to any dispute pending before the office. The Secretary to the Governor is to ensure that all State agencies provide the Ombudsman with assistance in advancing the purposes of the office, and to assure that the activities of the office are fully coordinated with the activities of State agencies providing related services.

Section 2 of the bill would add new section 186-g to the Tax. Law to create a new residential unit fee. Each cooperative corporation and condominium owners association would be required to pay an annual fee of six dollars per year for each residential unit located in a building or buildings owned or operated by such corporation or association. The fee would be paid to the Department of Taxation and Finance. All revenue collected by the Department of Taxation and Finance would be paid to the State Comptroller to be deposited into the office of the Cooperative and Condominium Ombudsman Fund.

Section 3 of the bill would add a new section 81 to the State Finance Law to establish a new fund in the custody of the State Comptroller to be known as the "Office of the Cooperative and Condominium Ombudsman Fund." All monies in this fund would be kept separate and apart from other monies in the custody of the State Comptroller. The fund would be allocated and spent by the Department of Law solely for the staffing and administration of the Office of the Cooperative and Condominium Ombudsman.

Section 4 of the bill provides for the effective date.

JUSTIFICATION:

The rights of condominium owners and cooperative shareholders are derived from a complex series of laws, regulations, and individual

54 § 186-g. Residential unit fee. A cooperative housing corporation or a
55 homeowners association, as such terms are defined in section two hundred
56 ten of this chapter, shall pay an annual fee of six dollars per year for
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1 each residential unit located in a building or buildings owned or oper-
2 ated by such corporation or association. Such fee shall be payable to
3 the department. All revenue from the fee imposed pursuant to this
4 section shall be paid by the department to the state comptroller to be
5 deposited to and credited to the office of the cooperative and condomin-
6 ium ombudsman fund, established pursuant to section eighty-one of the
7 state finance law.

8 § 3. The state finance law is amended by adding a new section 81 to
9 read as follows:

10 § 81. Office of the cooperative and condominium ombudsman fund. 1.
11 There is hereby established in the custody of the state comptroller a
12 special fund to be known as the "office of the cooperative and condomin-
13 ium ombudsman fund".

14 2. The office of the cooperative and condominium ombudsman fund shall
15 consist of monies appropriated thereto, funds transferred from any other
16 fund or sources, and monies deposited therein pursuant to section one
17 hundred eighty-six-g of the tax law.

18 3. The monies in the office of the cooperative and condominium ombuds-
19 man fund shall be kept separate from and shall not be commingled with
20 any other monies in the custody of the state comptroller. Such monies
21 shall be allocated to and expended by the department of law solely for
22 the staffing and administration of the office of the cooperative and
23 condominium ombudsman of such department.

24 § 4. This act shall take effect on the one hundred eightieth day after
25 it shall have become a law.

NEW YORK STATE SENATE
INTRODUCER'S MEMORANDUM IN SUPPORT
submitted in accordance with Senate Rule VI. Sec 1

BILL NUMBER: S7958

SPONSOR: KRUEGER

TITLE OF BILL:

An act to amend the executive law, in relation to creating the office of the cooperative and condominium ombudsman; to amend the tax law, in relation to authorizing the residential unit fee; and to amend the state finance law, in relation to establishing the office of the cooperative and condominium ombudsman fund

PURPOSE:

The bill creates the Office of the Cooperative and Condominium Ombudsman within the Department of Law to serve as a neutral, informative, and accessible resource available to cooperative and condominium residents,

1 unit owners and other parties so as to avoid costly and lengthy liti-
2 gation and reduce expenses for those involved in disputes.

3 5. To subpoena and enforce the attendance of witnesses, administer
4 oaths or affirmations and examine witnesses under oath and require the
5 production of any books and papers deemed relevant or material to the
6 resolution of any dispute pending before the office.

7 6. To engage with the housing courts, other trial courts, state and
8 local agencies and with alternative dispute resolution programs main-
9 tained by the office of court administration in order to provide
10 specialized expertise in the resolution of cooperative and condominium
11 disputes as an alternative to litigation.

12 7. To offer procedures, monitors and vote counting services to assure
13 fair elections for members of cooperative boards of directors and condo-
14 minium boards of managers. Fifteen percent of the total voting inter-
15 ests in a cooperative or condominium or shareholders or owners of six
16 residential units, whichever is greater, may petition the office to
17 attend and conduct an election of directors or managers. All costs asso-
18 ciated with the election monitoring process shall be paid by the cooper-
19 ative or condominium.

20 8. To refer any complaint received to the appropriate law enforcement
21 agency for prosecution, if deemed appropriate by the office.

