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I. Introduction

Cooperatives and condominiums are unique forms of valuable property ownership that engender special legal issues. In New York City, residential landlord-tenant issues are litigated in the Civil Court's Housing Part, commonly called "Housing Court." Residential landlord-tenant disputes arising in cooperatives and condominiums are referred to specialized parts. This article reviews the legal concepts and disputes litigated in the New York City Housing Court Coop and Condo Part.

II. Cooperatives

A. The Basics

Cooperatives are unique ownership regimes in which three different property interests are created. The first interest is created when the cooperative corporation secures the property in fee simple. The second is created when the shareholders purchase the corporation's shares, which are personal property. The third is created when the corporation enters into long-term leases, called proprietary leases, with those shareholders, entitling each shareholder to occupy a particular unit.

Cooperative corporations, which own the building and its land in fee simple, may be formed in New York State under the New York Business Corporation Law,[1] the Not-for-Profit Corporation Law,[2] or the Cooperative Corporation Law.[3] Creating the cooperative corporation involves choosing a corporate name, filing articles of incorporation, and drafting by-laws.[4]

The articles of incorporation for cooperatives are tailored for cooperatives. Because corporations formed under the Business Corporation Law might include in their articles of incorporation any provision consistent with state law,[5] many cooperatives vest decision-making power with proprietary lessees rather than with the board of directors.[6] Many cooperatives also include in their articles of incorporation powers necessary to manage a cooperative, such as the authority to buy property and buildings in fee simple, to lease the apartments in property the corporation owns, and to mortgage buildings.[7]

A cooperative corporation is bound by the articles of incorporation and the by-laws, the proprietary leases, and the cooperative's rules and regulations.[8] Cooperative shareholders have the right to commence a derivative action against the corporation.[9]

As with all corporations, cooperative corporations owe their shareholders fiduciary duties. These responsibilities sometimes conflict with duties the corporation, acting as landlord, owes to a proprietary lessee.

Shareholders do not own a unit in fee simple. They own a portion of a corporation that owns the entire property in fee simple. Thus, shareholders do not pay taxes on their individual unit. Instead, real-estate taxes are levied on the property as a whole, and the corporation assesses the proprietary lessees according to their ownership shares.[10] Similarly, cooperatives may encumber the entire property with a mortgage, which the shareholders satisfy.[11]

In entering into a proprietary lease with the cooperative, shareholders enter into a landlord-tenant relationship with the cooperative corporation.[12] This relationship is similar to a conventional landlord-tenant relationship. It confers on a proprietary lessee some benefits of fee simple ownership. Proprietary lessees, as shareholders, own a portion of the cooperative, and so have a voice in managing the building. The shares allocated to a particular unit might appreciate in value. The shares and leasehold interest may be leveraged.[13]

The proprietary lease establishes many of the rights and duties held by the cooperative and the proprietary lessee. The most important of these is the proprietary lessee's duty to pay to the cooperative maintenance charges, often called rent.[14] Typically, the proprietary lease provides an amount that may be amended by the directors, depending on the building's needs.[15] Cooperatives typically encumber the property as a whole with a mortgage, and real-estate taxes are levied on the entire property. Cooperatives depend on the shareholders to satisfy those obligations.[16]

Other provisions in the proprietary lease deal with the right to sublet, the right to make alterations, the cooperative's house rules, the duty to make repairs, and the shareholders' rights if they default on the lease.[17]

Real Property Law Article 7 applies to cooperatives and governs the landlord-tenant relationship between the cooperative and proprietary lessees.[18] This relationship confers Housing Court's jurisdiction on disputes between these parties.

B. Other Types of Cooperatives

1. Low- and Middle-Income Housing Cooperatives

New York State law allows for the creation of special cooperatives dedicated to providing low- and middle-income housing. These cooperative developments receive aid from the state, in the form of low-interest loans or tax-exempt status, in exchange for restrictions on the rent charged and the process by which tenants may be evicted.

a. Housing Development Fund Company

One special cooperative is the housing development fund company (HDFC), created under Private Housing Finance Law Article XI.[19] To qualify as an HDFC, the entity must dedicate itself to serving low-income tenants[20] and use all "income and earnings of the corporation" for corporate purposes rather than for "the benefit or profit of any private individual, firm, corporation or association."[21] HDFCs are authorized to receive a "temporary loan or advance" from funds established by the statute in exchange for submitting to Department of Housing and Community Renewal (DHCR) oversight and regulation.[22]

HDFC buildings are established after they fall into New York City's hands, for instance, due to tax foreclosure. Instead of administering the building or evicting the residents and leaving the building vacant, the City will invite the residents to form an HDFC. The deed restricts the building's use to low-income housing, with a provision that the property will revert to City ownership if that restriction is violated. This arrangement furthers the City's goal of creating low-income housing while not requiring the City to manage large amounts of real estate.[23]

HDFCs are exempt from rent regulation because they are cooperatives[24] and because they are nonprofit organizations.[25] In *546 West 156th Street HDFC v. Smalls*,[26] a tenant raised as a defense in a nonpayment proceeding that she was entitled to rent-stabilized status, despite the statutory exemptions. The tenant alleged that the HDFC had bestowed permanent rent-stabilized status upon her tenancy in a stipulation resolving an earlier nonpayment proceeding and had then offered a series of leases on rent-stabilized lease forms.[27] The Appellate Division, First Department, noted that the parties' beliefs regarding the tenant's rent-regulated status were not dispositive and held that the "subject agreement to treat respondent's apartment as rent-stabilized does not confer protection under the Rent Stabilization Law in contravention of the explicit statutory exemption for housing accommodations organized as a cooperative corporation or operated for charitable purposes"[28] The effect was that the tenant was a month-to-month tenant.

Because the government is "entwined" in HDFCs, those companies must accord their tenants due process required under the Fourteenth Amendment to the U.S. Constitution before effecting an eviction.[29] In finding this "entwinement," the Appellate Division, First Department, in *Grimmet* noted that because HDFCs perform an important government service by housing the poor, they are subject to strict government regulation and may revert to City ownership if the HDFC fails to comply with the restrictions placed on it.[30] This "significant and meaningful governmental participation"[31] triggers due process guarantees, including notice to the tenant of the reason for an eviction. These protections apply only to the tenant of record.[32]

Due-process protections ensure that an HDFC tenant may not be evicted merely because a lease has expired.[33] Rather, the HDFC may evict only for cause,[34] although little case law defines "cause" and in how much particularity it must be plead. Thus, an HDFC is unable to evict a month-to-month tenant after issuing a 30-day notice of termination.[35] On the other hand, an HDFC successfully evicted a tenant who, in violation of her lease, did not use the unit as her primary residence.[36] In that case, the notice to cure provided the tenant with sufficient notice of the alleged default.[37]

b. Limited Profit Housing Companies (Mitchell-Lama Housing)

Limited profit housing companies, often known as "Mitchell-Lama" cooperatives, so-called because of the sponsoring legislators, must be dedicated to providing low or middle-income housing. Under the Public Housing Finance Law, private developers are eligible for government-funded mortgages, tax abatements, and other incentives. In exchange for this aid, the housing projects must limit their profits and rent increases and are subject to DHCR regulation. Mitchell-Lama housing projects are required to submit financial information to the DHCR, which determines the allowable rent increases for the project.[38]

Before evicting a tenant for reasons other than not paying rent, a Mitchell-Lama development must first obtain a "certificate of eviction" from the New York Department of Housing Preservation and Development (HPD) before commencing a proceeding in Housing Court.[39] To appeal HPD's determination on a certificate of eviction, a party must commence an Article 78 proceeding. A party may not collaterally attack that determination in a Supreme Court ejectment action[40] or in a summary Housing Court proceeding.[41]

Practitioners should keep in mind the *Landaverde* rule and its application to Mitchell-Lama cooperatives. In *ATM One LLC v. Landaverde*,[42] the Court of Appeals interpreted DHCR regulations implementing the Emergency Tenant Protection Act (ETPA) to require a landlord to give a tenant 10 days' written notice to cure and another five days to cure if the notice is mailed. That rule was applied to Mitchell-Lama cooperatives in *Southbridge Towers v. Frymer*[43] because the Mitchell-Lama law's purpose and language is similar to the ETPA's.

