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## Lofts Legalization Labyrinth

BY LISA GALLAUDET



The recent amendment to the Loft Law (Article 7-C of the Multiple Dwelling Law) on June 25, 2019 (the "2019 Amendment") significantly expanded applicability of the law to potentially hundreds more buildings throughout the City, without lessening the extensive obligations placed on owners during the arduous legalization process regulated by the New York City Loft Board (the "Loft Board").

These changes significantly limit the options of how an owner can develop a property, and increases exponentially the costs of conversion.

Controversially, the 2019 Amendment created further legalization difficulties for owners. For example, the statute now covers units that do not have a window, are located in a basement, or are located in a building that contains a use set forth in use groups 15-17 in the Zoning Resolution (all of which were previously defined as inherently incompatible with residential use).

Loft Law tenants have the right to participate in the legalization process (known as the Narrative Statement Process), which is mediated by the Loft Board, and can object to an owner's plans if they can show that the legalization plan unreasonably interferes with the use and enjoyment of their space, including commercial use in the building. The parties, with their respective architects and attorneys, attend the Narrative Statement conferences at the Loft Board, which could, without proper representation to navigate the process, take years.

The Loft Law entitles owners to collect rent from loft tenants *so long as they are in compliance with the code compliance deadlines*. Minimal rent increases are only permitted

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upon achieving certain benchmarks of the legalization process. Thus, loft tenants are incentivized to delay owners in the Narrative Statement and legalization process.

Additionally, the conversion of all loft buildings has been placed on hold at the New York City Department of Buildings (“DOB”) and requires Loft Board approval prior to any work being performed, even in commercial units. Accordingly, it is necessary to have an attorney and architect experienced in Loft Law practice to advise you on your legal rights, obligations, and avenues to develop your property efficiently and avoid years of delay without income.

Loft Law is a very complex body of law that requires expertise in not only Loft Law, but

also zoning law, landlord/tenant law, and rent regulation.

BBWG has over 30 years’ experience of proven excellence in all of these areas of law and can help clients achieve their goals efficiently and cost-effectively.

Our team is continuing to expand. Lisa Gallaudet, having specialized in Loft Law for the past nine years, is the lead partner and head of the practice, overseeing all Loft Law matters for the Firm. Joseph Burden has practiced Loft Law for nearly forty years and has been at the forefront of the Loft Law since its inception. In response to the expansion of our Loft Law practice, this past spring, BBWG welcomed Michael Bobick as an associate. Prior to joining

BBWG, Michael was an attorney at the Loft Board for nearly five years, managing the legalization conferences, and also working directly with DOB in the creation of the Loft/DOB Guidelines for Legalization, which are expected to be published later this year. Michael’s integral knowledge of the legalization of lofts is invaluable. We at BBWG stand ready to assist clients in all Loft Law matters.

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## The Pro-Active Internal Audit

BY SHERWIN BELKIN



Due diligence is usually associated with a building analysis undertaken in conjunction with a potential sale or purchase. When rent

regulated apartments are involved, this will also involve a careful analysis of present and past rents to determine if apartments have been properly deregulated and if there is any potential liability for rent overcharge. The recent June 14th enactment of the Housing Stability and Tenant Protection Act of 2019 (HSTPA) creates an added urgency to an internal due diligence; that is, an audit of rents, security deposits, application and lease forms and general management to ensure that previously

lawful practices—which the HSTPA now makes unlawful—have or will be discontinued.

A significant change created by the HSTPA is the elimination of the “safe harbor”—this was the DHCR rule that had allowed an owner confronted with an overcharge complaint by a rent regulated tenant to examine records, determine if there was an overcharge and, if there was an overcharge, make a refund to the tenant prior to the time that an answer to the complaint was due. By making such a timely refund, the owner avoided treble damages being imposed.

The HSTPA now provides that that safe harbor no longer exists. This means that determining the presence of an overcharge and making the refund *after* a rent overcharge complaint is received is too late to automatically avoid treble damages.

Once the complaint is received, an overcharge is presumed willful, with

the burden on the owner to rebut the willfulness. That evidentiary burden is far more difficult to sustain than simply making the safe harbor refund. In the absence of the safe harbor, short of actually proving non-willfulness in response to a complaint, the way to avoid treble damages is to undertake an internal rent audit and adjust rents, if warranted, *before* any complaint is filed.

