



# BLINK

## & THERE WILL BE A NEW LAW

Nearly 50 bills are sitting in Albany that  
could change board operations

BY CAROL J. OTT

**W**hile co-op and condo boards grapple with real-world challenges in their buildings, state legislators have been busy introducing measures purporting to solve problems plaguing this housing sector. Some of the issues addressed – such as the need for transparency and communication with shareholders – are already familiar to boards. But many find that

the details in these bills reveal what James Glatthaar, a partner at the law firm Bleakley Platt & Schmidt, calls “a huge misunderstanding of how co-ops operate.”

Since January, there have been more than 50 pieces of legislation introduced in Albany which, if passed, would profoundly change how co-ops are governed. “I think a lot of these suggested requirements are going to make board directors

and shareholders think twice about wanting to serve,” says Mitchell Berg, a vice president and the director of management at Maxwell-Kates. “It’s a micromanaging incentive for the disgruntled,” he continues, “which would make it difficult for anybody to really want to serve on a board.”

Each bill offers its own solution to a perceived problem, but one of them, S4595, sponsored

by Sen. Shelley Mayer, a Democrat from Westchester County, illustrates the thinking behind many. “Existing law really doesn’t provide much redress for shareholders who have legitimate complaints,” Mayer says, “other than to run for the board, which is what people would traditionally say.” Her bill, among others, would address this by requiring new operating procedures that everyone would have to abide by, regardless of size, constituency or current governance practices. “We tried to come up with a very reasonable set of additional shareholder protections that are not excessively burdensome for boards,” she says. Whether this bill accomplishes that is up for debate.

One of the key drivers in S4595 is transparency. “Conceptually,” Mayer says, “a shareholder has both a financial and personal interest in the financial operations (of the corporation). The sense that I got from having met with a number

of shareholders is that these decisions seem to be done in too much seclusion and without enough transparency.” The proposed solution to this is a sea change for several operating procedures common in most co-ops. Here’s a breakdown:

### **Budget Approval**

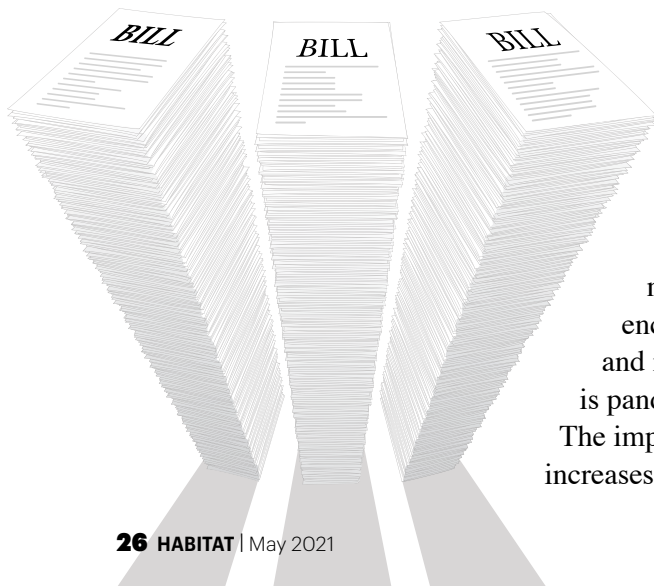
The first change affects how a co-op adopts a budget. Currently, most co-ops prepare their annual budgets in the fall. If a co-op retains a management company, that company usually prepares a budget, and the board then considers the recommendations based on its knowledge of upcoming expenses, access to capital and community sentiment regarding maintenance increases. The budget is then adopted by the board and is usually presented in a variety of formats to the shareholders, depending on whether there is to be a maintenance increase and how big it might be. S4595 would upend this process by requiring shareholder approval of the budget.

“This is the part that I just kept reading over and over again, as if I was stuck in a bad dream,” says Glatthaar, the attorney. “There’s a difference between democracy and mob rule. This, to me, is pandering to mob rule.” The impact of maintenance increases and the decisions

behind them come from a board’s understanding – and, in most instances, a good-faith effort – to run a housing corporation so that obligations can be met, buyers can get financing, and the co-op corporation itself can enter the financial markets for its needs. Putting budget decisions in the hands of shareholders who are not privy to – and probably not interested in – all the financial and legal details of the building is a daunting prospect.

