Belkin · Burden · Goldman, LLP
BBG UPDATE

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Inside this Issue

It's a Crime!

BY AARON SHMULEWITZ

The New York City "Fair Chance for Housing Act" (Local Law 24 of 2024) is effective on January 1, 2025. The new law, which can be accessed at: https://intro.nyc/local-laws/2024-24, creates a sea change in the process of apartment sales and rentals. The new law now largely bars co-op and condo Boards, owners of rental apartment buildings, and owners of individual apartments, from being able to decline to rent or sell to a person with a criminal record, or to reject a proposed sale or lease to such a person; worse, the new law severely limits the ability of Boards, owners and managing agents to even search an applicant's criminal history.

The new law bars any person "having the right to sell, rent or lease, or approve the sale, rental or lease" of an apartment from: (i) refusing to sell, lease, or approve the sale or lease to, or otherwise denying a housing accommodation from, a person due to his/her arrest record or criminal history (except for limited exceptions), or (ii) even doing a background check as to an applicant's criminal history (except for those limited exceptions). Doing either now constitutes unlawful housing discrimination, which could expose the co-op or condo and its Board members, or the rental landlord, or apartment owner--and in each case the building's managing agent--to significant liability.

The only criminal background matters that can now legally form the basis for denying a housing accommodation to an applicant—-and the only matters that can legally now even be reviewed--are his "reviewable criminal history", which comprises only: being included on a sex offender registry; being incarcerated or sentenced for a misdemeanor conviction within the past three years; or being incarcerated or sentenced for a felony conviction within the past five years.

That's it. No other criminal matter can be reviewed, or form the basis for a refusal to sell or rent an apartment.

To make matters worse, the review process is extraordinarily cumbersome, convoluted, fraught with pitfalls, and likely to create significant undue delays in the process of selling and leasing apartments.

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In the case of an apartment sale, the limited criminal background check can be done only after the seller has accepted the prospective purchaser's offer, and agreed in writing that the seller will not revoke the acceptance of the purchaser's offer or change the conditions of the deal based on the applicant's criminal history as disclosed in the search. In the case of an apartment lease, the limited background check can be done only after the applicant has been given a lease that "commits the [apartment] to the applicant", which "commitment" can only be revoked based on the results of a criminal background check that complies with the law, or upon an unrelated material omission, misrepresentation or change in the applicant's qualifications that was not known previously.

In all such cases, the applicant must be given notice that a criminal background check is being conducted, and a copy of a statutory notice to be promulgated by the City Human Rights Commission.

After the criminal background check is completed, if the Board, owner or managing agent has decided to reject the applicant's purchase or leasing application based on the applicant's reviewable criminal history, then before the sale or lease is actually denied the applicant must be given a copy of the criminal background check report, and the specific information therefrom on which the contemplated denial is based; the applicant must also be given at least five business days' opportunity to submit corrective, explanatory or mitigating information in response.

If, after all that, the Board or owner *still* intends to deny the sale or lease, it must give the applicant a written reason for such decision, and state how the applicant's reviewable criminal history "is relevant to a legitimate business interest of the property owner", and how any information submitted on behalf of the applicant was taken into account. Thus, not only would New York City co-op and condo Boards, and rental building and apartment owners, now be required for the first time to divulge the reasons for such declinations, they would also have to explain their reasoning--how the applicant's criminal history is relevant to the Board's or owner's "legitimate business interests".

Still worse is that, if the criminal background search is to be conducted by a third-party vendor, the Board, owner or managing agent that commissioned the search must "take reasonable steps to ensure" that the vendor conducts the check in accordance with the strictures of the new law. Those "reasonable steps" are not defined. The Board, owner and managing agent could be held liable for the vendor's failures—-the Board, owner and managing agent could be liable "for relying on criminal history other than reviewable criminal history if the [Board, owner or managing agent] failed to take reasonable steps to ensure compliance" by the vendor.

Worst of all, if a Board, owner or managing agent "knowingly receives criminal history information other than reviewable criminal history information, such receipt creates a rebuttable presumption that the [Board, owner or managing agent] relied on such information" in violation of the law. The burden of proof would be on the Board, owner or managing agent to prove that the decision to deny the sale or lease was *not* based on such improperly included information. In other words, if the criminal background check report happens to include references to criminal record events longer ago than the three- and five-year limits in the new law, the Board, owner or managing agent would need to prove that the reason to decline the applicant's purchase or lease was not based thereon. How to prove that negative is a mystery.

The law has two very limited exemptions--a rental or sale in a two-family house if the homeowner or his/her family member is also in occupancy, and the rental of rooms in any other form of housing accommodation if the owner or a member of his/her family resides there simultaneously.

In the view of this writer, the law's final provision unmasks the law's true intent. The law exculpates Boards, owners and managing agents from liability in suits arising as a result of "an alleged act of an individual with a criminal history based on the claim that the [Board, owner or managing agent] should not have sold, rented or leased" the apartment to him, *or as a result of a decision to not perform a criminal background check*. Thus, Boards, owners and managing agents are *encouraged* to enjoy a very large, very safe harbor—-all they have to do is simply not search an applicant's criminal background at all.