The need for internal analysis in the absence of the safe harbor is made even more stark by the increase in the treble damage period from two to six years by the HSTPA. In addition, the expansion of the “look-back” period to determine the legality of regulated rents has been dramatically expanded. Thus, the potential for overcharge liability has grown significantly.

The time for an owner to determine if it has the leases, riders, proof of improvements, etc. to address the legality of rents is, again, *before* a complaint is filed.

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Internal practices and forms also need to be re-examined in light of the HSTPA. For example:

- Are you asking for inappropriate information on your lease application?
- Are you asking for or holding more than one month's security deposit?
- Have you agreed to a tenant's request to pre-pay rent due to poor credit or lack of local contacts?
- Does your application fee exceed the new limits?
- Does your lease comply with the new rules regarding:

- tenant inspection of the apartment?
- mitigation of damages?
- prompt return of security deposit?
- late fees?

All of these fundamental issues, and many more, are impacted by the HSTPA. Moreover, the queries posed above do not apply only to rent regulated apartments. These issues apply to free market units, to condominium leases, cooperative proprietary leases and subleases.

The HSTPA represents a major overhaul of rights, obligations, liabilities and

methods of operation and management. The penalties for non-compliance are severe. A pro-active internal audit and analysis of rents, documents and practices can help to avoid the new pitfalls and pains

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*Sherwin Belkin is a founding partner of the Firm, and a member of its Administrative Law Department. He can be reached at [sbelkin@bbwg.com](mailto:sbelkin@bbwg.com).*

## New Acris Disclosure Requirements When Selling or Purchasing Residential Real Estate Through a Limited Liability Company

BY DANIEL ALTMAN



Effective September 13, 2019, New York City Administrative Code Section 11-2105 and New

York State Tax Law Section 1409(a) were amended to require that, henceforth, the New York City Real Property Transfer Tax Return (RPT) and the New York State Combined Transfer Tax Return (TP-584) for the sale of residential real property (i.e., co-ops\*, condos and homes) sold or purchased by a limited liability company ("LLC") must disclose the names and business addresses of all members, managers, and any other authorized persons of the LLC or if none, the business addresses of

all shareholders, directors, officers, members, managers, or authorized persons of any LLC or other business entity that are to be the members, managers or authorized persons of such LLC.

In addition, if any member, manager or authorized person of the LLC is itself an LLC or other business entity, the names and addresses of the shareholders, directors, officers, members, managers and partners of *that* LLC or other entity must also be disclosed, until full disclosure of the ultimate ownership by natural persons is accomplished.

The upshot of these changes is that the City and State are effectively no longer permitting sellers and purchasers of co-ops\*, condominiums, and other residential real property to

sell and purchase anonymously—these laws now require both sellers and purchasers that are LLC's (and/or which include LLC's as members) to disclose who their members are, down to the actual persons.

\*While the amended laws do not specifically mention co-ops, we assume that taxing authorities will apply the laws to co-ops as well, and/or that the laws will be further amended to include co-ops explicitly.

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*If you have any further questions regarding this matter, please contact Daniel Altman, Co-Managing Partner and Chair of the Transactional Department, at [daltman@bbwg.com](mailto:daltman@bbwg.com).*

# First Rollback in New Rent Laws' Applicability to Co-ops and Condos

BY: AARON SHMULEWITZ



BBWG's [summer newsletter](#) contained an article pointing out several ways that the new State rent laws adversely affected co-ops and

condominiums, probably inadvertently. One such way was a new Real Property Law section 238-a, which imposed a cap of \$20 on application fees that could be charged in connection with a new tenancy. It was feared that such limit would apply

to co-op purchase applications, as well as to subletting applications in co-ops and condos.

On September 13, the New York State Department of State issued a [Guidance Memo](#) which states flatly that the \$20 limit does not apply "when a property is being sold, including within a co-op or condo", or to "application fees imposed by a co-op or condo Board".

While the Guidance Memo is not absolutely dispositive since it is technically not binding on Courts, which are still free to interpret the new law as they wish, the Guidance

Memo is entitled to great weight by Courts considering the law. It would appear that the Guidance Memo is likely to be followed by Courts, thus likely resolving this issue.