2. Condoperatives (Condops)

A condoperative, or condop, combines condominium and cooperative ownership. Condops are buildings divided into one large residential condominium unit and one or more commercial condominiums. The residential condominium is then transferred to a cooperative corporation. The cooperative corporation divides the residential condominium into separate units allocated to the various

proprietary lessees. In other words, the cooperative owns the units under a condominium regime, rather than owning the entire building in fee simple.[44]

Condops receive tax advantages over the conventional cooperative. Cooperative shareholders may deduct their proportionate share of the cooperative's mortgage interest expenses and real-estate taxes if the cooperative derives 80 percent of its annual gross income from the shareholders.[45] Separating the commercial space from the cooperative may allow shareholders to benefit from that tax treatment.[46] The Mortgage Forgiveness Debt Relief Act of 2007, recently signed into law by President Bush, amends this tax provision by providing two additional ways to qualify for the tax treatment. Cooperatives may also now qualify if 80 percent of the corporation's property is used for residential purposes or if 90 percent of the corporation's expenditures are to acquire or maintain the property for the shareholders' benefit.[47]

III. Condominiums

A condominium divides a property into units owned in fee simple and common elements owned in common-fee ownership.[48] Unit owners hold title to their units in fee simple absolute and an undivided, proportionate common interest in the common elements, which are owned with all other unit owners.[49]

A condominium association, composed of the unit owners, may be incorporated pursuant to the Business Corporation Law or the Not-for-Profit Corporation Law[50] but may also remain unincorporated.[51] If incorporated, the statute under which it is formed will govern, unless the governance violates the Condominium Law.[52] Many provisions of these statutes, such as Business Corporation Law § 717, which governs fiduciary obligations,[53] also apply to unincorporated condominium associations. A derivative action may be brought against an unincorporated association.[54]

A property becomes a condominium upon the filing of a declaration.[55] The declaration must contain information for prospective purchasers and contractors, including that the property will be submitted to the provisions of the Condominium Act; a description of the land on which the building is located; a description of the building; a description of the units; a description of the common elements; a description of the common interest of each unit owner; and how the declaration may be amended.[56] Floor plans of each unit must be filed with the declaration.[57]

Condominiums must have by-laws that govern its administration and which must be filed with the declaration. The by-laws must provide for the method of electing a board of managers and officers, the conduct of meetings, and how condominium rules and regulations are made.[58] The declaration, the by-laws, and the house rules govern the condominium and its unit owners.

Although the by-laws must provide for the election of a board of managers to administer the building, in practice the board often delegates that authority to a management company through a management agreement.[59]

Condominium unit owners must pay "common charges" for the building's maintenance, similar to cooperative shareholder's maintenance.[60] In contrast to cooperatives, in which shareholders contribute to the cooperative's tax assessment, New York City condominium unit owners pay their real estate taxes for their units directly to the New York City Department of Finance.[61] Also in contrast to cooperatives, no "blanket mortgage" may encumber an entire condominium building,[62] and so condominium unit owners need not contribute to a shared mortgage. Condominium unit owners are not as bound together as cooperators.

Real Property Law Article 7 landlord-tenant provisions apply to cooperatives but not condominiums. In contrast to a cooperative's "hybrid" nature, in which shareholders own shares of the cooperative but also enter into a landlord-tenant relationship, condominium unit owners own their unit in fee simple absolute. Thus, cooperative shareholders are entitled to the protections of the warranty of habitability implied in their proprietary lease, but condominium unit owners do not receive these protections.

Because condominium unit owners do not enter into a landlord-tenant relationship with the condominium association, condominiums do not appear in Housing Court unless a unit owner leases a unit to a market-rate or rent-regulated subtenant or if, as shown below, a tenant remains in occupancy after a rental building converts to condominium ownership.

IV. Housing Court

Housing Court has jurisdiction over landlord-tenant disputes, including nonpayment proceedings (nonpayment of rent or maintenance), holdover proceedings (lease expiration or termination), lockout proceedings, Article 7-A proceedings (receiverships for distressed buildings), and HP proceedings (code violations).

Disputes between cooperative boards and proprietary lessees appear in Housing Court because of the landlord-tenant relationship. Among a great many examples, in *Jones v. Surrey Co-op. Apartments, Inc.*,[63] a cooperative board brought a nonpayment proceeding against a tenant for failure to pay monthly maintenance charges. Also among a great many examples, in *Gouverneur Gardens Housing Corp. v. Lee*,[64] a cooperative board brought a holdover proceeding against a tenant after issuing a notice of termination in accordance with applicable lease provisions.[65]

No landlord-tenant relationship exists between a condominium association and its unit owners. Housing Court does not hear condominium nonpayment and holdover disputes involving associations and unit owners.[66]

Cases involving cooperatives were a part of Housing Court's general docket until 1997, when the New York State Unified Court System created a separate part for cooperative and condominium cases. Proceedings involving units in cooperative or condominium buildings are heard in the Coop and Condo Part,[67] called Part C in New York County. Every borough has a separate coop and condo part except Staten Island, which hears all Housing Court cases in its All Purpose Part Y.

Petitioners must identify a proceeding involving units in cooperative or condominium buildings by using a green "legalback." If the petitioner fails to do so and the proceeding is referred to another judge, that judge must refer the proceeding to Part C upon determining that it involves a dispute in a cooperative or condominium building.

Housing Court instituted the Coop and Condo Part in response to significant pressure from important real-estate interests that want Housing Court to handle cooperative and condominium cases efficiently. The decision to create a separate court for cooperatives and condominium reflects several considerations. It allows these cases to escape an otherwise-busy Housing Court docket. And it allows, indeed compels, the presiding judge to develop a special expertise in cooperative and condominium law.[68] As Vickie Chesler, executive editor of *The Cooperator*, explained, "[C]o-op and condominium issues are being developed on a case-by-case basis. In co-ops, you're dealing with securities, corporate boards and business issues. Sometimes, the housing court judges try to fit those issues into landlord-tenant laws and precedents. And usually, they just don't fit."[69]

V. The Warranty of Habitability

The warranty of habitability, codified in Real Property Law § 235(b), guarantees to a tenant that a leased premises be "fit for human habitation and for the uses reasonably intended by the parties and that the occupants of such premises shall not be subjected to any conditions which would be dangerous, hazardous or detrimental to their life, health or safety."[70] The warranty is implied in all residential leases. Any waiver violates public policy. This protection for lessees is effectuated through rent abatements when a court finds that the premises' condition violates the warranty.

