

Cooperatives Granted Relief from Restrictions Imposed by the Tenant Protection Act -David L. Berkey, Gallet Dreyer & Berkey, LLP

On June 10, 2021, the New York State legislature exempted most cooperatives from important restrictions imposed by the Housing Stability and Tenant Protection Act of 2019 (HSTPA). The exemptions apply to cooperative housing corporations except for most low- and moderate-income cooperatives organized under the Private Housing Finance Law.

Important changes approved by the legislature are:

1. Rent security deposits and advance rental payments made for owner-occupied cooperative apartments may now exceed one month's rent;
2. Cooperative housing corporations are not required to give notice to tenants when rent increases exceed 5% of the current rent or when a lease is not being renewed;
3. Cooperative housing corporations and their managing agents may now charge prospective tenant-shareholders fees and charges in excess of \$20.00 to compensate for the actual costs of background checks and credit checks and may also charge for processing, review or acceptance of an application to become an owner or shareholder;
4. Cooperative housing corporations may now charge tenant-shareholders late fees that are no longer limited to the lesser of \$50.00 or 5% percent of the monthly rent and such late fees may be as high as 8% of the monthly rent if permitted by the proprietary lease or occupancy agreement;
5. Cooperative housing corporations no longer have to send written notice by certified mail to a tenant that fails to pay rent within five days of its due date if the proprietary lease contains an alternate method of sending notices to the tenant; and
6. Cooperative housing corporations [may] collect attorneys' fees as part of a default judgment in an eviction proceeding if recovery of attorneys' fees is provided for in the proprietary lease.

7. Cooperatives may be permitted to collect late fees that may deter rent delinquencies and to collect attorneys' fees in eviction and other cases should a tenant-shareholder default in the proceeding.

These exemptions will allow cooperative boards to require the deposit of a maintenance escrow in excess of one month's rent as a condition of approving applications from prospective tenant-shareholders who may not otherwise have strong financial statements.

Managing agents will be permitted to collect application and other fees that they traditionally charge. It is not clear from the statute whether a cooperative may collect attorneys' fees in the eviction case if the tenant does not so default.