It is hoped that the Department of State, the Legislature or the Courts will soon address and refine other aspects of the new rent laws so as to render them inapplicable to co-ops and condos.

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## New Civil Court Advisory Notice an Unwelcome Aftershock to NYC Landlords

BY: SCOTT F. LOFFREDO



While the real estate industry is still reeling from the recent overhaul of rent laws arising from the Housing Stability & Tenant Protection

Act of 2019 ("HSTPA"), it was hit with yet another wave of unwelcome procedural hurdles to deal with in the form of an August 22, 2019 administrative directive and advisory opinion issued by Judge Anthony

Cannataro, the Chief Administrative Judge of the Civil Court of the City of New York, involving compliance with the HSTPA.

Among other things, the HSTPA directs that every warrant (in both commercial and residential summary proceedings) must state the earliest date upon which execution of a warrant of eviction may occur. In direct response to this requirement, the August 22 directive states that where there is a judgment rendered after trial, stipulation, hearing or inquest, any resulting decision/order or file jacket must be stamped with a new "Earliest Eviction Date" ("EED") stamp that reads "The earliest date execution of this warrant may occur pursuant to the order of the Court is X".

If one were to stop there, one would think that the above statutory requirement in the HSTPA would be satisfied. Unfortunately, that is not the case. The same day that the Civil Court issued its directive, it also issued an advisory notice stating that

"When there is a judgment rendered after trial, stipulation, inquest or hearing decision, when deciding the EED, please consider:

- where there is a payment schedule, the EED should be based on the last date of payment;
- where there is a payment schedule and the EED is based on the last date of payment, any party seeking to accelerate the EED must seek leave of Court.

In short, when a landlord agrees to stay execution of a warrant of eviction on the condition that certain payments be made, the landlord will be required to go back and obtain "leave of Court" prior to executing on its warrant should there be a default. This is a significant departure from the current state of play where, in the event of a tenant's payment default, a landlord would simply submit an affidavit of default to the marshal who would then proceed to serve a marshal's notice and schedule an eviction.

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During a recent bar association meeting, Judge Cannataro stated that while the Court would consider *ex-parte* applications as a way of granting “leave of Court” if provided for in a stipulation of settlement, he could not guarantee any sort of uniformity in approach by judges throughout the five boroughs—creating even more uncertainty in the eviction process.

The new directive and advisory notice are certain to bring: (i) confusion to unrepresented litigants as to what the “EED” is, (ii) delay (measured in weeks/months) in obtaining leave of Court prior to allowing a landlord to execute on its marshal’s

notice, (iii) additional cost and expense for landlords while rent continues to accrue; and (iv) lack of predictability in assessing how, or whether, any particular judge will permit an *ex parte* application.

That being said, it is the overly optimistic hope of this practitioner that given the increased workload that Court parts will see in the deluge of *ex parte* orders and/or motions from landlords seeking permission to evict, the Courts will be compelled to raise the standards that are applied to orders to show cause filed by tenants seeking to stay evictions for which landlords will have already been given specific “leave” to proceed with.

After all, if one of the goals of this directive is for the Housing Court to begin acting more like other Courts throughout the State with regard to the granting and vacating of conditional stays, the Housing Court should also be advancing this noble objective by declining to sign multiple orders to show cause submitted by tenants seeking *ex parte* injunctions often based on little more than undocumented, self-serving affirmations, as has been the practice for the last two decades.

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## New Rent Laws Radically Alter MCI Filing Procedures and Rent Calculations

BY: MARTIN HEISTEIN



As we advised in the [summer edition](#) of this newsletter, the 2019 Rent Law contains many changes that impact directly on property

owners and managing agents of both regulated and unregulated units. One major set of changes affects the entire Major Capital Improvement (MCI) rent increase filing procedure and the methodology for calculating the rent increase once an MCI Order is issued.

