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CONDOS & CO-OPS CORNER

New tenant protection law forgot about co-op owners

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Last June, Gov. Cuomo signed the Housing Stability and Tenant Protection Law. Its stated purpose is to address certain abuses in the rental market, but we believe the law will potentially — perhaps unintentionally — harm many tenant shareholders.

The ability to purchase and own a co-operative apartment has traditionally been an important reflection of upward mobility, and it has been long recognized that the opportunity for people to purchase their homes helps stabilize communities.

Many owners, who as young folks raising families purchased their first residential properties in co-ops and condos, remain in those homes today, retired, and in many cases, with substantially reduced incomes. The ownership of their apartment often remains their biggest asset — one they must depend upon without the threat of new, unnecessary and unforeseen expenditures along with unwarranted encroachments to their chosen lifestyle.

The new and increased costs, and new prohibitions, suggested by the new legislation may ultimately make their apartments unaffordable.

Our worries about the new law are many. But the one overarching concern is that the new law conflates "landlords" — for whom the creation of the new law was intended — with "co-op boards," an egregious error.

It should be recalled and underscored that co-ops generally operate on a break-even basis. They are not reaping any profit, nor stand to receive any measurable gain like landlords (to whom most of this legislation was ostensibly directed). The bulk of the costs perennially incurred by co-ops and condos are fully out of their control (real estate taxes, mortgage costs, labor expenses, water tariffs, insurance, etc.), and the ability of co-ops and condos to fully meet their fiduciary responsibility while maintaining the level of habitability expected of them is entirely dependent upon precisely forecasted income from residents.

The new law may unintentionally result in hampering co-op boards from acting properly in vetting new members of their community, an inability to pursue defaults among residents, and an inability to collect required fees for which the co-op (read: "shareholders") must remain responsible.

That the new law conflates landlords with co-op boards remains our general concern, some specific examples in the law may help crystallize the reasons for our opposition to it in its present form. In many — if not all — cases below, all that would be needed is amended language reading "except in a multiple dwelling owned as a co-operative or condominium."

• The new law would limit a landlord from requiring more than one month's rent. That may be appropriate in rental situations, but there are numerous occurrences when co-ops determine that an amount — often equal to a year's maintenance — be held in escrow when a prospective buyer's finances are in question.

It is sometimes important to require an amount in escrow in order to give prospective residents a needed "leg up" — doing so provides an opportunity for homeownership that may be otherwise not available, especially to young folks beginning families and starting careers.

• The section of the law that prohibits the review of prior litigation when examining applications should be amended with the above language.

The historic failure of a prospective shareholder to adhere to the requirements of a signed lease, or to meet rental requirements in prior rental situations that were so egregious as to require adjudication in the courts, may be important indicators of potential future adherence to a corporation's requirements for timely payments of maintenance, fees, and the observation of duly constituted proprietary leases and house rules.

Defiant and litigious residents are a costly burden, and boards of directors need to retain the ability to fully screen their prospective purchasers in order to protect their resident shareholders.

• The section of the new law states that a landlord (again, read "co-op board") may not recovery attorneys' fees upon a default judgment should be amended with the above language.

Knowing that one does not shoulder the responsibility for attorneys' fees in the event of a lost lawsuit can only serve as an inducement for a landslide of unwarranted legal actions. According to the new law, legal fees associated with any nuisance claim must be unfairly borne by (innocent) shareholders rather than the offending party (the one who lost the judgment).

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• The new law provides that any attempts to claim uncollected rent (i.e., maintenance) must be considered separately from attempts to claim unpaid fees, assessments, charges or interest.

Again, this would pose unnecessary and unwarranted hardship on individual shareholders who must always eventually bear the burden of all costs, specifically including court filings, attorneys' fees, late fees, and interest costs from irresponsible and apathetic residents.

There is no need for redundant court filings when all of the facts supporting a case can (and always have been) easily bundled into one legal procedure. Once again, this section should be amended with the above language.

There are several other instances where residents of co-ops (and, to a lesser extent, condos) will suffer needlessly if the law is allowed to remain intact. The new Housing Stability and Tenant Protection Law needs to be thoroughly reviewed by our elected representatives in Albany, this time with a fair and just eye toward the significant and inherent differences between rental properties and those held co-operatively.

Co-op boards are simply not landlords in the context implied through the new law. The lawful and long-established lifestyles that tens of thousands of local residents have selected will be in jeopardy if the new law is allowed to stand in its current form.

The author is president of the Association of Riverdale Cooperatives & Condominiums.

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