QUEENS COUNTY BAR ASSOCIATION

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MEMORANDUM

To: Elected Members of the New York State Senate and Assembly

From: Mark Hankin, Esq. & Geoffrey Mazel, Esq.
Co-Chairs, Cooperative & Condominium Law Committee

Date: April 10, 2025

Subject: Supporting the Permanent Co-op Carve-Out Bill (S1745, A1701)

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I. Introduction

The undersigned, co-Chairpersons of the Queens County Bar Association Cooperative & Condominium Law Committee, strongly endorse the Permanent Co-op Carve-Out Bill, sponsored by Senator Toby Ann Stavisky in the New York State Senate (bill S7415) and Assembly Member Edward Braunstein in the New York State Assembly (bill A1701). This legislation is critical for ensuring that cooperatives remain distinct from traditional landlord-tenant relationships in the eyes of the law.

The bill does not seek special treatment for cooperatives but instead ensures clarity, fairness, and legislative intent in future laws. By requiring the legislature to explicitly include cooperative corporations in any future legislation, this bill creates a fair and just framework for crafting housing laws.

Cooperatives were unintentionally swept into the Tenant Protection Act of 2019 (TPA) and the Good Cause Eviction Bill, despite the clear intent of these laws to address landlord-tenant relationships. Substantial time, resources, and advocacy were needed to secure exemptions for cooperatives. This legislation will prevent such unintended consequences in the future and ensure that cooperatives are only included in future laws when the legislature explicitly intends to regulate them.

II. Why Cooperatives Require a Permanent Carve-Out

Cooperatives are fundamentally different from rental housing. In a cooperative, residents are shareholders in a corporation that owns the building. Their ownership is coupled with a proprietary lease granting them the right to occupy their units. Courts have repeatedly recognized this distinction, including in *Levandusky v. One Fifth Ave. Apt. Corp.*, 75 N.Y.2d 530 (1990), where the New York Court of Appeals emphasized that cooperative boards act as fiduciaries for shareholders, not as landlords for tenants.

Cooperative boards are democratically elected by shareholders and manage the building in the best interests of the community. Unlike landlords, boards do not profit from tenants but instead oversee the shared financial and operational responsibilities of the corporation. In *40 West 67th Street v. Pullman*, 100 N.Y.2d 147 (2003), the Court of Appeals upheld a board's authority to terminate a shareholder's proprietary lease for objectionable conduct, reaffirming the importance of self-governance in cooperative housing.

Statutory provisions designed to regulate rental housing, such as those in the TPA (NY RPL §§ 226-C and 227-F) or the proposed Good Cause Eviction Bill (S305/A4854), do not align with the cooperative model. For example: maintenance fees in a cooperative are not "rent"; they are proportional contributions to the operating expenses of the corporation. Cooperatives rely on the ability to enforce proprietary lease provisions and adjust maintenance fees to cover rising costs, which would be impaired by regulations limiting rent increases or evictions.

III. The Role of the Permanent Carve-Out Bill

The TPA and Good Cause Eviction Bill inadvertently included cooperatives, creating confusion and placing burdensome and inappropriate regulations on cooperative corporations. These unintended consequences were only rectified after significant advocacy efforts. The Permanent Co-op Carve-Out Bill eliminates the possibility of such future misapplications by codifying that cooperatives are distinct from rental housing unless the legislature explicitly states otherwise.

This bill does not grant cooperatives a blanket exemption from all housing laws but instead ensures that cooperatives are included only when their inclusion is intentional. By requiring legislators to explicitly name cooperatives in future laws, the bill upholds fairness, transparency, and legislative clarity. This approach prevents cooperatives from being unintentionally burdened by laws designed for landlord-tenant relationships.

The cooperative model relies on self-governance and collective responsibility. This bill protects those principles while leaving room for cooperatives to be regulated if deemed necessary by the legislature.

IV. Advocacy Efforts of the Cooperative Community

The cooperative community has worked tirelessly to secure exemptions from inappropriate regulations, including the TPA-imposed limitations on rent increases, evictions, and security deposits. Although aimed at rental housing, cooperatives were inadvertently included. After extensive advocacy by cooperative boards, managing agents, and cooperative advocacy organizations, cooperatives were eventually exempted. Similarly, the cooperative community mobilized to carve cooperatives out of the Good Cause Eviction Bill, which would have limited cooperatives' ability to adjust maintenance fees and enforce proprietary leases. These efforts diverted significant resources from other priorities and created uncertainty for cooperative boards and shareholders. The Permanent Co-op Carve-Out Bill would eliminate the need for such reactive advocacy in the future, allowing cooperatives to focus on their communities.

V. Conclusion

The Permanent Co-op Carve-Out Bill is a fair and just approach to future housing legislation. It ensures that cooperatives are treated as distinct entities and included in housing laws only when the legislature explicitly

intends to do so. This bill codifies cooperatives' exemption from the TPA and Good Cause Eviction Bill; prevents future unintended consequences and regulatory confusion; and protects cooperative boards' ability to govern effectively and in the best interests of their shareholders.

We urge all elected officials to support this legislation and ensure that cooperative housing remains a thriving and vital part of New York's housing landscape.

Respectfully submitted,

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