The new Rent Law creates the following changes:

- DHCR must establish a schedule of “reasonable costs” for MCI’s to establish a ceiling for what can be recovered;
- MCI rent increases are now temporary—lasting only for 30 years;
- No MCI rent increases will be granted in buildings with fewer than 35% rent regulated apartment units;
- The amortization schedule is extended:
  - for buildings with 35 or fewer units, the MCI rent increases will be based on a twelve year (144 months) amortization schedule;
  - for buildings with more than 35 units, the MCI rent increase will be based on a twelve and one-half year (150 months) amortization schedule;
- MCI rent increases will be collectible prospectively only, starting 60 days from the date of the mailing of notice of approval to the tenants—there is no longer any retroactive rent increase;
- Collection of MCI rent increases cannot exceed 2% in any year
- The new 2% cap will apply to any MCI rent increase approved on or after June 16, 2012; the reduced cap will be effective upon the first renewal lease commencing on or after June 14, 2019;
- DHCR shall inspect and audit 25% of all MCI applications to confirm that the work was completed.

There are many questions left unanswered by the 2019 Rent Law. These issues are complex and fact-specific, and the failure to comply with these new requirements may result in significant penalties.

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*If you are currently receiving an MCI rent increase or you intend to file an MCI application in the future, please contact Martin Heistein, co-head of BBWG’s Administrative Law Department at [mheistein@bbwg.com](mailto:mheistein@bbwg.com).*

# What to Know About Collecting and Maintaining Security Deposits In Light of the 2019 Rent Laws

BY DIANA R. STRASBURG



In a perfect world, a tenant who vacates a residential apartment will leave the apartment in pristine condition.

Unfortunately, in the real world—and in New York specifically—tenants are known for leaving apartments with damage that is beyond normal wear and tear. Because of this, New York State law allows for the collection of security deposits on the rental of real property.

Security Deposits for the rental of residential apartments are covered by New York General Obligations Law Section 7-103. Building owners are required to treat security deposits as being held in trust, and cannot commingle tenants' security deposits with the owner's own accounts.

The law requires building owners with six (6) or more apartments to deposit security deposits in interest bearing

accounts in a bank located in New York State, and the accounts must earn interest at a prevailing rate.

Once a security deposit is placed in an interest-bearing account, the owner is entitled to receive, as administrative expenses, up to 1% of the interest accrued annually on the account. If the interest accrued annually exceeds 1%, the tenant is entitled to receive the balance, and, at the tenant's choice, continue to be held in trust or paid out annually.

With the passing of the Housing Stability and Tenant Protection Act of 2019 on June 14, 2019, the legislature passed laws that affect how an owner collects and returns security deposits.

Pursuant to General Obligations Law Section 7-108:

- The amount of a security deposit may not exceed one month's rent;
- If a tenant requests a pre-occupancy inspection, all damage found during the inspection must be memorialized in an agreement, and shall not be subject to any reduction of the security deposit upon the tenant vacating the apartment;
- If a tenant requests a pre-surrender inspection on at least two weeks' notice, after the inspection is conducted, the owner must provide the tenant with an itemized statement specifying proposed repairs and cleaning with corresponding costs. A tenant shall have the opportunity to cure any of the conditions before the end of the tenancy;
- Within 14 days after a tenant has vacated, an owner must return the security deposit to the tenant, minus any permissible deductions, along with an itemized statement of deductions, if any. If an owner does not return the security deposit and statement within such 14 days, the owner forfeits the right to retain any portion of the security deposit;
- If an owner retains any portion of a security deposit due to damage, and an action is commenced by a former tenant disputing those deductions, the burden is placed on the owner to substantiate the reasonableness of the amounts retained.

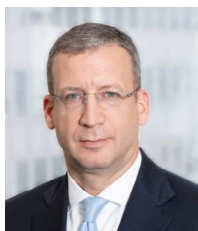
Both DHCR and the Attorney General's office have jurisdiction to handle complaints regarding security deposits. BBWG is ready to assist clients in addressing such issues

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# Sell with Certainty; Avoiding Disputes over “Materiality” of Inaccurate Representations

BY: LAWRENCE T. SHEPPS



Almost every purchase and sale agreement (a “PSA”) contains a short (or, more frequently, long) list of seller representations,

which, as a condition precedent to the purchaser’s obligation to close, must be true and correct in “all material respects” as of closing (or, sometimes, as of the date the PSA was initially signed). What does that mean? What does a representation mean, for example, that “There are no service contracts affecting the property other than as shown on Exhibit C” is true and correct “in all material respects”? It likely means that, if the parties disagree, it will be up to a Court to decide.