Cooperative shareholders are cooperative "owners" represented by the board, but the "proprietary lease given to the tenant is not different from any other type of lease and it creates a landlord-tenant relationship between the stockholder and the cooperative corporation."[71] Thus, shareholders, as tenants, are entitled to the warranty of habitability's protections.[72] One court noted that "[w]hile there is thus created the anomalous situation that one who is essentially an owner (by virtue of his purchase of shares) is in a sense suing himself, the situation is not vastly different from any stockholder who has occasion to sue the corporation of which he is a pro rata owner by purchase of stock."[73]

If the conditions in a tenant-shareholder's unit are "dangerous, hazardous or detrimental to their life, health or safety," [74] that shareholder may be entitled to relief. Second-hand smoke infiltrating a leased unit has been found to violate the warranty of habitability.[75] Excessive noise might lead to a warranty-of-habitability violation if the noise deprives the tenant of "the essential functions that a residence is supposed to provide."[76]

The warranty of habitability applies to the landlord-tenant relationship created in a cooperative, but the cooperative's hybrid nature requires that the warranty apply slightly differently than in a conventional landlord-tenant relationship. For instance, if "the conditions within the respondents' apartments are a direct result of a building-wide renovation project that the board of directors voted on and approved, it does not fall within the purview of a breach of the warranty of habitability. . . ."[77] This special application of the warranty of habitability allows cooperatives to act with the entire building's best interests in mind.[78] Ultimately, the abatement court must look to the proprietary lease to decide whose responsibility it is to repair or maintain a condition that plausibly affects the warranty of habitability.

No landlord-tenant relationship exists between a condominium unit owner and a condominium association. The warranty of habitability is inapplicable.[79] A condominium unit owner may not withhold common charges to the condominium association because of building violations in either the common areas or within a unit.[80] A landlord-tenant relationship is created when a unit owner leases a unit to a tenant. That tenant may enforce the warranty of habitability against that unit owner.[81] That tenant does not have this relationship with the condominium association and cannot enforce the warranty of habitability against it.[82]

VI. HP Proceedings

The New York Legislature created the Housing Court in 1973 to adjudicate actions and proceedings enforcing federal, state, and local housing standards to assure a safe, habitable, and plentiful housing stock in New York City. The Housing Court's jurisdiction includes nonpayment and holdover proceedings, which make up nearly the entire calendar, but the primary mission of the Housing Part (HP), a Part of the Housing Court (whose formal name is itself the Housing Part), is to hear housing code proceedings, referred to as "HP proceedings" or "HP actions."[83] An occupant, a tenant, a group of tenants, or the New York City Department of Housing Preservation and Development (HPD) may bring an HP proceeding. The goal of the proceeding from the petitioner's perspective is to urge the court to exercise its equitable, injunctive jurisdiction to compel a property owner, broadly defined, to correct housing violations in dwellings, to hold recalcitrant owners

in civil and criminal contempt, and to impose civil penalties on them.[84]

The Housing Part's subject-matter jurisdiction includes cooperative apartments, including the cooperative's common areas.[85] Proprietary lessees may bring an HP proceeding against the cooperative to force the cooperative to make repairs and cure violations of the Housing Maintenance Code and similar safety codes.

Most proprietary leases assign responsibility for repairs to the proprietary lessees if the problem arises from within and remains within the subject apartment, and to the cooperative corporation if the problem comes from outside the apartment. If a proprietary lessee brings an HP proceeding against the cooperative, the cooperative may not assert as a defense that the proprietary lease allocates responsibility to the lessee to fix the complained-of condition. The HP judge will order the cooperative to make the repairs.[86] If the shareholder is responsible for the costs of the repairs, the cooperative may recover its costs in a plenary action.

The Housing Part also has jurisdiction over condominium common areas[87] and to condominium units that a unit owner leases. A condominium unit owner may not bring an HP proceeding against its condominium association for conditions within the condominium unit, because no landlord-tenant relationship exists between the parties, and thus the warranty of habitability is inapplicable.[88] A City code-enforcement agency may bring a proceeding against a unit owner or the condominium association to correct violations, even if no landlord-tenant relationship exists.

Although every part of the Housing Court has code-enforcement jurisdiction—for instance, a tenant-respondent may invoke code violations as a defense to paying rent in a nonpayment proceeding and as a defense to paying use and occupancy in a holdover proceeding—there are a number of advantages for tenants or proprietary lessees to bring an HP proceeding. Those receiving government assistance, such as Social Services or Section 8 voucher recipients, face difficulties withholding their rent. The indigent benefit from the court's waiving filing fees[89] and from HPD attorneys' help with cases they deem viable. Wealthier tenants also benefit from suing for repairs. They might want to avoid withholding rent or maintenance due to potential damage to their credit rating and the stigma attached to defending a nonpayment proceeding.

VII. The Business-Judgment Rule

A. Generally

The business-judgment rule, which applies to cooperatives, "prohibits judicial inquiry into actions of corporate directors 'taken in good faith and in the exercise of honest judgment in the lawful and legitimate furtherance of corporate purposes.'"[90] Business Corporation Law § 717, also applicable to cooperatives, states the rule somewhat differently, requiring directors to act "in good faith and with that degree of care which an ordinarily prudent person in a like position would use under similar circumstances."[91] Cooperative boards' actions and decisions need not be optimal. They must be made in accordance with the procedures set forth in the governing documents and be made in good faith. Absent this showing, "judicial review is not available."[92]

The business-judgment rule was developed in the context of corporate governance. The Court of Appeals decided in *Levandusky v. One Fifth Avenue Apartment Corp.*[93] to apply that rule to cooperatives. The Court developed a rule to review corporate behavior judicially because "a cooperative corporation is—in fact and function—a corporation, acting through the management of its board of directors, and subject to the Business Corporation Law."[94] The Court also found that although "decisions of a cooperative board do not generally involve expertise beyond the usual ken of the judiciary, at the least board members will possess experience of the peculiar needs of their building and its residents not shared by the court."[95] The Court of Appeals believed that this rule appropriately allows cooperative boards to manage buildings effectively and efficiently, while still protecting residents from board decisions that do not reasonably relate to the cooperative's business.[96]

In the *Levandusky* case, a shareholder had sought to make alterations to his unit, including moving a steam riser. The shareholder's proprietary lease required him to receive the cooperative board's consent before making any alteration affecting the building's heating system. Despite the shareholder's contention that the alteration would not harm the building's plumbing, the board, after consulting with an architect, decided to deny the application. The parties eventually litigated the dispute, with the shareholder asking the Court to overturn the board's refusal.