22 9. To perform any other functions that are necessary or appropriate to
23 fulfill the duties and responsibilities of the office.

24 § 996-e. Principal office and satellite offices. The office shall
25 maintain its principal office in the city of New York and shall have
26 satellite offices in other locations within the state of New York where
27 there are significant concentrations of cooperative or condominium hous-
28 ing.

29 § 996-f. Assistance of other state agencies. To effectuate the
30 purposes of this article, the ombudsman may request and shall be enti-
31 tled to receive from any state agency, and the same are authorized to
32 provide, such assistance, services, facilities, and data as will enable
33 the office to carry out its functions, powers and duties, and such
34 temporarily or permanently assigned personnel as the director of the
35 budget may approve.

36 § 996-g. Reports to the governor, attorney general and the legisla-
37 ture. The office shall make an annual report, to be received on or
38 before January first, to the governor, attorney general and the legisla-
39 ture concerning the activities undertaken by the office, recommendations
40 for legislative proposals, data concerning program activities and other
41 pertinent information as may be required.

42 § 996-h. Contract authority. The office is hereby empowered to enter
43 into any agreement or contract with any state or local agency necessary
44 or convenient to carry out the provisions of this article.

45 § 996-i. Separability. If any clause, sentence, paragraph, section or
46 part of this article shall be adjudged by any court of competent juris-
47 diction to be invalid, such judgment shall not affect, impair or invali-
48 date the remainder thereof, but shall be confined in its operation to
49 the clause, sentence, paragraph, section or part thereof directly
50 involved in the controversy in which such judgment shall have been
51 rendered.

52 § 2. The tax law is amended by adding a new section 186-g to read as
53 follows:

1 4. The ombudsman shall be an attorney with extensive experience in
2 real estate, cooperative and condominium law and in conflict and alter-
3 native dispute resolution.

4 5. The ombudsman shall direct the work of the office and shall be the
5 chief executive officer of the office. The ombudsman may appoint such
6 officers and employees as he or she may deem necessary, prescribe their
7 powers and duties, fix their compensation and provide for the reimburse-
8 ment of their expenses, all within amounts made available therefor by
9 appropriation. Such officers and employees shall include attorneys and
10 other professionals with extensive experience in real estate, cooper-
11 ative and condominium law and in conflict and alternative dispute resol-
12 ution.

13 6. The ombudsman and officers and employees of the office shall adhere
14 to a code of ethics in order to inspire public confidence and trust in
15 the fairness and impartiality of the office. The ombudsman shall
16 prescribe such code of ethics. Such code shall require that the ombuds-
17 man and officers and employees of the office respect and comply with the
18 law; that they not use or attempt to use their positions to secure priv-
19 ileges or exemptions for themselves or others; that they not solicit,
20 accept or agree to accept any gifts or gratuities from persons having or
21 likely to have any official transaction with the office; that they not
22 request or accept any payment in addition to their regular compensation
23 for assistance given as part of their official duties; and that they
24 shall not perform any function in a manner that improperly favors any
25 person or party.

26 7. The ombudsman and officers and employees of the office shall not
27 serve as officers or employees of a political party or a club or organ-
28 ization related to a political party, receive remuneration for activ-
29 ities on behalf of any candidate for public office or party position or
30 engage in soliciting votes or other activities on behalf of a candidate
31 for public office or party position.

32 8. The secretary to the governor shall assure that all state agencies
33 provide the ombudsman with assistance in advancing the purposes of the
34 office and to assure that the activities of the office are fully coordi-
35 nated with the activities of state agencies providing related services.

36 § 996-d. Functions, powers and duties of the office. The office shall
37 have the following functions, powers and duties:

38 1. To educate and inform shareholders of cooperatives and unit owners
39 of condominiums, their boards of directors and boards of managers, prop-
40 erty managers, professionals working with and for such boards and other
41 interested parties of their legal rights and responsibilities under the
42 federal, state and local laws and regulations applicable to cooperative
43 and condominium housing in the state of New York and under the cooper-
44 ative and condominium documents governing the respective properties.

45 2. To coordinate and assist in the preparation and publication of
46 educational and reference materials about residential cooperatives and
47 condominiums, to make such resources known and available to the widest
48 possible audience.

49 3. To organize and conduct meetings, workshops, conferences, public
50 hearings and forums and to utilize all forms of communications media to
51 disseminate accurate and timely information of interest to persons
52 residing in, owning and managing cooperative and condominium housing.

53 4. To provide meetings, mediation, arbitration and other forms of
54 alternative dispute resolution services to cooperative and condominium
55 sponsors and developers, cooperative shareholders, condominium owners,

2 the residents of such housing are provided with safe and habitable
3 accommodations.