The law effectively stops Boards, apartment owners and rental building owners from being able to exercise the common sense right to decide whether or not to sell or lease an apartment, or to approve an apartment sale, lease or sublease, to a person with a criminal history. The law largely blocks even inquiring into a person's criminal past.

The law is so severe, and the potential penalties for housing discrimination violations are so harsh (fines of up to $125,000, or up to $250,000 for willful violations), that Boards, owners and managing agents must seriously consider accepting the apparent true goal of the new law--dropping the heretofore logically prophylactic requirement of criminal background checks on applicants, other than, possibly, sex offender registry checks (which the new law does not limit in time or scope). The likelihood of a claim being asserted successfully against a Board, owner or managing agent if a criminal background check was not conducted is much smaller than if one was.

The new law was sponsored by 31 of the 51 City Councilpersons as well as four of the City's five borough presidents; the law was adopted by a vote of 38-8. While presumably well-meaning, the goal of the new law would appear to be very simple--to end the common sense practice of conducting criminal background checks on applicants, including by shielding Boards, owners and managing agents from liability if an unchecked applicant later commits a crime. Unfortunately, Boards, owners and managing agents may have no logical choice but to use this escape hatch. Even more unfortunately, the safety and quality of life of law-abiding City residents will inevitably suffer as a result.

*Aaron Shmulewitz heads the Firm's co-op/condo practice, and can be reached at **ashmulewitz@bbgllp.com**, or 212-867-4466, ext. 390.*

SoHo and NoHo Residential Conversion Process in Flux

BY RON MANDEL AND FRANK NORIEGA

On December 5, 2024, the Appellate Division, First Department issued a decision in the case *The Coalition for Fairness in SoHo and NoHo, Inc. vs. the City of New York*, striking down a key element of the recent law governing conversions of joint living-work quarters for artists ("JLWQA's") to residential use.

The Appellate Division held that the non-refundable fee of $100 per square foot, which was payable to the SoHo-NoHo Arts Fund as a precondition for converting a JLWQA to residential use under New York City Zoning Resolution ("Zoning Resolution") §143-13, was an unconstitutional taking. Although this outcome may sound promising to owners and developers of such units, the Court's decision created ambiguity about the application of the Zoning Resolution to these conversions.

The Special SoHo-NoHo Mixed Use District was created on December 15, 2021, which included the adoption of a Zoning Map Amendment and zoning text amendments. With respect to the Zoning Map Amendment, select manufacturing districts ("M" districts) were paired with residential districts ("R" districts). Prior to this zoning change, residential uses (Use Group II uses) were not permitted in SoHo-NoHo within M districts. JLWQA's are deemed non-residential uses under the Zoning Resolution, which is why they were permitted in SoHo-NoHo prior to the zoning change, yet are required to be occupied by a certified artist, as certified by the New York City Department of Cultural Affairs.

The Special District also created a procedure for converting JLWQA's to residential use. As part of the conversion process, owners of JLWQA units seeking to convert them were required to pay $100 per square foot into a newly established SoHo-NoHo Arts Fund. No other outgoing commercial use (aside from JLWQA's) required such payment. The Court struck that down as unconstitutional.

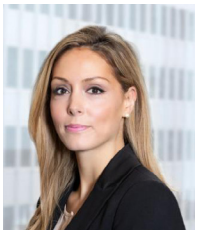
Another noteworthy amendment established by the SoHo-NoHo rezoning and not discussed in The *Coalition for Fairness* decision was that all newly established R districts were mapped within the Mandatory Inclusionary Housing Program Area, Option 1 (see map). In said area, in part, "no #residential# #development#, #enlargement# or #conversion# from non-#residential# to #residential use# shall be permitted unless #affordable housing#, as defined in §23-911 (General definitions) is provided." Generally, in accordance with Mandatory Inclusionary Housing Program requirements, the creation of residential uses, including the conversion of JLWQA's to residential use, triggers the obligation that at least 25% of the floor area be set aside for affordable housing for individuals with an average Area Median Income of 60% or less.

As discussed in our BBG Spring 2022 newsletter (https://bbgllp.com/wp-content/uploads/2022/03/BBG_Newsletter_Spring2022_Final.pdf), conversions of JLWQA's to residences, as outlined in Zoning Resolution § 143-13 (with the payment of the non-refundable fee), are exempt from the affordable housing requirements of ZR §143-04(a). However, now that the Court has deemed the payment requirement of §143-13 unconstitutional, the path for converting JLWQA's is not at all clear, including uncertainty as to whether Mandatory Inclusionary Housing will even apply to these converted units.

BBG is actively monitoring this issue and will continue to provide updates concerning the zoning text and interpretations by the Department of Buildings and Courts. Notwithstanding the payment of the non-refundable fee issue, there exist opportunities for smaller developments and conversions that may be accomplished as-of-right that may avoid triggering affordable housing requirements. Please reach out to our attorneys to discuss these issues further.

*Ron Mandel is a partner, and Frank Noriega is an associate, in BBG's zoning/land use practice. Ron may be reached at 212-867-4466 ext. 424 (**rmandel@bbgllp.com**), and Frank may be reached at 212-867-4466 ext. 438 (**fnoriega@bbgllp.com**).*

FARE Act Shifts Broker Fee Responsibility



BY LOGAN J. O'CONNOR

On November 13, 2024, the New York City Council passed Introduction Bill No. 360-A, the Fairness in Apartment Rental Expenses Act (the "FARE Act"). The full text of the Bill can be found here.

