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Why the Permanent Co-op Carve-Out Bill Is Essential for New York's Cooperatives

BY GEOFFREY MAZEL, ESQ.

The proposed Permanent Co-op Carve-Out Bill (NYS Senate S1745), introduced in the New York State Legislature by Senator Toby Ann Stavisky and Assembly Member Edward Braunstein, is a crucial step forward for protecting cooperative housing in New York. This legislation seeks to codify the exemption of cooperative corporations from laws designed to address traditional landlord-tenant relationships, such as the Tenant Protection Act (TPA) of 2019 and the Good Cause Eviction Bill. By doing so, it ensures that cooperatives remain distinct under the law, shielding them from the unintended consequences of regulations that are ill-suited for their unique housing model.

This article will explain why this bill is necessary, the benefits it provides to cooperative housing, and the compelling reasons why it must be supported.

Cooperatives, or "co-ops," are fundamentally different from rental housing. In a co-op, residents are shareholders in a corporation that owns the property. Instead of being tenants who rent their units, co-op shareholders hold shares in the corporation, coupled with a proprietary lease granting them the right to occupy their apartment.

This structure is inherently democratic, with residents electing a board of directors to manage the building and make decisions in the collective interest of the shareholders. Co-op boards are fiduciaries, responsible for maintaining financial stability and enforcing the community's rules.

Unlike landlords, co-op boards do not generate profit from tenants. Instead, they oversee the cooperative's financial and operational needs, funded entirely by maintenance fees paid by shareholders. This distinct model is not a traditional landlord-tenant relationship and should not be regulated as such.

The need for the Permanent Co-op Carve-Out Bill arises from a recurring problem: cooperatives have been unintentionally swept into legislation designed for rental housing. Two notable examples illustrate the problem:

The TPA was intended to protect tenants in rental housing from excessive rent increases, predatory eviction practices, and unfair security deposit requirements. However, the language of

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the law inadvertently included cooperatives. This misapplication created unnecessary burdens for co-ops, such as requiring co-op boards to comply with notice requirements for "rent" increases, even though maintenance fees are not rent. The cooperative community had to invest significant resources to secure an exemption for co-ops from the TPA, which was ultimately granted.

The Good Cause Eviction Bill proposed limiting evictions and restricting rent increases in rental housing. If applied to co-ops, it would have severely hampered the ability of boards to enforce proprietary leases and collect maintenance fees. Cooperatives would have been unable to remove shareholders who fail to pay their fees or comply with house rules, threatening the financial health and governance of co-op buildings. Through substantial advocacy, co-ops were carved out of this legislation.

These examples highlight a troubling pattern: laws designed for rental housing unintentionally encompassing co-ops due to broad or ambiguous language. Each time, co-op boards, shareholders, and advocacy groups have had to mobilize to correct these misapplications. This has consumed significant time and resources that could have been better spent improving and managing cooperative communities.

The Permanent Co-op Carve-Out Bill provides a fair, practical, and lasting solution. By codifying cooperatives' exemption from laws like the TPA and Good Cause Eviction Bill, it ensures that co-ops are treated as distinct entities under New York law. Future legislation affecting landlord-tenant relationships would explicitly need to name cooperatives to apply to them.

This approach prevents future misapplications of rental housing laws to co-ops and eliminates the need for continuous advocacy to secure carve-outs. It strikes a balance by allowing lawmakers to regulate co-ops when necessary but only when they make that intention clear.

Co-op boards need the authority to manage their buildings effectively. They must be able to enforce proprietary leases, collect maintenance fees, and address shareholder conduct without the constraints of laws designed for landlord-tenant relationships. The bill protects this autonomy, allowing co-ops to continue operating democratically and efficiently.

Cooperatives rely on maintenance fees paid by shareholders to cover operating costs. Laws like the TPA or Good Cause Eviction Bill, if applied to co-ops, would limit boards' ability to adjust these fees, jeopardizing the building's financial health. The bill ensures that co-ops can manage their finances flexibly and responsibly.

The bill provides clarity for lawmakers, cooperative boards, and shareholders by formally recognizing the distinction between cooperatives and rental housing. This reduces the risk of future legislative overreach or unintended consequences.

The cooperative community has spent considerable time and energy lobbying for carve-outs from laws that should not have applied to them in the first place. The bill eliminates the need for repeated advocacy, allowing co-ops to focus on their communities rather than fighting unnecessary battles.

The Permanent Co-op Carve-Out Bill is not about granting co-ops special treatment—it is about fairness. It ensures that co-ops are only included in legislation when lawmakers specifically intend to regulate them. This aligns with principles of good governance, ensuring that laws are applied thoughtfully and deliberately.

The Permanent Co-op Carve-Out Bill is essential to protecting the unique and democratic nature of cooperative housing in New York. It codifies cooperatives' distinct status, preserves their self-governance, safeguards their financial stability, and prevents future misapplications of landlord-tenant laws. By supporting this bill, lawmakers can provide clarity, fairness, and stability for the tens of thousands of New Yorkers who live in cooperatives.

This legislation is a reasonable and just solution that respects the cooperative model while ensuring legislative intent is clear. It deserves the full support of New York's elected officials and legal community.