“It’s impossible to have a majority vote on a building budget,” says Steven Greenbaum, the director of property management at Charles H. Greenthal. If a maintenance increase of 4% is required, he says, there are always shareholders who will say: “We can’t pay for that. We’re on fixed incomes. We don’t want it, so let’s vote.” The fact is, though, that budgeting is a science, according to Greenbaum. “A budget needs as much income as expenses,” he says. “You can’t run a deficit budget, because people aren’t going to be able to get loans to buy apartments.”

Ben Kirschenbaum, a vice president and the general counsel at FirstService Residential New York, says this proposed solution, while designed to create more transparency, is overkill. “It’s killing the fly with a sledgehammer,” he says. “No matter what the legislation says, the management company or the board is going to come



## ON THE LEGISLATIVE TABLE

Nearly 50 bills have been introduced this year (as of April 7) that could directly affect the co-op and condo community. Some will change how boards govern, others will change how co-ops and condos are taxed, while others deal with courts, ombudsman, management companies, reverse mortgages, purchasers and more. If a bill is approved in the Senate or Assembly, it then proceeds to the other house where, if approved without amendment, moves to the Governor for signature or veto.

| BILL          | SUMMARY   |
|---------------|---|
| <b>A06510</b> | Requires cooperative housing corporations to provide a prospective purchaser with a written statement of reasons when withholding consent to a purchase; voids any agreement inconsistent with such requirement.  |
| <b>A06516</b> | Increases the real property tax circuit breaker credit income limits to \$100,000; removes real property tax rebates from real property taxes that qualify under such credit.   |
| <b>A06143</b> | Requires a mandatory settlement conference in cooperative apartment foreclosure actions; makes related provisions.  |
| <b>A02387</b> | Enacts a bill of rights for owners of residential condominium units to provide fair and equitable treatment of all unit owners; directs the attorney general to promulgate a handbook summary of the rights of unit owners vis-à-vis condominium associations and the procedures and processes available to unit owners to enforce such rights.   |
| <b>S05376</b> | Establishes the COVID-19 Community Protection Act of 2021; imposes a tax on the transfer of certain residential properties that are sold within two years of the prior conveyance of such property; exempts certain purchases of residential properties from mortgage recording taxes; imposes a tax on the transfer of certain properties in the City of New York that are sold for \$1 million or more.   |
| <b>S05105</b> | Excludes tenant-shareholders in cooperative housing corporations from certain housing provisions, fixing certain unintended effects of the Housing Stability and Tenant Protection Act of 2019.   |
| <b>A05630</b> | Expands the New York State low-income housing tax-credit program to certain one-to-four family residences, including a cooperative or a condominium unit.   |
| <b>A05573</b> | Prohibits eviction without good cause.  |
| <b>A05326</b> | Provides for the appeal of disputes between shareholders and boards of directors of residential cooperatives to a hearing officer appointed by the attorney general.  |
| <b>S04595</b> | Increases transparency in cooperative housing corporations by giving shareholders more rights to information of the co-op and limiting the powers of management companies and boards.   |
| <b>S04303</b> | Authorizes the temporary occupancy, for compensation, of a Class A multiple dwelling that is a cooperative or condominium unit under certain conditions.  |
| <b>A03491</b> | Relates to the taxation of property owned by a cooperative corporation.   |
| <b>S04147</b> | Provides that assessed values of cooperative units and condominiums shall not increase by more than 3% in the two years following resolution of tax certiorari proceedings.   |
| <b>S01449</b> | Requires cooperative housing corporations to provide a prospective purchaser with a written statement of reasons when withholding consent to a purchase; voids any agreement inconsistent with such requirement.  |
| <b>S03017</b> | Creates a residential condominium owner's bill of rights that includes the right to transparency, the right to timely decisions, voting rights, the right to notice, and the right against extraordinary expenses.  |
| <b>S03082</b> | Prohibits eviction without good cause.  |
| <b>S03092</b> | Requires residential real property managers or any company employing a property manager, contracting with a property manager or contracting to provide a property manager to file a registration statement with the secretary of state and to be certified from an approved certifying organization.  |
| <b>A00445</b> | Requires owners of multiple dwelling properties to develop, implement and distribute smoking policies to current and prospective tenants; requires a posted copy of the smoking policy; requires such policy be incorporated into all written and oral leases and contracts for sale; allows the enforcement officer the power to impose a civil penalty for violations.  |
| <b>A03395</b> | Eliminates the New York City condominium and cooperative tax abatement for dwelling units whose billable assessed value is \$200,000 or greater and instructs that the money used to formerly fund such abatement be reallocated to the New York City Housing Authority; extends certain provisions of the partial tax abatement for residential real property held in the cooperative or condominium form of ownership in a city having a population of one million or more. |