The FARE Act requires whoever hired the real estate agent in a residential rental real estate transaction to be responsible for paying the agent's fees. In other words, landlords will no longer be permitted to require tenants to pay broker fees for the landlord's broker.

The FARE Act was signed on December 14 and will become effective 180 days thereafter, June 14, 2025.

The law applies only to residential rental transactions, not to residential sales or to any commercial transactions. Co-op apartment sales are also exempt from the law.

Any person found to violate the FARE Act will be subject to a civil penalty of up to $1,000 for the first violation and $2,000 for every subsequent violation within a two-year period.

To prevent workarounds, the law includes a provision which prohibits landlords from conditioning the rental of residential property upon a tenant engaging an agent, including, but not limited to, a dual engagement with the landlord.

The FARE Act also requires all rental listings to disclose clearly any fees required to be paid by a prospective tenant. A violation of this provision can result in a civil penalty of $500 for the first violation and $1,000 for each subsequent violation within a two-year period.

Notably, the law also applies where a landlord merely permits a broker to advertise a residential rental unit. A posted listing alone, without any other documentation, is sufficient to establish an agreement between a landlord and agent. Under these circumstances, the landlord can be held responsible for paying the agent's fee.

There is still alot we do not know with respect to this law. For example, It is unclear how the new law will affect the standard 10%-15% broker fee arrangement between agents and landlords. It is also unclear how this will affect free market rents, particularly in consideration of recent rent limitations under the Good Cause Eviction law. As we obtain more information, we will continue to keep you updated.

***Logan O'Connor** is a Partner in the Administrative Law Department, and can be reached at 212-867-4466 ext. 365 (**loconnor@bbgllp.com**).*

Mortgage Recording Tax: The Tax That Can Be an Asset

BY LAWRENCE T. SHEPPS

In New York State, for the privilege of pledging one's real property as security for a mortgage loan, borrowers pay the State a mortgage recording tax (the "MRT"). The applicable rate for the MRT varies depending on the type of property and amount of the loan. This discussion focuses on commercial financings in excess of $500,000; the applicable tax rate is 2.8% of the principal amount borrowed (lower loan amounts are also subject to the MRT, but at lower rates).

Mortgage Assignment

Once paid, the MRT can be seen as an "asset" of sorts to the borrower, as the MRT appertains to the current outstanding principal amount of the mortgage loan. To the extent (i.e., the amount) of the then outstanding principal balance of the existing loan (colloquially referred to as the "old money"), New York State law allows a borrower to avoid payment of the MRT which would otherwise be due on a portion of a new loan if the existing loan is "assigned" to the new lender (i.e., the current lender transfers and assigns all of the underlying notes and its interest in all underlying mortgages encumbering the property to the new lender). If one is refinancing with the same lender, the "assignment" may be achieved even more simply, by the current lender's simply retaining the existing notes and mortgage.

To illustrate, on a $10 million interest-only commercial mortgage loan, a borrower would be required to pay $280,000 (i.e., 2.8% of $10 million) in MRT at the loan's origination. Because an interest only loan does not amortize, that $280,000 MRT has value to the mortgagor because if, in the future while the aforementioned loan is still outstanding, the borrower were to refinance that current loan with another $10 million loan (e.g., because the initial loan is either maturing or rates have fallen), by having its current lender assign to the new lender the underlying notes and its interest in the recorded mortgage, the borrower will likely be entitled to a credit in the full amount of the MRT previously paid ($280,000), and thus be able to avoid paying the entire MRT which would otherwise have been payable on the new $10 million loan.

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If the new loan is for a higher principal amount than the old money (including if the old loan has been amortizing), and the original underlying mortgage is assigned to the new lender, then the borrower would only pay MRT on the incremental amount by which the new loan exceeds the old money (such increment is colloquially referred to as the "new money"). To illustrate, if the "old money" balance on the old loan is, say, $8 million, and the new mortgage amount is $10 million, the borrower would get a credit equal to the MRT on the old money balance (a $224,000 credit for the $8 million balance in this example), and would pay MRT only on the new money increment ($56,000 on the $2 million increment in this example). A loan transaction where there is old money and new money is called a "loan consolidation", the promissory note evidencing the new money is called the "gap note", and the new mortgage securing the gap note, the "gap mortgage". In a loan consolidation, the liens of the existing mortgages are consolidated into a single lien, and all of the terms and conditions of such mortgages are amended and restated in a single mortgage, often titled a "mortgage modification, consolidation and extension agreement"; the promissory note which amends and restates the notes which have been assigned in connection with the loan consolidation is often titled the "consolidated, amended and restated promissory note". It is not uncommon for a series of such mortgage consolidations on a property to involve continually assigning notes and mortgages that are decades old.

Mortgage Assignment In connection with the Sale of the Property

Not only can a fee owner save on the MRT if it's refinancing the loan on its property, but if it is selling the property, the purchaser can request that the seller's outgoing lender assign the underlying notes, and its rights in the existing mortgage, to the purchaser's lender, so that the purchaser can save on the MRT which would otherwise be due in connection with the outstanding old money principal balance under the seller's current loan. Even though the seller will be "paying off" its loan at closing and being completely relieved of its obligation, because the outgoing lender would be assigning its interest in the existing notes and recorded mortgage to the new lender, the purchaser can still save on the MRT.