With 1031 transactions, expiring rate locks and loan commitments, and “time of the essence” closing dates, nobody wants uncertainty in a PSA; it serves the interests of all parties to provide a mechanism that can manage expectations and provide assurance that the contemplated transaction will close without incident.

An easy way to avoid such uncertainty would be to quantify what would constitute “materiality” (i.e., address it from a purely monetary perspective). The PSA can provide that all of the (or particular) representations of the seller shall be “deemed to be true and correct in all material respects” as long as any subsequently discovered untruths or inaccuracies do not have a “material adverse effect” (a “MAE”) on the subject property or on the purchaser, as the successor owner thereof. Defining what would constitute a “MAE” would

be the subject of negotiation, but it would, at least, provide for the management of expectations, and parameters within which the seller would be assured that it will have a buyer at the closing table. Likewise, the buyer would be protected in that its potential exposure to misrepresentations or deviations of fact would be limited to an agreed-upon threshold, beyond which it would have the option to elect not to proceed.

Setting a MAE can be accomplished by agreeing to a dollar amount which would be required to cure the misrepresentation, or reflect the diminished value of the property as a result thereof (this may be a little more subjective), each of which can be determined more expeditiously by mutually acceptable third parties, as opposed to enduring years of litigation and its attendant expense.

In practical terms, the mechanism would be that the trigger amount of costs and/or diminution in value would be agreed to in advance and, to the extent that there is a breach of any of seller’s representations (whether inadvertent or deliberate), the purchaser would be required to agree that it would accept a “negative deductible” on the purchase price for the property (i.e. it would have to agree to absorb the costs associated with misrepresentations which may occur up to the amount of the MAE). The parties could additionally negotiate so that, beyond the MAE threshold amount, but up to a second “cap” threshold amount, the seller would have the right to keep the purchaser committed under the PSA by simply crediting the purchaser with the agreed compensatory costs. The purchaser, however, would need to be sensitive to any financing which it might be seeking, and the tolerance of a lender to factual inaccuracies in the seller’s representations.

Of course, the concept of a MAE will not fit for all representations, because some (e.g., the legal authority of the seller to consummate the contemplated transaction) simply must be true, without qualification. It may be that a purchaser would agree that the MAE qualification would apply only to specifically enumerated representations.

The bottom line is that managed expectations are always desirable for all parties, and such expectations are often the subject of negotiation; quantifying the extent of excess/unanticipated costs which a purchaser may be compelled to incur under a PSA is very helpful in providing a certain level of assurance to a seller that a transaction will close. It should also be noted that building such wiggle room into the requirement that representations be true as of the closing date, often allays fears and anxieties of a seller in determining the representations themselves and the seller’s willingness to provide them at the outset (which is typically where the brunt of the PSA negotiation occurs). Agreeing to manage each other’s expectations by applying a MAE qualifier to representations can lead to minimizing some of the battles to get a PSA over the finish line and executed by the parties, saving all parties avoidable frustration and expense.

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*Lawrence T. Shepps is a partner in the Firm’s Transactional Department, and has handled numerous sophisticated commercial transactions. He can be reached at [lshepps@bbwg.com](mailto:lshepps@bbwg.com).*

# New Members of the BBWG Team

We are excited to welcome **Ron Mandel** and **Matthew Schommer**, expanding the Firm's land use and zoning practice, as well as **Ashley Winters**, to augment our administrative law practice. These attorneys' in-depth knowledge and experience have demonstrated BBWG's industry reputation as a magnet for top talent as we help our clients handle all forms of legal issues involving their properties.



## RON MANDEL

**Ron** joins as a partner in the Transactional Department. Ron's practice focuses on development, with an emphasis on zoning, purchase and

sale of development rights ("air rights"), property development analyses, outdoor advertising issues, environmental matters, municipal code enforcement, and landmarks regulation.

Ron advises clients seeking zoning relief, including variances, rezoning and special permits, before the Board of Standards and Appeals, City Planning Commission, Department of Buildings, and Landmarks Preservation Commission. He also counsels clients on maximizing development opportunities in property acquisitions and conveyances, including strategic assemblages involving easements, inclusionary housing, tax incentives, and mixed-use condominium structurings.