The Court of Appeals applied the business-judgment rule.[97] The Court found that the board acted within the procedures set forth in the proprietary lease in examining the shareholder's alteration plans. The shareholder was unable to show that the board did not rely on its architect's advice or that any board member harbored animosity against him. Even if the shareholder had shown that the building's heating system would not be harmed and that the board's decision was unreasonable, the Court would not intervene.[98]

The *Levandusky* Court stressed that the business-judgment rule's application to cooperatives might differ from its application to more conventional corporations. The Court anticipated this difference because the rule's development in the conventional corporate context responded to "self-dealing and financial self-aggrandizement," which, in its view, would not be a major problem among directors of not-for-profit cooperatives.[99]

One motive to apply the business-judgment rule to cooperative board actions is to protect honestly made decisions from lengthy litigation. New York courts have helped effectuate that purpose by not hesitating to grant summary-judgment motions to resolve these disputes quickly. In *Sherry Associates v. Sherry-Netherland*, a group of minority shareholders sued their cooperative corporation, a dual-purpose residence and hotel, alleging that it discriminated against shareholders who owned hotel units.[100] The Appellate Division held that the governing documents entrusted the management of the hotel units to the board and that the plaintiffs did not overcome the presumption that the board acted in good faith and in the exercise of honest judgment.[101] The plaintiffs alleged that the hotel units could have been more profitable. That allegation did not defeat the business-judgment rule.[102]

Courts have also been quick to grant summary judgment in cases challenging the promulgation of rules clearly within the board's authority. In *Jacobs v. 200 East 36th Owner's Corp.*, a resident challenged the "promulgation of a rule prohibiting deliveries of food by placing the food packages on the floor of the elevator and sending the elevator to shareholders' floors and requiring residents to pick up food deliveries in the lobby."[103] Finding the record devoid of proof that the action did not further safety and cleanliness, the court granted the managing agent's summary-judgment motion.[104] Similarly, a cooperative's summary motion was granted when the plaintiff, challenging the adoption of a rule by the cooperative board expanding the hours of usage of the common roof garden adjacent to a penthouse apartment, could not "establish that the board was not acting for the purposes of the cooperative, within the scope of its authority and in good faith."[105]

Courts have also granted summary judgment to challenges against enforcing cooperative rules. In *W.O.R.C. Realty Corp. v. Carr*, the defendants' membership in a club in which shareholders used summer cottages was terminated due to rule violations. Because they were unable to show that the board "deliberately singled them out for harmful treatment or selectively enforced West Oak's bylaws and regulations," the business-judgment rule applied, and summary judgment was awarded.[106]

The business-judgment rule might help shield cooperative boards from some litigation, but it will not shield actions taken in conflict with a contract, such as a proprietary lease or the by-laws. In *Whalen v. 50 Sutton Place South Owners, Inc.*, after concluding an alteration agreement with a resident, the board revoked its consent to the renovations.[107] In refusing to apply the business-judgment rule, the court wrote that "while it may be good business judgment to walk away from a contract, this is no defense to a breach of contract claim."[108]

Similarly, the business-judgment rule will not protect a board that violates a proprietary lease's express provision.[109] The business-judgment rule is inapplicable if a board acts without express authority in a proprietary lease, for instance in imposing a sublet surcharge. In one case, the board acted outside its authority and instead should have followed "the proper procedures to effectuate an amendment of the Proprietary Lease authorizing such a sublet surcharge."[110]

The business-judgment rule will not insulate actions taken contrary to public policy or law. Unreasonable restraints on alienation, such as a requirement that shareholders end litigation against the board[111] or to sell their shares above a minimum set price to gain the board's consent to transfer their shares,[112] violate public policy and render the business-judgment rule inapplicable.

Most issues involving cooperatives and the business-judgment rule arise in Supreme Court, not Housing Court. We discuss the concept here because the business-judgment rule applies in Housing Court in holdover proceedings when a shareholder's lease is terminated for objectionable conduct.

B. Objectionable Conduct

Most proprietary leases allow a cooperative board to terminate a proprietary lease for objectionable conduct. Although RPAPL § 711 requires a landlord to prove with competent evidence that the occupant's conduct was objectionable, courts apply the business-judgment rule when cooperative shareholders challenge lease terminations. As long as the shareholder is unable to show the board acted outside its authority, in bad faith, or without honest judgment, a board's determination that an occupant's conduct was objectionable will stand.[113]

The seminal *Pullman* case arose when one shareholder circulated flyers throughout the building accusing one long-time resident of being a "psychopath," alleging that his wife had intimate relations with the board president and had cut his telephone wire.[114] The problem shareholder performed renovations in his apartment without the board's consent and on weekends. In accordance with the proprietary lease, the cooperative board convened, with proper notice, a special meeting, where more than the necessary two-thirds of the shareholders voted to terminate the shareholder's lease due to his objectionable conduct.

The Court of Appeals in *Pullman* applied the business-judgment rule to the shareholder's challenge and held that the shareholders terminated his proprietary lease in accordance with the procedures set forth in the cooperative's governing documents. Although the Court found RPAPL § 711's requirement for "competent evidence" relevant, it deferred to the shareholder vote and "stated findings as competent evidence that the tenant is indeed objectionable under the statute."[115] Under *Pullman*, to challenge a lease termination for objectionable conduct successfully, the shareholder

must show that the board's decision does not deserve the business-judgment rule's protections.[116]

In *13315 Owners Corp. v. Kennedy*, a cooperative board, rather than the shareholders, sought to terminate a lease on objectionable conduct grounds.[117] Without deciding whether the *Pullman* framework was appropriate for a board decision, the court found on the facts that the board would not have been entitled to deference.[118] The board had acted outside its authority; it had not been properly elected. The board also acted in bad faith when it silenced the shareholder's attorney at the meeting held to determine whether the shareholder had acted objectionably.[119] The court did not apply the business-judgment rule. It denied the cooperative's summary-judgment motion and adjourned the case for trial to determine whether the board could prove by competent evidence that the shareholder's conduct was objectionable.[120] The preceding immediately settled after that ruling.

That same court decided in *London Terrace Towers, Inc. v. Davis* what it declined to decide in *Kennedy*: that a board decision to terminate a lease due to objectionable conduct deserves *Pullman* deference. Finding the Court of Appeals' dicta in *Pullman* persuasive, the court granted the board summary judgment after it applied the business-judgment rule to a board decision made within its scope of authority, in good faith, and after offering the shareholder notice and an opportunity to be heard, the twin pillars of due process.[121]

In determining whether the board has acted within its authority, courts look to the cooperative's governing documents. The court in *Carnegie Hill 87th Street Corp. v. Heller* refused to vacate a default judgment against a tenant unable to present a meritorious defense.[122] Although the tenant had not been allowed an opportunity to defend herself in a special meeting of the board, the cooperative's governing documents did not require such a meeting, the court found.[123]

The Appellate Division, First Department, recently applied the business-judgment rule and affirmed a Supreme Court decision to terminate a proprietary lease for objectionable conduct.[124] In *1050 Tenants Corp. v. Lapidus*, the shareholder had violated a stipulation entered into with the cooperative and installed an air-conditioning system that malfunctioned and damaged a neighboring apartment. The shareholder then refused to remove the system.[125] The board of directors notified the shareholder of a special meeting to consider a resolution to terminate his lease. The shareholder's attorney appeared on his behalf. The board of directors voted unanimously in favor of terminating the lease. Shareholders later overwhelmingly ratified the decision.[126] The court applied the business-judgment rule and upheld the Supreme Court's final judgment of possession.[127]

Whether a board or shareholder determination is entitled to business-judgment deference is relevant only if the board seeks a possessory judgment under business-judgment deference. If a cooperative seeks to evict for objectionable conduct or some other lease or statutory violation and goes to trial with proof of that conduct or violation, a shareholder may not defend on the ground that the cooperative acted in bad faith or outside its authority, or without giving the shareholder notice and an opportunity to be heard before the proceeding began. The only issue in a non-*Pullman* holdover proceeding brought by a cooperative corporation against a shareholder is whether the board can prove the conduct or violation with competent evidence and what defenses the shareholder can bring to bear.