Sales contracts affecting properties encumbered by mortgages frequently contain provisions requiring the seller to endeavor to cause its lender to assign its loan to the purchaser's lender. Negotiating those provisions requires determining whether the purchaser should be entitled to 100% of the MRT savings achieved by a mortgage assignment, or whether the parties will share such savings 50/50 (or by some other ratio). It is not uncommon for the seller to negotiate so as to be entitled to receive a significant portion of the MRT savings realized, as a closing credit in addition to the purchase price.

Planning for a Mortgage Assignment

For these reasons, property owners need to plan ahead in order to ensure they have the ability to cause their lender to assign the existing notes and mortgage when requested. Likewise, purchasers and sellers need to establish their rights with respect to the MRT and any credit, when it comes to negotiating a purchase and sale agreement. In each instance, the best time to do this is during the negotiating of the term sheet, whether for a loan or the purchase and sale of the property.

When negotiating a loan term sheet, it is important that the lender acknowledge and agree that at closing, in lieu of providing a satisfaction of mortgage, it will agree to provide customary assignment documents, assigning underlying note(s) and mortgage(s) to the purchaser's lender, and that there would not be any cost or expenses associated therewith, other than the reasonable cost of lender's counsel and, possibly, a nominal charge which the outgoing lender may impose in connection with an such an assignment (if there is a charge, this is usually no more than $2,000 to $3,000).

When negotiating a term sheet with respect to the purchase and sale of a property, a purchaser would typically want the seller to agree to be obligated to cause an assignment of the mortgage, and that the purchaser will receive the full benefit of any mortgage recording tax credit. In contrast, a seller would typically want to agree only to endeavor to cause such an assignment, and only on the condition that the seller would receive, at closing, a payment by the purchaser equal to some portion of the MRT savings. A purchaser would typically take the position that the industry norm is for a mortgage to be assigned, and a seller that has already paid the MRT should not be able to profit for merely requesting its lender to assign the mortgage. A seller would typically take the position that it had to pay the full MRT due, and so should the purchaser, and if the purchaser is seeking to enlist the seller's assistance in avoiding part of such payment, it would only be fair for the purchaser to pay to seller some portion of its savings, as purchaser would still pay less MRT than had the seller not caused the assignment.

Rather than bringing the purchaser's attention to this issue in the term sheet, it may be better for a seller to leave it off the term sheet, only to take the position that it was assumed that the seller would be entitled to 50% of the savings--otherwise the seller risks the purchaser's taking the position that it will not be proceeding with the term sheet unless seller agrees that the purchaser will be entitled to 100% of the savings. The timing of the proposal, by either side, is a matter of strategy and may also be deferred until negotiation of the purchase and sale agreement.

Importantly, if the lender which is being asked to assign its mortgage is not an institutional lender, the new lender may not permit the assignment and consolidation, so loans from private and some non-traditional lenders are sometimes rejected in proposed consolidations. In addition, residential lenders are much less likely to be agreeable to assigning their loans, and, accordingly, it is much less common in the residential context.

Conclusion

Borrowers, sellers and purchasers should be cognizant of the significant potential benefits of MRT avoidance and the large asset that this "tax credit" could be for parties to a transaction. There are many permutations and nuances to the laws affecting the eligibility of mortgage assignments and MRT avoidance and we strongly encourage the reader to discuss its options with competent and experienced counsel at the outset of any transaction involving the financing, purchase or sale of real property in New York.

Lawrence T. Shepps *is a partner in the Firm's Transactional Department, specializing in financings and other complex transactions, and can be reached at 212-867-4466 ext. 369 (**lshepps@bbgllp.com**).*

Recent Transactions of Note

Members of BBG's Transactional Department recently handled the following:

Leases

Partners **Daniel T. Alman** and **Allison R. Lissner** negotiated a 20-year lease with a large international supermarket for premises located in Kips Bay.

Partner **Craig L. Price** and associate **Michael A. Mulia** represented the owner in a 15-year lease for 1,500 square feet of retail space to a startup pasta bar concept in Chelsea.

Partner **Allison R. Lissner** and **Mr. Mulia** represented a tenant in its expansion lease amendment of 14,701 square feet of office space in East Midtown.

Ms. Lissner and **Mr. Mulia** also represented a grab-and-go food concept tenant with its lease for its newest location in Lenox Hill.

Ms. Lissner represented a New York-based fast-casual restaurateur in the leasing of space in Rockefeller Center and in a Staten Island shopping center.

Partner **Robert S. Marshall** and **Mr. Mulia** represented the owner of a large luxury mixed-use building on a retail lease to a Thai-inspired dessert café.

Buy/Sell and Refinancing Transactions

Partners **Daniel Altman** and **Lawrence T. Shepps** represented Manhattan Skyline Management in a $55 million refinancing of its first mortgage and mezzanine financings on a mixed-use property on East 34th Street, with The John Hancock Life Insurance Company.

Partners **Craig L. Price**, **Lawrence T. Shepps** and **Murray Schneier** and associate **Joshua A. Sycoff** represented AYA Acquisitions in connection with its $45 million acquisition of the ground lease interest at an East 63rd Street property. The deal included acquisition and construction financing provided by Derby Copeland Capital, as well as preferred equity financing.