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up with the budget. They have access to information that I don't think should be made available to all shareholders. Unless you have a board that is corrupt, which is very rare, or totally negligent or not diligent, you're going to come up with a budget that is reasonable."

That said, Kirschenbaum offers another way to provide more transparency to shareholders that doesn't upend or roadblock current practices. "I think if there was a requirement to have semiannual meetings to report on the financial status of the board's budget, including any variances or significant arrearages affecting anticipated income," he says, "that would help shareholders understand whether the board is doing the right thing."

### **Micromanaging**

One of the common complaints reported by management companies over the years is boards that second-guess the day-to-day running of the building. "There are boards out there that can micromanage management," says Maxwell-Kates's Berg. This bill, he adds, "would be an entree for shareholders to micromanage the board and management. I don't think that's a good recipe."

S4595 has several provisions that fall under the micromanagement rubric. One involves building violations. Currently, when a co-op receives a violation, it is generally the responsibility of management to resolve it.

Given the increase in building inspections and requirements, management companies have set up entire compliance departments to deal with this issue. When building violations are served, they're treated routinely – unless the correction involves significant cost or community inconvenience, such as an elevator shutdown. It is only then that the entire shareholder population is informed about the problem.

The change envisioned by S4595 would revamp this process. It would require notice to the entire shareholder community of all violations within two weeks of receipt and notice of any written appeal or response by the co-op within one week.

"I'm trying to figure out what grievance this provision is trying to address," Glatthaar says. "Do they think boards cover up violations? I understand sunshine, I understand disclosure, but this? This is not really a problem."

It may not be a problem, but like many provisions in the bill, it is mandating something different that may, in the end, be more trouble than it's worth. "These legislative requirements will make it more expensive to operate a co-op or condo," says Babette Krolik, the general counsel at the real estate services company Terra Holdings. "What's the cost-benefit analysis to these requirements? Everyone wants more transparency, but you have to look at the end results of your legislative requirements."

### **Board Meetings**

Informational meetings are commonplace today, especially when boards need to lay out the need for a maintenance increase or assessment. But transparency has to be balanced against privacy laws, and this is the fine line that restricts some information boards can disseminate. S4595 mandates open board meetings but allows executive sessions. It also requires that boards meet at least quarterly, and that the minutes of these meetings be distributed within one month. Logistically this presents a problem, because minutes aren't distributed until they're approved, and they wouldn't get approved until the next quarterly meeting.

In the end, this all leads to a fundamental question: Are state laws the best way to increase transparency in co-op and condo governance and get more information into the hands of shareholders and unit-owners? That's open to debate. Historically, measures that have attempted to accomplish this have fared poorly. "None of the bills that have addressed shareholder challenges have gotten anywhere in the Legislature," says Mayer, the sponsor of S4595. "To the extent that people think provisions are inappropriate or go too far, I'm open to conversation about how to improve it. But I don't accept that nothing can be done. If we can make improvements in an underlying law that affects thousands of residents and makes things better, then we should see if we can." ■