VIII. The Pet Law

Under New York City Administrative Code § 27-2009.1, known as the Pet Law, if a tenant harbors a pet openly and notoriously for three months, and the owner or its agent knows of it and does not commence a summary proceeding against the tenant, the owner waives its right to enforce a no-pet lease provision. The Pet Law imputes to the owner the knowledge of employees, such as a superintendent, doorman, or guard. If a building employee knows for three months that the resident had a pet, the cooperative may not force the tenant to move or to get rid of the pet. The Pet Law's purpose is to force owners to enforce promptly a no-pets-allowed rule or to waive the rule.[128]

Many cooperatives and condominiums prohibit residents from harboring pets in the unit.[129] The Pet Law applies to cooperatives seeking to terminate a tenant's proprietary lease for violating a no-pet clause.[130] The Second Department applies the Pet Law defense to condominiums,[131] while the First Department does not.[132]

IX. The Martin Act

The Martin Act governs the offering for sale of condominium and cooperative units.[133] Sponsors of conversions are required to submit to the state Attorney General an "offering plan" that provides information about the contemplated offering, including "detailed terms of the transaction; a description of the property, the nature of the interest, and how title thereto is to be held; the gross and net income for a reasonable period preceding the offering where applicable and available; the current gross and net income where applicable and available."[134] The Act authorizes the Attorney General to promulgate disclosure through regulation.[135]

The offering plan is submitted to the Attorney General, but the Attorney General does not necessarily review and approve plans. Rather, the Attorney General accepts the plans for filing and reviews the plans to ensure that the required disclosures

are provided. Generally, if an offering plan is deficient, the sponsors are merely required to disclose that a deficiency exists rather than to correct that deficiency.[136] The Martin Act does not provide a private cause of actions for parties injured by deficient offering plans, although a common-law fraud action might lie.[137]

A. Conversion to Condominium or Cooperative Ownership Under the Martin Act

The Martin Act provides additional requirements to convert a rental building to condominium or cooperative ownership.[138] The purpose of those requirements is to provide for an orderly conversion of those buildings while seeking to preserve affordable housing and ameliorate the disruption of conversion on the lives and welfare of affected tenants.[139]

1. Non-Eviction Plan or Eviction Plan

If a sponsor seeks to convert a building from rental units to condominium or cooperative ownership, the offering plan must include whether the conversion is being done pursuant to an "eviction plan" or a "non-eviction" plan.[140]

A non-eviction offering plan will not be deemed effective until "written purchase agreements have been executed and delivered for at least fifteen percent of all dwelling units in the building"[141] by "bona fide tenants in occupancy or bona fide purchasers who represent that they intend that they or one or more members of their immediate family intend to occupy the unit when it becomes vacant."[142] Tenants in occupancy when the Attorney General accepts the offering plan are entitled to a good-faith, non-discriminatory offer to purchase their unit.[143]

A non-eviction plan is so-called because sponsors may not commence eviction proceedings "against non-purchasing tenants for failure to purchase or any other reason applicable to expiration of tenancy."[144] Furthermore, "an owner of a unit or of the shares allocated thereto may not commence an action to recover possession of a dwelling unit from a non-purchasing tenant on the grounds that he seeks the dwelling unit for the use and occupancy of himself or his family."[145] However, non-purchasing tenants may be evicted "for non-payment of rent, illegal use or occupancy of the premises, refusal of reasonable access to the owner or a similar breach by the non-purchasing tenant of his obligations to the owner of the dwelling unit or the shares allocated thereto."[146]

Non-purchasing tenants subject to rent regulation before an offering plan is filed continue to enjoy regulations after filing.[147] The Martin Act protects free-market non-purchasing tenants from "unconscionable increases beyond ordinary rentals for comparable apartments during the period of their occupancy,"[148] which has been interpreted by the Appellate Division, Second Department, as prohibiting landlords from demanding above-market rents from non-purchasing tenants.[149] This protection is not a form of rent-regulation and does not prevent large rent increases consistent with market conditions.[150]

A non-eviction plan may not be amended into an eviction plan.[151]

On the other hand, an eviction plan is not effective until 51 percent of the development's units are purchased by a "bona fide tenant" under a good-faith, non-discriminating offer.[152]

As suggested by its name, eviction plans offer few protections against eviction to non-purchasing tenants. The Martin Act prohibits eviction proceedings against eviction plan non-purchasing tenants until the later of the expiration of the tenant's lease agreement or a three-year period after the offering plan becomes effective.[153] Non-purchasing tenants who are senior citizens or disabled are not subject to eviction, except for "non-payment of rent, illegal use or occupancy of the premises, refusal of reasonable access to the owner, or a similar breach by the tenant of his obligations."[154] Senior citizens and disabled tenants are protected from unconscionable rent increases.[155]

As in non-eviction plans, non-purchasing tenants under an eviction plan who were previously subject to rent regulation remain subject to them.[156]

2. Tenants in Occupancy

Because tenants in occupancy are afforded an insider's purchase option and protections against eviction, it is crucial to determine who falls within that group. Much litigation has revolved around the question, and numerous cases have sought to answer it.

In *De Kovessey v. Coronet Properties Co.*, the Court of Appeals addressed who qualifies as a tenant in occupancy.[157] In that case,[158] the sponsor of a cooperative conversion plan offered tenants an insider price. Before accepting, one tenant died, and the estate sought to exercise the right. The court held that to uphold the estate's right to exercise an option would violate the purposes of the Martin Act, which protects tenants against dislocation while allowing owners to develop their property. The Court saw no reason to encumber further an owner's rights to give an estate a valuable purchase option, while not protecting an actual tenant from eviction.[159]

In *Manolovici v. 136 East 64th Street Associates*,[160] the Court of Appeals interpreted the phrase "tenant in occupancy." In that case, Mr. and Mrs. Manolovici were undergoing marital problems, and Mr. Manolovici voluntarily vacated the apartment, in which his wife remained with their children. During this arrangement, the Attorney General accepted an offering plan for conversion for filing. The offering plan provided a favorable "insider's price" for the tenant in occupancy of the Manolovici's apartment. Mrs. Manolovici sued for declaratory relief to be named the sole tenant in occupancy.[161]

The Court of Appeals denied that relief, holding that Mr. Manolovici was entitled to share the purchase option. The Court found that the "critical date" to determine who is the "tenant in occupancy" is the date the offering plan was accepted for filing.[162] The Court determined that although he was not actually living in the apartment, Mr. Manolovici maintained a "sufficient nexus with the apartment as of the critical date," qualifying him to a share in the purchase option.[163]

In *322 West 57th Owner v. Penhurst*, the Housing Court applied the "sufficient nexus" test to determine whether tenants were entitled to statutory protections against eviction.[164] In that case, a number of tenants' leases expired after the owner's offering plan for conversion to condominium ownership was submitted to the Attorney General but had not yet been accepted for filing. When the owner began summary holdover proceedings against the tenants, the tenants claimed protections as non-purchasing tenants under a presently accepted offering plan.[165]

The *Penhurst* Court held that, despite the expiration of their leases, the tenants were entitled to protection under the Martin Act as non-purchasing tenants. The tenants were occupying the units and so had a "sufficient nexus" to the apartments.[166] Because the owner had not yet been granted a judgment of possession, the landlord-tenant relationship had not been extinguished.[167] Even though the respondents were "holdover tenants," they were afforded the status of non-purchasing tenants, and the proceedings were dismissed.[168] The *Penhurst* case is currently on appeal before the Appellate Term. A decision is anticipated shortly.

