

Co-op & Condo Law-Legislative Update

BY GEOFFREY R. MAZEL, ESQ.

As the legislative sessions in the New York City Council and New York State Legislature heats up, there has been a flurry of legislative initiatives that would material effect Co-ops if passed and enacted into law. In the New York City Council, February 2, 2023 saw the introduction of several bills that could have long lasting and profound impact on the Co-op community. Below is a brief summary of several of these initiatives.

Intro 913 – This legislative introduction was sponsored by Council Member Vickie Paladino. It is a relatively simple piece of legislation and is designed to push back the compliance and enforcement deadlines for Local Law 97 (the Climate Mobilization Act) for a period of seven (7) years from their current stated deadlines.

By way of background, the New York City Council passed Local Law 97 in May, 2019 to great fanfare. The so-called Climate Mobilization Act is landmark legislation requiring extensive retrofits in an effort to address global warming and climate change. This legislation is designed to combat climate change by setting strict caps on carbon emissions from real property and imposing substantial penalties on property owners throughout New York City. The goal of Local Law 97 is to reduce the emissions produced by the city's buildings by 20 percent in 2024; 40 percent by 2030 and 80 percent by 2050.

If a qualified building fails to meet these very difficult carbon reduction thresholds, that building would be subject to severe monetary penalties. In a recent study released by the Real Estate Board of New York, it was estimated that over 13,000 buildings would be subject to over $900,000,000.00 in annual penalties if no efforts were made to reduce carbon emissions. This potential fine is clearly one of the largest potential fines a municipality has ever assessed against its' citizens.

Since the passage of the law, the implementation has been delayed and confusing to Property Owners. In addition, the technology for building retrofits is still in its' relatively early stages. These retrofits are expensive and not reliable. Finally, the success of Local Law 97 is dependent on the electric grid being generated by 100% renewable sources in New York City. The electric grid today is under 20% renewable and its' expansion to 100% will take many years to develop. In light of these circumstances, the Co-op community and other property owners are supportive of the notion of pushing back the enforcement and

I**ntro 915 "Reasons Bill" –** This proposal is the reintroduction of the aptly called "Reasons Bill". A bill of this nature has been proposed at both the City and State levels for nearly a dozen years. Versions of this bill have passed and been implemented in Westchester County in recent years.

Under this bill if a prospective purchaser for a Co-op is not approved.is disapproved, the Board would be required to issue a "mandatory statement" with all of the reasons for withholding its consent, together with a certification by an officer of the corporation, sworn or affirmed under penalties of perjury, that the statement is true and complete. Further, this statement must list the reasons for the denial with "specificity". This statement must convey sufficient information to enable purchasers to remedy deficiencies in their applications and must set forth the number of applications in the last three (3) years received by the corporation, for which the corporation withheld consent, and for which the corporation did not make a decision.

The requirements of this bill are unrealistic and strongly opposed by Co-op Board members throughout the Co-op community. This bill imposes severe and draconian penalties for non-compliance. Failure to comply with any of these requirements would incur statutory damages from $1,000 to $25,000 to each purchaser and seller who commences or joins in an action. The amount of the damages would depend on the scope of non-compliance and the resources of the corporation. The New York City Commission on Human Rights may also initiate investigations in connection with a failure to comply with the requirements and may award additional civil penalties from $1,000 to $25,000. Many in the Co-op community fear that with such tremendous financial exposure in the Co-op application process, volunteer Board members would no longer want to serve on Board of Directors.

Intro 914 "Timing Bill" – This introduction will require a Co-op Board to acknowledge receipt of an application to purchase within ten (10) days of receiving materials, the corporation must provide a written acknowledgement of receipt, and within forty-five (45) days after the corporation first receives any of the required information the corporation must inform the purchaser whether its consent is granted unconditionally, granted conditionally, or denied.

The time for determination may be extended with the consent of the purchaser at any time for no more than fourteen (14) days after a completed application is submitted. Additionally, if a purchaser receives written notice from a corporation that sets out with specificity the ways in which the purchaser's submission did not comply with the list of requirements or a prior notice provided by the corporation, the time will be tolled until the corporation receives additional materials from the purchaser. However, the time period may not be tolled more than three times.

Once again, failure to comply with this law could have devastating effects on the Co-op. First, purchaser may treat a failure to comply with this law as a denial. Thereafter a purchaser or seller may sue the Co-op Board in order determine whether a violation has occurred. The legislation states that for each violation the court may assess statutory damages of $1,000 for failure to provide the corporation's standardized application or acknowledge receipt of the materials; $5,000 for failure to maintain a standardized application; and $10,000 for failure to provide notice of consent or denial within forty-five (45) days.

In addition, the court may award compensatory damages and attorney's fees to the purchaser. The New York City Commission on Human Rights may also initiate investigations in connection with a violation, and may award additional civil penalties from $1,000 to $25,000. These devastating penalties will further disincentivize volunteer from serving on a Co-op Board. This is also an extreme piece of legislation will have no discernible benefit, but will greatly hinder the ability of a Co-op Board to function properly.

Geoffrey Mazel, Esq., is the co-Chairperson of the Queens Bar Association Co-op & Condo Law Committee.