Partners **Stephen Tretola** and **Murray Schneier** represented a development client in its $59 million construction loan from Genesis Capital to develop and build a 17-story, 120-unit development along with community facility space in Upper Manhattan. The deal was reported at https://www.pincusco.com/artifact-ashok-khubani-sign-59m-construction-loan-for-120-unit-project-in-washington-heights/

Partner **Lloyd Reisman** and associate **Joshua A. Sycoff** represented a sponsor in connection with a wrap mortgage on a New York cooperative building.

Partners **Craig L. Price** and **Michael J. Shampan** represented the owner in the sale of a 92-acre estate located in Old Westbury for $21 million.

Messrs. Altman and **Shampan** represented the seller of a $10.45 million townhouse in the Flatiron district.

Messrs. Price, **Shampan** and **Sycoff** represented the purchaser of a $20 million condo apartment in Manhattan.

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Recent Notable Matters Handled by Our Land Use/Zoning Team

Partner **Ron Mandel** and associate **Frank Noriega**:

- Successfully represented a developer in connection with closing of property and "air rights" transfers, and easement agreements to authorize the development of a 13-story commercial and residential building in lower Manhattan.
- Assisted an Upper East Side co-op in connection with Department of Buildings issues to effectively address quality of life concerns from an adjoining eating and drinking establishment.
- Provided zoning and land use advice to a developer group in connection with street mapping issues and a Department of City Planning application related to waterfront public access area requirements.
- Effectively negotiated battery storage lease and obtained related approvals for assemblage in Brooklyn.
- Provided counsel to seller of development rights, including negotiation of sales agreement and zoning agreements, for property in upper Manhattan.
- Prepared Department of City Planning application for modifications to an existing plaza at a Manhattan co-op.
- Provided land use litigation counsel to a Manhattan co-op in connection with disputes with owner of adjoining development project, including preparation of easements and access agreements.
- Represented licensors and licensees on several construction access agreements in Queens, Brooklyn and Manhattan.
- Advised architects, property owners and developers in connection with recent zoning text amendment under adopted "City of Yes" program.

BBG In The News

Founding partner **Sherwin Belkin** was quoted in a September 30 article in The City decrying the perceived anti-development impact that Brad Lander would have as Mayor: Fearing Progressive Alternatives, Business Leaders Stay Loyal to Mayor Adams | THE CITY — NYC News. **Mr. Belkin** was also quoted in the Ask Real Estate/Q&A feature of the October 6 Sunday New York Times on whether landlords can substitute QR codes and facial scans for tenant keys: Can My Building Replace Our Keys With QR Codes and Facial Scans? - The New York Times (nytimes.com). **Mr. Belkin** was also quoted in a November 14 article in law360.com on the impact of the Good Cause Eviction law several months after its implementation: Flash Points In Early Months Of NY's Good Cause Eviction Law - Law360 Real Estate Authority, and in a November 19 article in the same publication on the aftermath of the United States Supreme Court's declination to consider challenges to New York State's rent regulation regime: https://www.law360.com/articles/2262364/after-high-court-snubs-what-s-next-for-ny-rent-law-cases. **Mr. Belkin** was also a guest speaker at a December 10 class given by Paul Hanau in the Master's program at NYU's Shack Institute on Real Estate Principles, on the topic of "Rent Regulation, Landlord-Tenant Law, and Their Impact on Multifamily Housing".

Litigation Department co-head **David M. Skaller** was referenced in a November 14 article in Curbed.com on a case involving a problematic tenant making apartment alterations without the owner's consent: My Monster Tenant.

A $59 million loan transaction in which BBG represented the developer of a 120-unit rental apartment building including community facility use to be built in Washington Heights was reported in pincusco.com on October 24: https://www.pincusco.com/artifact-ashok-khubani-sign-59m-construction-loan-for-120-unit-project-in-washington-heights/

The Firm's representation of the Hudson Valley Property Owners Association's challenge at the State Court of Appeals to the imposition of rent stabilization in the City of Kingston was reported in Hudson Valley One on November 29 https://hudsonvalleyone.com/2024/11/29/kingston-vacancy-study-challenged/

BBG Continues to Expand and Welcomes New Hires

The Firm has recently added the following attorneys and professional support staff:

New Hires - Professional Support Staff

The following individuals joined as professional support staff:

PAUL MURAL, Network Analyst
FARIS MADI, Junior Staff Accountant
CHIJIOKE UKONNE, Paralegal

BBG Anniversaries

BBG would like to acknowledge and congratulate the following members of the BBG team who have been with the Firm for over 5 years and whose work anniversary dates fall in the months of October - December. As we reflect on these significant milestones, we express our sincere appreciation for their support, hard work, and unwavering commitment.

Magda Cruz, Partner – 35 Years

Matthew Brett, Partner – 24 Years

Kenneth Rosario, Office Services Clerk – 22 Years

Michelle Ruiz, Legal Assistant – 18 Years

Robert Jenkins, Paralegal – 13 Years

Jaime Lopez, Legal Assistant – 10 Years

Alissa Prairie, Office Manager/HR – 9 Years

Jay Solomon, Partner – 6 Years

Daniel Phillips, Partner – 6 Years

2025 Partner Promotions

We're thrilled to announce well-deserved Partner promotions for some outstanding members of our team, effective January 1, 2025:

These individuals exemplify excellence, hard work, professionalism, and unwavering dedication. Their ongoing commitment is crucial to BBG's success, and we're proud to have them on our team. Join us in congratulating them on their much-deserved promotions!