Some courts have further extended the Martin Act's protections to tenants who come in possession after the "critical date" of the offering plan's filing. In *Paikoff v. Harris*,[169] a landlord commenced a holdover proceeding to evict tenants after the expiration of their 1992 lease. The parties disputed whether the tenants were entitled to "non-purchasing tenant" status and, thus, to protections against eviction. The landlord, while conceding that those tenants had not purchased shares of the cooperative, argued that they were not entitled to "non-purchasing tenant" status because they took possession after the 1987 conversion of the building and so could not be tenants in occupancy.[170]

The Appellate Term, Second Department, found in *Paikoff* that the tenants were entitled to the Martin Act's protections. According to the court, that statute protects tenants from dislocation as building owners' economic incentives change. When operating a rental building, an owner has an incentive to retain an unobjectionable market-rate paying tenant. Sometimes the unit is worth more as a condominium or cooperative, and the owner is then incentivized to evict the tenant and sell the unit. The Martin Act protects the tenant from this economic change and, thus, according to the court, there can "be no valid distinction between tenants in possession at the time of the conversion and those who rent from sponsors after the conversion."[171]

Courts have extended the Martin Act's non-eviction protections to family members of deceased rent-stabilized tenants. In *Langdale Owners Corp. v. Lane*,[172] due to the statute's purpose of protecting families from dislocation and to similar interpretations of prior conversion statutes not addressed legislatively in the Martin Act, the Appellate Term, Second Department, held that a family member of a deceased tenant was entitled to a rent-stabilized lease renewal.

X. Recovery of Unit and Shares

Should a cooperative board successfully pursue a summary proceeding in Housing Court and evict a tenant for its default in paying of maintenance, or after the expiration or termination of a lease, the cooperative does not automatically regain possession of the shares. That relief is unavailable in Housing Court, which awards possession of the premises, rent, and use and occupancy but has no jurisdiction to allocate shares.

Cooperatives and condominiums have a number of mechanisms that might afford relief.

First, the proprietary lease might require the proprietary lessee to sell its shares to the cooperative upon termination of the lease.[173]

Second, the share certificates might provide that the cooperative may obtain a lien over the shares should the tenant fail to pay maintenance.[174] The cooperative does not automatically obtain a lien. [175] New York law does not recognize a "landlord's lien." Rather, a lien must be created under an agreement between the parties.[176] If properly created, and if the cooperative complies with U.C.C. Article 9, the shares may be foreclosed upon in a nonjudicial sale.[177]

Many shares are also pledged as security for a loan taken to purchase the shares. Often, a cooperative seeking maintenance and a bank seeking mortgage payments both seek to enforce their respective liens. In *ALH Properties Ten, Inc. v. 306-100th Street Owners Corp.*,[178] a cooperative issued shares stating "Corporation, by the terms of said By-laws and the proprietary lease, has a first lien on the shares represented by the certificate for all sums due and to become due under said proprietary lease."[179] The Court of Appeals held that even if the cooperative's "first lien" were valid, it applied only to the maintenance due under the lease.[180] The Court gave priority to the mortgagor's lien for the non-maintenance obligations.[181]

Similarly, in *Bankers Trust Co. v. Board of Managers of Park 900 Condominium*,[182] a condominium asserted that it had a "first lien" on unpaid common charges. The First Department held that the bank's mortgage held priority over the asserted lien on the common charges.[183]

Third, upon receiving a money judgment for nonpayment of maintenance, a cooperative may obtain a judicial lien under CPLR 5234. The judgment may be satisfied upon foreclosing the former tenant's shares.[184]

XI. Miscellaneous Topics

A. Succession Rights in Cooperatives

Upon the death of a proprietary lessee, disputes often arise about who may properly take possession of the apartment. Possession of the decedent's shares does not necessarily create an entitlement to occupy the apartment.[185] One must examine the proprietary lease and by-laws to determine succession rights.

In *Chapman v. 2 King Street Apartments Corp.*,[186] the proprietary lease provided that the cooperative board could not unreasonably withhold its consent to an assignment of the lease and shares to a "financially responsible" family member of the decedent.[187] The Court reviewed the board's decision to refuse the decedent's daughter's application on the ground that she was not financially responsible and found that the board acted reasonably.[188] In *Joint Queensview Housing Enterprise, Inc. v. Balogh*, the cooperative's by-laws provided that an inheritor of shares was required to receive permission from the board before occupying the apartment.[189] After inheriting shares and taking possession of the apartment, the defendant applied to the board for permission to do so.[190] After the board refused permission and the defendant refused to vacate the apartment, the board sued. The Court applied the business-judgment rule and refused to order the board to accept the defendant's application.[191]

B. Statute of Limitations Considerations

Claims involving cooperatives are subject to a range of different statutes of limitations, depending on the claim's nature. When the action is brought on the corporation's behalf against present or former directors, officers, or shareholders, or if the action is brought for equitable relief, a six-year statute of limitations applies.[192] If the action is brought for money damages, a three-year statute of limitations is applicable.[193] If the action seeks to challenge a board determination in an Article 78, the statute of limitations is a mere four months.[194] A rent claim or counterclaim for abatement is subject to a six-year contracts statute of limitations, although the doctrine of laches can affect the possessory portion of a judgment against a shareholder.

C. Attorney Fees

Although most proprietary leases require a shareholder to pay the cooperative's attorneys' fees in the event of a dispute, courts enforce those provisions only when the cooperative is the prevailing party.[195] A further consequence of the Real Property Law's application to cooperatives is that attorney-fee provisions in proprietary leases are made reciprocal. Shareholders may collect attorney fees if they are the prevailing party.[196] Shareholders are also protected in many leases by language requiring the shareholder to be in "default" of the lease for the cooperative to recover for attorneys' fees.[197]

D. Possessory Judgments

In the rent-regulated context, the general rule is that a possessory judgment may not include additional charges above the legal regulated rent, such as attorney fees or other costs.[198] In cooperatives, a possessory judgment may include attorney fees and other costs, if they are defined as added or additional rent in the proprietary lease. A cooperative may not secure a possessory judgment, or even bring a summary proceeding, to replenish a security deposit or an escrow account.[199]

XII. Conclusion

The New York City Housing Court's Coop and Condo Part handles a broad array of possessory and money disputes involving cooperatives and condominiums. Cooperatives and condominiums are unique forms of property ownership; disputes over cooperatives and condominiums involve unique and heavily litigated legal issues, distinct from those arising in more conventional ownership and leasing arrangements. This article has described issues that arise often in the Coop and Condo Part.