4 Inevitably, disputes have arisen among cooperative and condominium
5 sponsors and developers, cooperative shareholders and condominium unit
6 owners, prospective shareholders and unit owners, boards of directors
7 and boards of managers. Such disputes often result in lengthy and costly
8 litigation and uncertainty as to the rights of the parties pending the
9 outcome of litigation. Such litigation diverts resources that could be
10 better utilized to provide affordable and well-maintained buildings and
11 grounds for the common good of the owners.

12 This article is necessary to provide a neutral, informative and acces-
13 sible resource available to all parties involved in residential cooper-
14 ative and condominium ownership and governance. The ombudsman appointed
15 pursuant to this article will conduct outreach programs to educate unit
16 owners and board members as to their legal rights and responsibilities.
17 The ombudsman will encourage alternative dispute resolution when
18 disputes do arise. The ombudsman will be available to provide dispute
19 resolution services on consent of the parties. The ombudsman will also
20 provide monitoring and supervision of cooperative and condominium
21 elections.

22 § 996-b. Definitions. 1. "Cooperative" means a corporation organized
23 and operating pursuant to the general business law or the cooperative
24 corporations law for the primary purpose of providing residential hous-
25 ing to its shareholders.

26 2. "Condominium" means a homeowners association or any association
27 organized and operating pursuant to article nine-B of the real property
28 law for the primary purpose of providing residential housing to its unit
29 owners.

30 3. "Office" means the office of the cooperative and condominium
31 ombudsman created by this article.

32 4. "Ombudsman" means the chief administrative officer of the office of
33 the cooperative and condominium ombudsman.

34 5. "State agency" means any department, board, bureau, commission,
35 division, office, council or agency of the state, or a public benefit
36 corporation or authority authorized by the laws of the state.

37 6. "Local agency" means any department, board, bureau, commission,
38 division, office, council, officer or agency of a city, town or village.

39 § 996-c. Office of the cooperative and condominium ombudsman. 1. The
40 office of the cooperative and condominium ombudsman is hereby created
41 within the department of law to have and exercise the functions, powers
42 and duties provided by the provisions of this article and any other
43 provision of law.

44 2. The head of the office shall be the cooperative and condominium
45 ombudsman who shall be appointed by the attorney general. The ombudsman
46 shall hold office until the end of the term of the attorney general by
47 whom he or she was appointed and until his or her successor is appointed
48 and has qualified. A vacancy shall be filled in the same manner as the
49 original appointment.

50 3. The ombudsman shall receive an annual salary to be fixed by the
51 attorney general within the amount made available therefor by an appro-
52 priation and shall be allowed his or her actual and necessary expenses
53 in the performance of his or her duties. The ombudsman's salary shall be
54 no less than the salaries of certain state officers holding the posi-
55 tions indicated in paragraph (a) of subdivision one of section one
56 hundred sixty-nine of this chapter.

STATE OF NEW YORK

7958

IN SENATE

May 26, 2010

Introduced by Sen. KRUEGER -- read twice and ordered printed, and when printed to be committed to the Committee on Finance

AN ACT to amend the executive law, in relation to creating the office of the cooperative and condominium ombudsman; to amend the tax law, in relation to authorizing the residential unit fee; and to amend the state finance law, in relation to establishing the office of the cooperative and condominium ombudsman fund

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

- 1 Section 1. The executive law is amended by adding a new article 49-C
2 to read as follows:
3 ARTICLE 49-C
4 OFFICE OF THE COOPERATIVE AND CONDOMINIUM OMBUDSMAN
5 Section 996. Short title.
6 996-a. Legislative declaration.
7 996-b. Definitions.
8 996-c. Office of the cooperative and condominium ombudsman.
9 996-d. Functions, powers and duties of the office.
10 996-e. Principal office and satellite offices.
11 996-f. Assistance of other state agencies.
12 996-g. Reports to the governor, attorney general and the legis-
13 lature.
14 996-h. Contract authority.
15 996-i. Separability.
16 § 996. Short title. This article shall be known and may be cited as
17 the "cooperative and condominium ombudsman act".
18 § 996-a. Legislative declaration. The legislature finds and determines
19 as follows:
20 Cooperative and condominium housing constitutes a significant portion
21 of New York state's residential housing stock. It is and has been the
22 public policy of this state to encourage such forms of home ownership. A
23 wide variety of laws have been enacted to provide fairness in the
24 conversion of rental properties to cooperative and condominium ownership
25 and in the regulation and taxation of cooperatives and condominiums.

EXPLANATION--Matter in italics (underscored) is new; matter in brackets
[-] is old law to be omitted.

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1 State and local laws and regulations are also designed to insure that