Prior to joining BBWG, Ron was associated with top-ranked New York City land use and government relations law firms navigating clients through the City's development challenges. He has practical industry experience, having worked in the general counsel's office of the New York City Department of Buildings, and in-house with a real estate development firm.

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## MATTHEW SCHOMMER

**Matthew** focuses on land use, zoning and related real estate transactional matters. He advises developers, property owners, institutional clients and

licensed professionals on zoning compliance and development potential for properties. Matthew has been involved in numerous transactions for the transfer of development rights, including negotiating and drafting zoning lot development agreements, purchase and sale agreements, construction licenses, and similar development documents. Matthew also has significant experience advising clients on the New York City Construction Codes and the Multiple Dwelling Law.

Prior to joining BBWG, Matthew was associated with two prominent New York City zoning and land use law firms. He is also an active member of the New York City Bar Association's Land Use, Planning, and Zoning Committee.

*Matthew can be reached at [mschommer@bbwg.com](mailto:mschommer@bbwg.com).*



## ASHLEY WINTERS

**Ashley** adds to our already-strong administrative law department, having several years' concentrated experience handling diverse types of DHCR, rent regulation

and landlord/tenant matters. Ashley received her law degree from The Ohio State University Moritz College of Law and her BA from Queens University of Charlotte.

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# Co-Op | Condo Corner

BY AARON SHMULEWITZ

Aaron Shmulewitz heads the Firm's co-op/condo practice, consisting of more than 300 co-op and condo Boards throughout the City, as well as sponsors of condominium conversions, and numerous purchasers and sellers of co-op and condo apartments, buildings, residences and other properties. If you would like to discuss any of the cases in this article or other related matter, you can reach Aaron at 212-867-4466 or (ashmulewitz@bbwg.com).

## CONDO CANNOT INCLUDE LEGAL FEES FOR PRIOR ACCESS-DENIAL LITIGATION, OR PRIOR MANAGING AGENT BALANCE, IN AMOUNT OF LIEN BEING FORECLOSED

*Board of Managers of The Alfred Condominium v. Wu*  
Supreme Court, New York County

**COMMENT** | The Court analyzed the bylaw provisions, and the absence of Board resolutions. Condo Boards must document all amounts sought, to even have a chance to try to collect them.

## CONDO UNIT OWNER ENTITLED TO LICENSE UNDER RPAPL 881 TO ENTER ADJOINING UNIT TO PERFORM WORK

*Voron v. Board of Managers of The Newwalk Condominium*  
Supreme Court, Kings County

**COMMENT** | This case of apparent first impression involved a statute that is typically used by adjoining building owners.

## CONDO UNIT OWNER NOT LIABLE TO TENANT FOR FAILURE TO PROVIDE WORKING AIR CONDITIONING

*Hameroff v. Swaminathan* Appellate Term, 2nd Department

**COMMENT** | The lease provisions barred the tenant from withholding rent for stoppage of services. But the Court held that the tenant could sue for breach of warranty of habitability for other deficiencies.

## NYC RESERVE FUND LAW INCLUDES COMMERCIAL UNITS' SALE PRICES IN CALCULATION OF MANDATORY MINIMUM RESERVE FUND DUE FROM SPONSOR

*Board of Managers of 150 East 72nd Street Condominium v. Vitruvius Estates, LLC* Appellate Division, 1st Department

## CO-OP'S NEW HOUSE RULES PROHIBITING PETS BY NON-RESIDENT SHAREHOLDERS, AND IMPOSING MOVING FEES ON ALL SUBTENANTS, ARE VALID AND ENFORCEABLE AGAINST HOLDERS OF UNSOLD SHARES AND THEIR SUBTENANTS

*Babad v. Board of Directors of Murray House Owners Corp.*  
Supreme Court, New York County

**COMMENT** | The Court held that the new House Rules did not constitute disparate treatment, and that the new House Rules did not require consent by the Holders of Unsold Shares.

## CO-OP SHAREHOLDER CANNOT CHALLENGE LONG-STANDING SHARE ALLOCATION

*Sidore v. 334 East 5th Street* Appellate Division, 1st Department

**COMMENT** | The Court noted that the shareholder had owned her apartment for at least 15 years before challenging the share allocation. This issue arises regularly.