Endnotes

1. N.Y. Bus. Corp. Law §§ 401-409.
2. N.Y. Not-for-Profit Corp. Law §§ 401-406.
3. N.Y. Coop. Corp. Law §§ 10-19.
4. Vincent DiLorenzo, New York Condominium and Cooperative Law § 3:9 (2d ed. 2007).
5. *Id.* at § 3:10; N.Y. Bus. Corp. Law § 402(c).
6. DiLorenzo, *supra* note 4, at § 3:10.
7. *Id.*
8. Eva Talel & Dale Degenshein, 2006-2007 Legal Update for Court Attorneys: Cooperatives and Condominiums—Significant Decisions and Legal Principles 1 (unpublished CLE manuscript for N.Y.S. Judicial Inst.).
9. N.Y. Bus. Corp. Law § 626; Talel & Degenshein, *supra* note 8, at 1.
10. DiLorenzo, *supra* note 4, at § 1:2.
11. *Id.*
12. Daniel Finkelstein & Lucas A. Ferrara, Landlord and Tenant Practice in New York (2008).
13. DiLorenzo, *supra* note 4, at § 1:2.
14. Carlyn Millar Ross, Condominiums and Cooperative Apartments § 148 (2d ed. 2007).
15. DiLorenzo, *supra* note 4, at § 3:13.
16. *Id.* at § 1:2.
17. *Id.* at § 3:13.
18. Talel & Degenshein, *supra* note 8, at 2.
19. N.Y. Priv. Hous. Fin. Law § 573.
20. *Id.* § 573(3)(a).
21. *Id.* § 573(3)(b).
22. *Id.* § 573(3)(c).
23. *See E. 11th St. HDFC v. Grimmet*, 181 A.D.2d 488, 489, 581 N.Y.S.2d 24, 25 (1st Dep't 1992) (mem.); *50 W. 11th St. HDFC v. Ali*, 13 Misc. 3d 1237(A), 831 N.Y.S.2d 353, 2006 WL 3342679, N.Y. Slip Op. 52150(U) (Hous. Part Civ. Ct. N.Y. County 2006).

24. RENT STABILIZATION LAW (N.Y.C. ADMIN. CODE) § 26-504(a); *546 W. 156th St. HDFC v. Smalls*, 43 A.D.3d 7, 11, 839 N.Y.S.2d 62, 66 (1st Dep't 2007).

25. N.Y. COMP. CODES. R. & REGS. tit. 9, § 2520.11(j).

26. 43 A.D.3d at 9, 839 N.Y.S.2d at 64.

27. *Id.* at 8-10, 839 N.Y.S.2d at 64-66.

28. *Id.* at 12, 839 N.Y.S.2d at 66.

29. *Grimmet*, 181 A.D.2d at 489; *Ali*, 13 Misc. 3d 1237(A), 831 N.Y.S.2d 353, 2006 WL 3342679.

30. *Grimmet*, 181 A.D.2d at 489, 581 N.Y.S.2d at 25.

31. *Id.*, 581 N.Y.S.2d at 26.

32. *W. 149th St. HDFC v. Rodriguez*, 5 Misc. 3d 1020(A), 799 N.Y.S.2d 165, 2004 WL 2752468, at *2 2004 N.Y. Slip Op. 51471(U), *2 (Hous. Part Civ. Ct., N.Y. County Sept. 29, 2004) (Gerald Lebovits, J.); *757 E. 169th St. HDFC v. Haney*, 171 Misc. 2d 965, 966, 656 N.Y.S.2d 92, 93 (Hous. Part Civ. Ct., N.Y. County 1996).

33. *Grimmet*, 181 A.D.2d at 489, 581 N.Y.S.2d at 24.

34. *Id.* at 489, 581 N.Y.S.2d at 26.

35. *Id.* at 489, 581 N.Y.S.2d at 25; *Marcus Garvey Park Homes Hous. Dev. Fund Corp. v. Franco*, 12 Misc. 3d 840, 815 N.Y.S.2d 807 (Hous. Part Civ. Ct., N.Y. County 2006).

36. *167-169 Allen St. HDFC v. Ebanks*, 22 A.D.3d 374, 375, 802 N.Y.S.2d 650, 651 (1st Dep't 2005) (mem.).

37. *Id.* at 375, 802 N.Y.S.2d at 652.

38. *See Davis v. Starr*, 88 Misc. 2d 210, 213, 387 N.Y.S.2d 351, 354 (Sup. Ct., N.Y. County 1975) (noting that N.Y.C. Administrative Code requires only a "public hearing" for rent increases).

39. *Wong v. Gouverneur Gardens Hous. Corp.*, 308 A.D.2d 301, 304, 764 N.Y.S.2d 53, 57 (1st Dep't 2003) (mem.) (holding that HPD has primary jurisdiction over eviction of Mitchell-Lama tenant); *Gouverneur Gardens Hous. Corp. v. Lee*, 2 Misc. 3d 525, 527, 769 N.Y.S.2d 829, 831 (Hous. Part Civ. Ct., N.Y. County 2003) (Gerald Lebovits, J.) (HPD issued certificate of eviction); ANDREW SCHERER, RESIDENTIAL LANDLORD-TENANT LAW IN NEW YORK § 6:12, at 366 (2007-2008 ed.).

40. *Bedford Gardens Co., LP v. Jacobowitz*, 29 A.D.3d 501, 502, 815 N.Y.S.2d 149, 151 (2d Dep't 2006) (mem.).

41. *Lindsay Park Hous. Corp. v. Grant*, 190 Misc. 2d 777, 777, 740 N.Y.S.2d 552, 552 (App Term 2d Dep't 2d & 11th Jud. Dists. 2001) (mem.); *Yorkville Towers Assocs. v. Mourino*, N.Y.L.J., June 9, 1997, at 29, col. 3 (App Term 1st Dep't) (*per curiam*).

42. 2 N.Y.3d 472, 475, 812 N.E.2d 298, 299, 779 N.Y.S.2d 808, 809 (2004).

43. 4 Misc. 3d 804, 809, 781 N.Y.S.2d 207, 210 (Hous. Part Civ. Ct., N.Y. County 2004) (Gerald Lebovits, J.).

44. *See generally* RICHARD SIEGLER, *The Feasibility of Co-Op to Condo Conversion*, N.Y.L.J., Mar. 5, 1997, at 3, col. 1; RICHARD SIEGLER, *Techniques for the 80/20 Test of IRC § 216—Part I*, N.Y.L.J., May 5, 1999, at 3, col. 1 [hereinafter "Techniques for the 80/20 Test"]; STUART SAFT, *Commercial Real Estate Forms* 27:8 (3d 2007); *Xamaka, Inc. v. 166 E. 61st St. Assocs.*, N.Y.L.J., Nov. 17, 1999, at 26, col. 3 (Sup. Ct. N.Y. County).

45. *See* 26 U.S.C. § 216; TALEL & DEGENSHEIN, *supra* note 8, at 1; *see* RICHARD SIEGLER & EVA TALEL, *Dealing with the 80/20 Test*, N.Y.L.J., July 5, 2006, at 3, col. 1.

46. *See generally* RICHARD SIEGLER, *Cooperatives and Condominiums: Dealing with the 80/20 Test*, N.Y.L.J., July 5, 2006, at 3, col. 1; SIEGLER, *Techniques for the 80/20 Test*, *supra* note 44.

47. PUB. L. 110-142, § 4(a), 121 STAT. 1804.

48. DILORENZO, *supra* note 4, at § 3:1.

49. *Id.*; TALEL & DEGENSHEIN, *supra* note 8, at 29.