NITISHA BISHNOI

JEREMY POLAND

JOSE SALADIN

Awards & Accolades

We are proud to announce that 24 of our distinguished real estate attorneys have been recognized as 2024 Super Lawyers and Rising Stars in the NY Metro area! Their dedication and expertise continue to elevate the real estate legal landscape. Please join us in congratulating these exceptional professionals!

Super Lawyers: Daniel Altman, Sherwin Belkin, Matthew Brett, Jeffrey L. Goldman, Martin Meltzer, Noelle Picone, Craig L. Price, Lloyd Reisman, Kara Rakowski, Aaron Shmulewitz, Jay Solomon

Rising Stars: Brian Bendy, Michael Bobick, Israel Katz, Scott F. Loffredo, Benjamin J. Margolin, Leslie Mendoza, Anthony Morreale, Frank Noriega, Esq., Daniel Phillips, Alex Pia, Michael Shampan, Joshua Sycoff, Lauren Tobin

We are honored to announce that our firm has earned multiple recognitions in the 2025 Best Lawyers Law Firm rankings, both nationally and in New York City – a testament to our unwavering commitment to excellence in Real Estate Law and Litigation.

Our 2025 Best Law Firms Rankings:

New York City (Metropolitan Tier 1): Litigation - Real Estate & Real Estate Law

National Recognition:

- Tier 2 in Litigation - Real Estate
- Tier 3 in Real Estate Law

This prestigious award reflects the trust and appreciation of our clients, the respect of our peers, and the expertise of our talented team. Best Law Firms rankings are derived from a thorough review process, incorporating client feedback, peer evaluations, and a detailed analysis across 127 practice areas and 188 regions nationwide.

Additionally, a special congratulations to our exceptional attorneys recognized in Best Lawyers 2025:

Best Lawyers: Ones to Watch

o Benjamin J. Margolin and Michael Nesheiwat (Litigation - Real Estate)

The Best Lawyers in America

o Magda L. Cruz and Jeffrey L. Goldman (Litigation - Real Estate)

o Kara Rakowski and Aaron Shmulewitz (Real Estate Law)

Thank you to our clients for their trust, and to our team for their dedication to excellence.
Here's to another year of outstanding legal service!

Craig Price Honored with 2024 Lawyers in Real Estate Award by Connect CRE!

We're proud to announce that Craig Price, Co-Head of BBG LLP's Transactional Department, has been recognized with Connect CRE's 2024 New York & Tri-State Lawyers in Real Estate Award.

In the fast-paced world of real estate law, this accolade celebrates attorneys who excel in their practice and make a meaningful impact on the industry. According to Connect CRE, "Craig Price, of Belkin Burden Goldman LLP, demonstrates exceptional skill in handling sophisticated commercial and residential real estate matters, making him a leader in his field."

Craig's work spans single-asset and portfolio acquisitions and sales, financing transactions, and commercial leasing. His comprehensive understanding of the complexities in real estate law distinguishes him as a trusted advisor to clients ranging from developers to tenants.

Beyond his legal practice, Craig is a faculty member for REBNY's NYRS course and an active participant on real estate panels, sharing his knowledge with industry professionals throughout New York City. Read more about this award by going HERE.

We congratulate Craig on this well-deserved honor and are inspired by his dedication to excellence in the field of real estate law.

Popular Social Media Posts

Sherwin Belkin • 1st
Founding Partner at Belkin Burden Goldman, LLP
6d •

Today NY's City Council approved the Mayor's City of Yes housing plan. The plan calls for the creation of 80,000 units — but that's over fifteen years. New York City needs several hundred thousand apartments. While the plan should be applauded, it must be recognized that (a) the City Council actually whittled down the number of units to be created and (b) so much more needs to be done.

How NY will create this much needed housing while both the City and State legislative bodies demonize, burden, constrain and injure those that actually produce and maintain the housing remains to be seen. Unless the real estate industry is viewed by our elected representatives as a valuable and essential partner, massive housing creation seems far off.

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#cityofyes
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Lewis A. Lindenberg and 75 others 9 comments • 3 reposts

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Co-Op/Condo Corner

BY AARON SHMULEWITZ AND LLOYD F. REISMAN

Aaron Shmulewitz *and* ***Lloyd F. Reisman*** *head 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 ext. 390, or* ***ashmulewitz@bbgllp.com*** *, or Lloyd at 212-867-4466 ext. 387, or* ***lreisman@bbgllp.com***

CO-OP NOT ENTITLED TO MANDATORY INJUNCTION IN CIVIL COURT TO AFFORD ACCESS FOR REPAIRS AND VERMIN ERADICATION IN SHAREHOLDER APARTMENT

Northridge Cooperative Section No. 1, Inc. v. Zaidi Civil Court, Queens County, L&T Part

COMMENT | Why wasn't an injunction sought in Supreme Court, the proper venue?