| BILL          | SUMMARY   |
|---------------|---|
| <b>S02846</b> | Enacts the "fairness in cooperative homeownership act"; regulates the submission and determinations of applications for ownership of cooperative apartments.  |
| <b>S02874</b> | Requires a uniform process for considering applications to purchase condominiums or cooperatives.   |
| <b>S02887</b> | Eliminates the New York City condominium and cooperative tax abatement for dwelling units whose billable assessed value is \$200,000 or greater and instructs that the money used to formerly fund such abatement be reallocated to the New York City Housing Authority; extends certain provisions of the partial tax abatement for residential real property held in the cooperative or condominium form of ownership in a city having a population of one million or more. |
| <b>S02807</b> | Relates to the application for a partial tax abatement for residential real property held in the cooperative or condominium form of ownership in the City of New York.  |
| <b>A03057</b> | Prohibits upon the vacancy of an unsold condominium or cooperative dwelling unit, the rental of such unit unless the original offering plan provided for such rental and a majority of the members of the condominium or cooperative agree thereto; generally requires the sale of such units.  |
| <b>A03157</b> | Creates the office of the cooperative and condominium ombudsman; authorizes the residential unit tax and establishes the office of the cooperative and condominium ombudsman fund.  |
| <b>A03263</b> | Relates to the disclosure of information on the fiscal health of a condominium, cooperative apartment building or cooperative community to prospective buyers, current owners and the condominium board or the cooperative board.   |
| <b>A03277</b> | Relates to financial statements for assessments of condos, cooperative buildings and cooperative communities; requires financial statements to be prepared using GAAP; requires auditing for certain buildings by CPAs.   |
| <b>A02356</b> | Requires that the board of directors or board of managers of a converted cooperative or condominium, as the case may be, must be composed of a majority of members elected by shareholders or owners in occupancy so that control of the converted cooperative or condominium is turned over to the unit owners as soon as possible; applies only to plans of 20 or more units.   |
| <b>S01995</b> | Exempts real property owned or leased by a cooperative corporation or on a condominium basis located in a city with a population of one million or more from certain assessment provisions.   |
| <b>A01930</b> | Creates a special subpart of the housing part within the New York City Civil Court to handle cases involving condominiums and cooperative buildings.  |
| <b>A01508</b> | Relates to authorizing reverse cooperative apartment unit loans for persons 62 years of age or older; provides additional consumer protections.   |
| <b>A01623</b> | Requires a uniform process for considering applications to purchase condominiums or cooperatives.   |
| <b>A01698</b> | Provides for the imposition of a fine for the failure of a cooperative apartment corporation to credit the STAR exemption to the tenant-stockholders thereof.   |
| <b>A01268</b> | Requires real property in New York City to be assessed using a fair comparative.  |
| <b>S01112</b> | Classifies properties held in condominium and cooperative form for assessment purposes as Class 1-A properties; requires that the annual tax rate percentage change for Class 1-A properties does not exceed the annual tax rate percentage change for Class 1 properties.  |
| <b>S01127</b> | Relates to establishing a property tax credit for Class 2 cooperative and condominium buildings that are designated safe after a facade safety program inspection.  |
| <b>A00350</b> | Excludes tenant-shareholders in cooperative housing corporations from certain housing provisions, fixing certain unintended effects of the Housing Stability and Tenant Protection Act of 2019.   |
| <b>A00496</b> | Extends the transitional assessed value of parcels held in cooperative or condominium forms of ownership to 12 years.   |
| <b>A00513</b> | Relates to establishing a property tax credit for Class 2 cooperative and condominium buildings that are designated safe after a facade safety program inspection.  |
| <b>A00546</b> | Relates to establishing a new classification for properties held in condominium and cooperative form for assessment purposes.   |
| <b>A00686</b> | Provides that assessed values of cooperative units and condominiums shall not increase by more than 3% in the two years following resolution of tax certiorari proceedings.   |
| <b>S00071</b> | Creates a special subpart of the housing part within the New York Civil Court to handle cases involving condominiums and cooperative buildings.   |
| <b>S00494</b> | Creates the office of the cooperative and condominium ombudsman; authorizes the residential unit tax and establishes the office of the cooperative and condominium ombudsman fund.  |
| <b>S00760</b> | Relates to authorizing reverse cooperative apartment unit loans for persons 62 years of age or older; provides additional consumer protections.   |