## HDFC CO-OP SHAREHOLDER CANNOT SUE HDFC TO ENJOIN POSSIBLE EXTENSION OF REGULATORY AGREEMENT AND HDFC STATUS

*Scher v. Turin Housing Development Fund Company, Inc.*  
Supreme Court, New York County

**COMMENT** | The Court denied class certification. The shareholder apparently wanted the ability to sell his apartment at market price upon expiration of the HDFC's regulated status.

## CO-OP PURCHASER ENTITLED TO CANCEL CONTRACT DUE TO BOARD CONDITION THAT HER PARENTS BE CO-PURCHASERS

*Paradise v. Wood* Supreme Court, New York County

**COMMENT** | As is typical, the contract was contingent on the Board's unconditional consent. The not-uncommon condition imposed by the Board was deemed to be a significant condition.

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**TENANT'S LONG-STANDING PATTERN OF OBJECTIONABLE AND HARASSING BEHAVIOR RULED INSUFFICIENT TO CONSTITUTE A NUISANCE, EVICTION DENIED**

*Timston Corp. v. Kienzle* Civil Court, New York County, Landlord & Tenant Part

**COMMENT** | While involving a rent-stabilized tenant, the case is instructive for Boards as well. The Court emphasized the tenant's 42-year tenancy, and tried very hard to avoid evicting her despite her having admitted in writing to the objectionable behavior.

**HOUSING DISCRIMINATION SUIT BY REJECTED CO-OP PURCHASE APPLICANT DISMISSED**

*De La Fuente v. The Sherry Netherland, Inc.*  
United States District Court, Southern District of New York

**COMMENT** | The Court rejected plaintiff's claims of anti-Mexican animus, and cited the Board's reliance on his litigious history, adjudicated lack of honesty, regulatory sanctions, and financial questions.

**CO-OP CANNOT REQUIRE HOLDER OF UNSOLD SHARES TO DELIVER SURETY BOND FOR LOST STOCK CERTIFICATES AND PROPRIETARY LEASES AS A CONDITION FOR ISSUANCE OF REPLACEMENTS**

*Courtview USA Inc. v. Courtview Owners Corp.* Supreme Court, Queens County

**COMMENT** | Such a requirement applicable to the HUS would be disparate treatment, since the co-op did not require it for prior instances involving other shareholders. BBWG represented the successful HUS.

**CONDO UNIT TENANT CAN SUE UNIT OWNER OVER NON-RETURNED SECURITY DEPOSIT**

*Furuya v. Parry* Supreme Court, New York County

**QUESTIONS OF FACT BAR SUMMARY JUDGMENT IN SUIT OVER RESPONSIBILITY FOR WATER DAMAGE ARISING FROM BLOWN PIPE CAP IN CO-OP**

*Kleinwald v. 411 East 57th Street Corporation* Supreme Court, New York County

**COMMENT** | The Court held that it was unclear whose responsibility this was. BBWG represented the co-op.

**CO-OP MANAGING AGENT NOT LIABLE TO CO-OP EMPLOYEE FOR INJURIES SUFFERED IN SLIP & FALL WHILE DOING MAINTENANCE WORK IN BUILDING**

*Bove v. Brown Harris Stevens* Supreme Court, New York County

**COMMENT** | The Court held that the managing agent had no exclusive control over the premises, and the floor had been painted by the co-op. Notably, the employee did not sue the co-op.

**CONDO UNIT OWNER SUIT AGAINST BOARD FOR HOUSING DISCRIMINATION BASED ON ALLEGED HARASSMENT PATTERN BY A BOARD MEMBER AND A TENANT DUE TO ADOPTED CHINESE DAUGHTER DISMISSED**

*A.L.M. vs. Board of Managers of The Vireum Schoolhouse Condominium* United States District Court, Southern District of New York

**COMMENT** | The Court held that there was no evidence of racial animus by the Board, which seemed to investigate the complaints fully. Creepily uncomfortable facts; decision could easily have gone the other way.

**CO-OP CAN ENFORCE NO-PET CLAUSE, DESPITE SHAREHOLDER'S CLAIM THAT DOG IS AN EMOTIONAL SUPPORT ANIMAL**

*Westchester Plaza Holdings, LLC v. Sherwood* City Court, Westchester County

**COMMENT** | There was no evidence that it was a legitimate emotional support dog; the Court noted that the certificate proffered by the shareholder was bought on the internet from an entity that only requires payment of a small fee, without any sort of documentation.