FORMER SUPERINTENDENT MUST PAY CONDO $85,000 IN USE & OCCUPANCY FOR HOLDING OVER IN APARTMENT AFTER TERMINATION

The Condominium Board of The 10 Nevins Street Condominium v. Qeliqi Supreme Court, New York County

COMMENT | Hopefully, this case will prove to have a deterrent effect, in a not-uncommon situation.

PROPERTY OWNER ENTITLED TO ACCESS LICENSE UNDER RPAPL §881 DESPITE ALLEGED BREACHES BY LICENSOR UNDER PRIOR LICENSE AGREEMENT

268 East 7th Street Owner, LLC v. Gogan Supreme Court, New York County

CONDO CAN SUE SPONSOR, SOME OF ITS PRINCIPALS, AND SOME CONTRACTORS, FOR CONSTRUCTION DEFECTS

The Board of Managers of 252 Condominium v. World-Wide Holdings Corp. Supreme Court, New York County

COMMENT | The Court presented a detailed analysis of each claim, and facts supporting a continuation of the suit's claims vs. dismissing them.

CONDO ENTITLED TO MANDATORY INJUNCTION REQUIRING SPONSOR TO ERECT SAFETY SHED FOR FALLING BRICKS

Board of Managers of The 19th Avenue Condominium v. 19th Ave Properties LLC Supreme Court, Kings County

COMMENT | The Court held that safety concerns outweighed the natural inclination to deny mandatory injunctive relief.

PROPERTY OWNER ENTITLED TO ACCESS LICENSE UNDER RPAPL §881

WHGA Garvey Housing Development Fund Company, Inc. v. 136 West 129 LLC Supreme Court, New York County

COMMENT | The decision presented a scholarly analysis of all relevant factors.

UNIT OWNER CANNOT SUE CONDO'S ATTORNEY; ATTORNEY OWED NO DUTY TO THE UNIT OWNER

Sarasota Development Co., LLC v. The Board of Managers of The 58-60 Reade Street Condominium Supreme Court, New York County

COMMENT | Attaboy!

CO-OP SHAREHOLDER A HOLDER OF UNSOLD SHARES

320 West 87, LLC v. 320 West 87th Street, Inc. Supreme Court, New York County

COMMENT | The Court held that the shareholder had satisfied all of the requirements stated in the offering plan and governing documents.

CONDO BOARD MEMBER CAN SUE FELLOW BOARD MEMBER FOR DEFAMATION ARISING FROM "ANONYMOUS" EMAIL SENT TO BUSINESS ASSOCIATES OF THE TARGET

Dellaportas v. Shahin U.S. District Court, SDNY

COMMENT | Several other claims were dismissed.

QUESTIONS OF FACT PRECLUDE SUMMARY JUDGMENT TO CO-OP ON CLAIM FOR UNPAID MAINTENANCE

Excelsior 57th Corp. v. Kotogianni Supreme Court, New York County

CO-OP'S "PULLMAN" TERMINATION OF SHAREHOLDER'S PROPRIETARY LEASE FOR OBJECTIONABLE CONDUCT UPHELD UNDER BUSINESS JUDGMENT RULE

Windsor Terrace at Jamaica Estates Owners, Inc. v. Advani Appellate Term, 2nd Dept.

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FORMER CO-OP PORTER ENJOINED FROM COMING WITHIN 50 FEET OF BUILDING

333 East 57th Street Corporation v. Molina Supreme Court, New York County

COMMENT | He engaged in a campaign of harassment and threats against the building super and residents after being terminated for refusing to take the Covid vaccination.

CO-OP ENTERS INTO CONSENT DECREE TO ALLOW SHAREHOLDER TO KEEP EMOTIONAL SUPPORT ANIMALS, TO SETTLE HOUSING DISCRIMINATION COMPLAINT

United States v. Rutherford Tenants Corp. U.S. District Court, SDNY

COMMENT | This case illustrates clearly why Boards must think twice—-or more--before denying any request involving an emotional support animal. The co-op had to pay the claimant $165,000, offer to buy her apartment for $585,000, waive the flip tax and subletting fees, pay her brokerage commissions on any sale, adopt a reasonable accommodations policy, train employees appropriately, and file regular compliance reports with the FHA. It would have been easier to say yes.

CONDO UNIT OWNER ENTITLED TO COPIES OF RECORDS OF RECEIPTS AND EXPENDITURES, FINANCIAL STATEMENTS, MEETING MINUTES AND CORRESPONDENCE

Minkoff v. Executive Risk Indemnity Inc. Supreme Court, New York County

COMMENT | Continues and expands the case law trend of making more information and documents available for inspection by unit owners, under RPL §339-w and common law.

FORMER SHAREHOLDER CANNOT SUE POST-"PULLMAN" EVICTION PURCHASER OF HER APARTMENT

Deeton v. Ruckus 85 Corp. Supreme Court, New York County

SHAREHOLDER CAN SUE HER SECURED LENDER FOR REIMBURSING CO-OP'S LEGAL FEES

Lashley v. Kings Village Corp. Supreme Court, Kings County

CONDO CAN FORECLOSE ON LIEN FOR UNPAID COMMON CHARGES, IS ENTITLED TO ATTORNEY FEES

Board of Managers of The 243 West 98 Condominium v. Goldberg Supreme Court, New York County

DOORMAN'S CONTINUING SEXUAL HARASSMENT OF UNIT OWNER ENTITLES HER TO SUE CONDO AND MANAGING AGENT FOR HOUSING DISCRIMINATION AND NEGLIGENT SUPERVISION

Charlier v. 21 Astor Place Condominium U.S. District Court, SDNY

COMMENT | Even though claims against the individual Board members were dismissed, Boards and managing agents must carefully vet, screen and supervise building employees!

