

CLIENT ADVISORY

MAY 2020

COOPERATIVES AND CONDOMINIUMS CONTINUE TO DEAL WITH THE PANDEMIC

All of us in New York and around the world continue to deal with the coronavirus pandemic. In addition to the tragic loss of life and the many people who have become ill, everyone is also affected by the ongoing economic disruption. Nonessential businesses continue to be closed. Even essential businesses allowed to remain open must allow employees to work from home where feasible and must require employees and others on-premises to practice social distancing. At this writing, the state of emergency in New York State has been extended through May 15, 2020. At least with regard to the urban and suburban parts of the state, further extensions are anticipated, with reopening to be subject to criteria established by the Governor.

As discussed in our March, April, and mid-April newsletters, cooperative and condominium boards have been on the front lines of the pandemic, both in dealing with their shareholders or unit owners and as employers. Every board of directors or board of managers has made decisions and set policies or procedures addressing the implications of the Governor's executive orders and the health emergency, in areas such as access to the building, residents' interactions with staff, closure or limited use of common areas, and postponing annual meetings.

Boards and management should seek to ensure continued compliance with executive orders and best practices, especially since many people may naturally tend to relax their level of vigilance or compliance as time goes on. For example, everyone in public areas of the building, particularly in smaller spaces such as elevators or when dealing with building employees, should now be wearing a mask covering the individual's nose and mouth. Enhanced sanitation protocols, such as regular cleaning of surfaces and making hand sanitizer available, should continue for the foreseeable future.

In time, boards will have to decide when and to what extent to relax some of the current restrictions, such as by reopening amenity spaces or allowing authorized outsiders into the building again. No one knows yet when "normal life" will resume in New York City, but we can be sure that it will be a gradual process. Boards should be guided by updates from the health authorities and should continue to consult with their legal counsel and managing agents as issues arise.

Most construction activity in New York continues to be shut down. Many government offices also are operating on a limited basis, with employees working primarily from home. The New York State court system is among the many institutions whose operations have been dramatically affected. The state courts are currently not accepting new civil cases for filing, except for certain narrow categories of essential matters.

As previously discussed in our newsletters, several government programs have been created to assist businesses and individuals in surviving the financial impact of the crisis. Uncertainty continues to exist concerning whether cooperatives and condominiums are eligible for some of these programs and what degree of financial hardship must be shown to be eligible. Buildings that cannot qualify for the best-known programs may still benefit from other provisions of the new laws, such as certain tax changes. Some previously announced programs have run out of funding, but new programs have been announced, including a small business loan program to be funded by the New York State pension system. All boards should be consulting with their professionals to review what benefits may be available to them based on their specific circumstances.

MANY NEW YORK EMPLOYERS WILL HAVE INCREASED SICK LEAVE OBLIGATIONS

New York State employers will be required to provide their employees with sick leave under New York's new Sick Leave Act. Employees will begin to accrue sick leave under the law on September 30, 2020 and may begin taking leave days as of January 1, 2021. This new sick leave law is a permanent change in the law and is separate from special leave rights for employees affected by the coronavirus emergency. It is also separate from New York City's existing sick leave law, although many of the requirements overlap.

The minimum amount of sick leave that must be provided depends on the size of the employer. If the employer has 4 or fewer employees, each employee must be allowed 40 hours of sick leave per year. The leave may be unpaid if the employer's net income during the previous tax year was less than \$1 million, and otherwise must be paid. Employers with between 5 and 99 employees must provide each employee with at least 40 hours of paid sick leave per year. Employers with 100 or more employees must provide at least 56 hours of paid sick leave per year. Paid sick leave time must be compensated at the employee's regular rate of pay. The law also allows employees to carry up to one year's unused sick leave over to the following calendar year, but does not require payment for unused leave time at the termination of employment.

Sick leave under the law may be used for the mental or physical illness, injury, or health condition of an employee or an employee's family member. There is no requirement that the condition must have been diagnosed or must require medical treatment. Sick leave may also be used for the diagnosis, care, or treatment of such a condition or for preventative care. In addition, sick leave may be used for reasons relating to an employee's or an employee's family member's being the victim of domestic violence, a family or sexual offense, stalking, or human trafficking. The law defines a "family member" as including an employee's child, spouse, domestic partner, parent, sibling, grandchild, grandparent, or the child or parent of the employee's spouse or domestic partner. Employees may not be required to disclose confidential information relating to the reason for use of sick leave. Employers are required to reinstate an employee returning from sick leave to his or her position and are prohibited from retaliating against an employee for using sick leave.

Employers that already offer sick leave or paid time off to their employees meeting these standards are not required to make any changes to their policies. Because the details of the new Sick Leave Law are complex, and the State Commissioner of Labor is expected to issue regulations that will provide further details about employers' obligations, employers should consult with their legal counsel before the law takes effect to ensure that their existing or new sick leave policies comply with the new requirements.

TITLE INSURER HAS NO LIABILITY WHEN INSURED'S TITLE IS UPHELD

Even during this tumultuous period, Ganfer Shore Leeds & Zauderer's real estate litigation practice has been successful, as in the next case. Title insurance protects the insured if a cloud appears against the insured's title to the property. However, where a title defect is fully resolved by an insurer, the insured may not recover damages under the policy. In **Golden First Mortgage Corp. v. Alleyne, Index No. 026405/2009 (Sup. Ct. Nassau Co. Apr. 16, 2020)**, an owner bought property and granted a mortgage on it. For unknown reasons, the deed and mortgage were not recorded. When the lender discovered this fact, it sued the owner for a declaration that it held a valid mortgage. The owner filed a third-party complaint against the title insurer seeking damages because she did not have good title to the property. The court ultimately held that despite the failure to record the documents, the insured remained the owner. To reflect this, the court directed that a new deed and mortgage be recorded. The title insurer then moved for summary judgment, arguing that by filing the new deed, it had cured the title defect. The court agreed, because "title insurance only provides indemnification for any diminution in value of property sustained because of the defects in the title insured by the policy" and does not cover "consequential damages." Once the title insurer had successfully established the owner-insured's title to the property, it had no further obligation to her.