**CONDO BOARD MEMBERS CAN FORCE CONDO TO INDEMNIFY THEM IN LAWSUIT, PURSUANT TO BUSINESS CORPORATION LAW**

*Board of Managers of The 28 Cliff Street Condominium v. Maguire* Supreme Court, New York County

**COMMENT** | Even though the BCL applies only to corporations, this Court found that the indemnity provisions should be deemed to apply to unincorporated condominiums too. [🔗](#)

# BBWG In The News

Founding partner **Sherwin Belkin** was featured in *The New York Times* Sunday Real Estate section Q & A column on July 14, regarding the status of buyouts of rent-regulated tenants in light of the 2019 rent laws: **Read article [here](#)**. **Mr. Belkin** was also quoted in *The Real Deal* on July 19 regarding the effect of confusion over preferential rents arising from the new rent laws: **Read article [here](#)**, and in *The Real Deal* on August 21 on methods that landlords are using to address the impact of the new rent laws: **Read article [here](#)**. **Mr. Belkin** was also quoted in *The Real Deal* on August 27 on apartments being kept vacant in Stuyvesant Town in response to the new rent laws: **Read article [here](#)**.

**Mr. Belkin**, as well as Litigation Department head **Jeffrey Goldman** and Administrative Department co-head **Kara Rakowski**, were panelists at a seminar on the 2019 rent laws sponsored by REBNY on August 13.

**Mr. Goldman** was also a panelist on a July 30 seminar on “The Residential Market in NYC in Light of the Housing Act of 2019”, sponsored by AmTrust Title and The Stoler Report: **Read article [here](#)**.

**Mr. Goldman** was also cited by REBNY for helping to draft its new form of residential lease in light of the changes created by the new rent laws: **Read article [here](#)**.

**Mr. Goldman** and BBWG successfully represented Trump Park Avenue LLC in a litigation against a former apartment tenant in which the Court ordered the tenant to pay \$1.8 million in back rent owed, with the case to continue to determine the tenant’s liability for rent for the balance of the lease; the decision was reported in *Bloomberg News* on September 6: **Read article [here](#)**.

Transactional Department head **Daniel T. Altman** was quoted in *The Real Deal* on July 16 with regard to a lawsuit filed by the RSA and CHIP challenging the 2019 rent laws: **Read article [here](#)**. Administrative Law Department co-head **Martin Heistein** was quoted in *Real Estate Weekly* on July 16 with regard

to the suit: **Read article [here](#)**. **Sherwin Belkin** was quoted in *The Real Deal* on July 17 with regard to the industry’s reaction to the suit: **Read article [here](#)**.

**Aaron Shmulewitz**, head of the Firm’s co-op/condo practice, answered an inquiry in *The Cooperator’s* August edition on a Board’s authority to change bicycle storage fees and rules: **Read article [here](#)**. **Mr. Shmulewitz** was also a panelist at a seminar entitled “Executive Symposium for Cooperative Housing Corporations and Condominiums” sponsored by PKF O’Connor Davies on September 18, discussing the impact of the 2019 rent laws on co-ops and condominiums.

Litigation Department partner **Lewis A. Lindenberg**, as the Real Estate representative of the New York chapter of the International Network of Boutique and Independent Law Firms (INBLF), will be speaking during INBLF’s Black Tie Weekend event scheduled for October 11.

Transactional Department partner **Craig L. Price** participated in a podcast produced by James Nelson of Avison Young discussing the transactional impact of the new rent laws: **Read article [here](#)**.

**Martin Heistein** discussed the 2019 rent laws as a panelist at a September 12 Triborough Multifamily seminar sponsored by Marcus & Millichap, and as a panelist at a September 25 seminar sponsored by the New York Private Equity Network, a group of private equity and venture capital investors.

**Kara Rakowski** was a panelist at a September 23 seminar on the 2019 rent laws sponsored by the Rent Stabilization Association and the New York County Lawyers Association.

**Ms. Rakowski** and Litigation Department partner **Matthew Brett** will also be speakers at *The New York Multifamily Summit* sponsored by JLL on October 31.



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