UNIT OWNER CAN SUE BOARD FOR ALLOWING UNAUTHORIZED PERSONS TO USE HER APARTMENT DURING HER COVID ABSENCE

Popescu v. The Board of Managers of The Belaire Condominium Supreme Court, New York County

QUESTIONS OF FACT PRECLUDE SUMMARY JUDGMENT IN SUIT OVER CO-OP'S ALLEGED WRONGFUL REJECTION OF TRANSFER TO DECEASED SHAREHOLDER'S NIECE

Stauber v. The Board of Directors of 8 East 96th Street, Inc. Supreme Court, New York County

CONDO CLAIMS AGAINST SPONSOR FOR DEFECTIVE CONSTRUCTION BARRED BY PURCHASE AGREEMENT

Board of Managers of The 37, 39 Madison Street Condominium v. 31 Madison Development, LLC Appellate Division, 2nd Dept.

COMMENT | The claims dismissed were for consequential damages and breach of the statutory housing warranty.

CO-OP CAN DO NON-JUDICIAL AUCTION SALE OF APARTMENT FOLLOWING "PULLMAN" EVICTION FOR OBJECTIONABLE CONDUCT

Peters v. Caton Towers Owners Corp. Supreme Court, Kings County

CONDO CAN BE SUED FOR DRASTICALLY UNDER-INSURING ITS BUILDING, WHICH WAS DESTROYED IN A FIRE

Wong v. Board of Managers of One Sunset Park Condominium and ***Lin v. Mountain Valley Indemnity Company*** Supreme Court, Kings County

COMMENT | In these companion cases, the condo had never updated the coverage amount from that obtained in 2013 per the original offering plan budget. Always and regularly check with your broker, and the bylaws.

BETH DIN AWARD CONFIRMED IN FAVOR OF CONDO AGAINST UNIT OWNERS FOR UNPAID COMMON CHARGES

Waterview Condominium LLC v. Indig Supreme Court, Kings County

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SHAREHOLDER CANNOT SUE CO-OP FOR CLAIMED OVER-ALLOCATION OF SHARES 75 YEARS EARLIER

Haim v. 875 Park Avenue Corporation Appellate Division, 1st Dept.

COMMENT | The Court invoked the statute of limitations and res judicata from a 1991 Court decision in a similar suit brought by the apartment's prior shareholder.

LLC UNIT OWNER CANNOT RECOVER AMOUNTS PAID BY ITS PRINCIPAL FOR HIS ALTERNATE LIVING ARRANGEMENTS ELSEWHERE DUE TO APARTMENT DEFECTS

Nochi Blue LLC v. Board of Managers of Franklin Place Condominium Supreme Court, New York County

COMMENT | The Court also held that the LLC could not recover amounts paid for common charges and real estate taxes while the unit could not be occupied.

COMMERCIAL SHAREHOLDER MUST PAY CO-OP ASSESSMENTS, EVEN THOUGH SIGNED PROPRIETARY LEASE COULD NOT BE LOCATED FOR INTRODUCTION INTO EVIDENCE

6 West 20th St. Tenants Corp. v. Dezer Properties LLC Appellate Division, 1st Dept.

COMMENT | The Court held that the offering plan and the co-op's form proprietary lease were sufficient to be relied upon.

SPONSOR NOT ENTITLED TO INDEMNITY FROM CONTRACTOR AND SUBCONTRACTOR DEFENDANTS, BECAUSE NO SHOWING OF NEGLIGENCE

Board of Managers of The 51 Jay Street Condominium v. 201 Water Street LLC Supreme Court, Kings County

COMMENT | The indemnity provisions of the governing agreements—-which applied only to instances of negligence--were interpreted strictly.

DE FACTO JANITORS IN CONDO BUILDING ARE COVERED BY FEDERAL LABOR LAWS

Shala v. Ocean Condominiums U.S. District Court, EDNY

CONDO CAN SUE SPONSOR AND ITS PRINCIPALS FOR CONSTRUCTION DEFECTS AND FINANCIAL IRREGULARITIES

Board of Managers of 570 Broome Condominium v. Soho Broome Condos LLC Appellate Division, 1st Dept.

ENGINEER NOT LIABLE TO CONDO FOR FAILING TO DISCOVER THAT WALL WAS IN IMMINENT DANGER OF COLLAPSE

Board of Managers of The St. Tropez Condominium v. JMA Consultants, Inc. Appellate Division, 1st Dept.

COMMENT | Because that wall was not within the scope of the engineer's engagement.

SHAREHOLDER OF CO-OP PROFESSIONAL OFFICE NOT ENTITLED TO EXCLUSIVE USE OF ADJOINING YARD

Koretz v. 363 East 76th Street Corporation Appellate Division, 1st Dept.

COMMENT | BBG is counsel to this co-op, but was not involved in the litigation.

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