

On December 22, 2021, Governor Hochul signed into law (Real Property (RPP) CHAPTER 50, ARTICLE 7) an amendment which exempts cooperatives from many of the onerous provisions of the Housing Stability and Tenant Protection Act (HSTPA) of 2019. Under the HSTPA, late fees imposed by landlords, including co-ops, were limited to \$50 or 5% of the monthly rent, whichever was lower.

The new law allows a cooperative (with the exception of Mitchell-Lamas and HDFCs which are still subject to the 5% or \$50 limitation) to impose “a fee of up to 8% of the monthly maintenance fee for the late payment of the monthly maintenance fee if the proprietary lease or occupancy agreement provides for such fee.”

There may still be inherent problems with this provision, which at first appears to fully support cooperatives in their ever-challenging mission to maintain the fiscal stability of their buildings, since many proprietary leases simply do not provide for the imposition of a late fee. The common provision in proprietary leases provides that in the event a shareholder fails to pay maintenance promptly, the shareholder shall be liable for interest at the maximum legal rate allowed by law. Interest and late fees are not the same things.

There are many legal issues suggested by the language of the new law, and accordingly co-op boards would do well to consult with their attorneys before imposing fees, charging escalating fees or imposing interest on errant residents. In some cases it may be prudent to even consider a proprietary lease amendment in order to meet the new requirements.

The full text of the new law can be found here: <https://www.nysenate.gov/legislation/laws/RPP/238-A>