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New Tenant Protections Likely to Be Felt in Co-ops and Condos

By Ira Brad Matetsky and Justin R. Bonanno

On June 14, Governor Cuomo signed the Housing Stability and Tenant Protection Act of 2019. While this controversial law's primary focus is the residential rental market, it might also have repercussions in housing cooperatives and, to a lesser extent, condominiums. So co-op and condo boards need to familiarize themselves with it. Here are some key provisions:

Prior litigation. The new law prohibits landlords from refusing to offer a lease because of a potential tenant's involvement in landlord/tenant litigation. Because a cooperative is considered a landlord, this provision might be interpreted as precluding co-op boards from considering an applicant's landlord/tenant litigation history when weighing a purchase application. The law will also apply to individual co-op shareholders and condo unit-owners who wish to lease or sublease their units.

Fees. The law prohibits landlords from charging a fee of more than \$20 for processing an application or performing a background check. Again, this may be interpreted as limiting the purchase-application fee a co-op board can charge, and preventing the board from passing on the actual cost of background checks. This section of the law also precludes landlords from charging late fees in excess of \$50, or 5 percent of the monthly rent, whichever is less.

Evictions. The new law will increase the cost associated with evicting residential tenants who fail to pay their rent or maintenance. It places limits on what monies can be collected by a landlord in a summary proceeding,

and it increases the length and complexity of notice requirements. These provisions will affect cooperatives that bring summary proceedings against defaulting shareholders, as well as individual shareholders of condo unit-owners who sublease or lease their units.

Common cooperative charges, such as late fees, utilities, and repair costs, can no longer be sought in a summary proceeding and can be sought only in a separate plenary action. This will likely result in an increase in litigation in the state's already overburdened court system. Some co-op boards may find that it is financially untenable to recover these costs through litigation at all, and may have to collect the amounts through another means, such as by waiting until the unit is sold, or by withholding amenities from shareholders who are in arrears.

Conversions. The new law modifies the requirements for converting a rental property into a cooperative or condominium. Under prior law, for a non-eviction offering plan to take effect, the sponsor was required to enter into contracts with at least 15 percent of the units, in which tenants or purchasers represented that they or an immediate family member intended to occupy the unit. Under the new law, the threshold is increased to 51 percent of apartments being purchased by tenants – a change that may make future conversions difficult or impossible.

Some real estate industry groups have announced plans to challenge provisions of the new law. A lobbying effort is seeking to convince the Legislature to amend the law so that it would not apply to cooperatives. Residential property owners and co-op and condo boards should consult with their legal counsel concerning interpretations of the law and the status of any challenges. This story is just beginning.

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