50. N.Y. BUS. CORP. LAW § 401 *et seq.*; N.Y. NOT-FOR-PROFIT CORP. L. § 401 *et seq.*; DILORENZO, *supra* note 4, at § 3:2.

51. DILORENZO, *supra* note 4, at § 3:2; TALEL & DEGENSHEIN, *supra* note 8, at 28.

52. DILORENZO, *supra* note 4, § 3:2.

53. *Id.*; *see also, e.g.*, *Bd. of Managers v. Fairway at N. Hills*, 193 A.D.2d 322, 324, 603 N.Y.S.2d 867, 869 (2d Dep't 1993) (noting that although the Condominium Act is silent, fiduciary duty akin to that imposed in B.C.L. § 717 is imposed on the initial board of managers); *Schoninger v. Yardarm Beach Homeowners' Assoc.*, 134 A.D.2d 1, 2, 523 N.Y.S.2d 523, 524 (2d Dep't 1987) (business judgment rule applies to actions of board of unincorporated condominium); TALEL & DEGENSHEIN, *supra* note 8, at 28.

54. *Caprer v. Nussbaum*, 36 A.D.3d 176, 187, 825 N.Y.S.2d 55, 64 (2d Dep't 2006); TALEL & DEGENSHEIN, *supra* note 8, at 28.

55. DILORENZO, *supra* note 4, at § 3:3.

56. *Id.* at § 3:3; N.Y. REAL PROP. § 339-n.

57. *Id.* at § 3:4; N.Y. REAL PROP. § 339-p.

58. DILORENZO, *supra* note 4, at § 3:5.

59. *Id.* at § 3:7.

60. SCHERER, *supra* note 39, at 388, § 6:75.

61. TALEL & DEGENSHEIN, *supra* note 8, at 29.

62. N.Y. REAL PROP. § 339-r (when first conveyed); N.Y. REAL PROP. § 339-1 (subsequent liens); DILORENZO, *supra* note 4, at § 1:2.

63. 263 A.D.2d 33, 35, 700 N.Y.S.2d 118, 120 (1st Dep't 1999).

64. 2 Misc. 3d 525, 526, 769 N.Y.S.2d 829, 830 (Hous. Part Civ. Ct., N.Y. County 2003) (Gerald Lebovits, J.).

65. *See* ROSS, *supra* note 14, at § 149.

66. DILORENZO, *supra* note 4, at § 11:9; FINKELSTEIN & FERRARA, *supra* note 12, § 2:133, at 2-49.

67. Report of the Civil Court of the City of New York, Jan. 1, 1997–Dec. 31, 2006, *A Decade of Change and Challenge in "The People's Court"* 1997-2006, at 9.

68. JAY ROMANO, *Your Home; Co-op Cases Are Getting Own Court*, N.Y. TIMES, Oct. 26, 1997, at S. 11, at 3.

69. *Id.*

70. N.Y. REAL PROP. § 235(b).

71. *Suarez v. Rivercross Tenants Corp.*, 107 Misc. 2d 135, 137, 438 N.Y.S.2d 164, 166 (1st Dep't 1981) (*per curiam*).

72. *Id.* at 139, 438 N.Y.S.2d at 167.

73. *Id.*, 438 N.Y.S.2d at 167.

74. *Id.* at 138, 438 N.Y.S.2d at 166.

75. *Poyck v. Bryant*, 13 Misc. 3d 699, 701, 820 N.Y.S.2d 774, 766 (Civ. Ct., N.Y. County 2006).

76. *Kaniklidis v. 235 Lincoln Place Hous. Corp.*, 305 A.D.2d 546, 547, 759 N.Y.S.2d 389, 389 (2d Dep't 2003).

77. *315-321 Eastern Parkway Dev. Fund Corp. v. Wint-Howell*, 9 Misc. 3d 644, 648, 802 N.Y.S.2d 892, 895 (Hous. Part Civ. Ct., Kings County 2005).

78. *Id.* at 648, 802 N.Y.S.2d at 896.

79. *Frisch v. Bellmarc Mgmt.*, 190 A.D.2d 383, 385, 597 N.Y.S.2d 962, 963 (1st Dep't 1993); *Linden v. Lloyd's Planning Service*, 299 A.D.2d 217, 218, 750 N.Y.S.2d 20, 21 (1st Dep't 2002) (mem.), *lv. denied*, 99 N.Y.2d 509, 790 N.E.2d 274, 760 N.Y.S.2d 100 (2003).

80. *Bd. of Managers of First Ave. Condo. v. Shandel*, 143 Misc. 2d 1084, 1087, 542 N.Y.S.2d 466, 468 (Hous. Part Civ. Ct., N.Y. County 1989).

81. *Sneddon v. Greene*, 17 Misc. 3d 1, 4, 844 N.Y.S.2d 575, 577 (App. Term 2d Dep't 9th & 10th Jud. Dists. 2007) (mem.).

82. *McCarthy v. Bd of Managers of Bromley Condo.*, 271 A.D.2d 247, 247, 706 N.Y.S.2d 104, 105 (1st Dep't 2000) (mem).

83. *See Mark C. Rutzick & Richard L. Huffman*, *The New York City Housing Court: Trial and Error in Housing Code Enforcement*, 50 N.Y.U. L. Rev. 738, 749-58 (1975).

84. Civ. Ct. Act § 110(a)(7) (giving Housing Court jurisdiction to order violations corrected); HMC (Admin. Code) §§ 27-2115(i), (j).

85. *Kahn v. 230-79 Equity Inc.*, 32 H.C.R. 233A, 2 Misc. 3d 140(A), 784 N.Y.S.2d 921, 2004 N.Y. Slip Op. 50302(U), *2, 2004 WL 869746, at *2, 2004 N.Y. Misc. LEXIS 409,

at *1 (App. Term 1st Dep't Apr. 8, 2004) (*per curiam*) (cooperative corporations); *McMunn v. Steppingstone Mgt. Corp.*, 131 Misc. 2d 340, 343, 500 N.Y.S.2d 219, 221 (Hous. Part Civ. Ct., N.Y. County 1986) (same).

86. *Kahn*, 2004 WL 869746, at *2; *McMunn*, 131 Misc. 2d at 343, 500 N.Y.S.2d at 221.

87. *Pershad v. Parkchester S. Condo.*, 174 Misc. 2d 92, 94-95, 662 N.Y.S.2d 993, 995-96 (Hous. Part Civ. Ct., Bronx County 1997) (incorrectly noted in Official Reports as New York County) (holding condominium association responsible for repairing code violations extending beyond individual unit), *aff'd per curiam*, 178 Misc. 2d 788, 683 N.Y.S.2d 708 (App. Term 1st Dep't 1998*); Smith v. Parkchester N. Condo.*, 163 Misc. 2d 66, 69, 619 N.Y.S.2d 523, 525 (Hous. Part Civ. Ct., Bronx County 1994) (finding HP proceeding available when violation stems from defective conditions in common area in condominium association's exclusive control); *Gazdo Props. Corp. v. Lava*, 149 Misc. 2d 828, 831-33, 565 N.Y.S.2d 964, 966-67 (Hous. Part Civ. Ct., Kings County 1991) (holding condominium managing board or agent responsible for common areas), *appeal dismissed mem.*, 150 Misc. 2d 1019, 579 N.Y.S.2d 305 (App. Term 2d Dep't 2d & 11th Jud. Dists. 1991).

88. *Frisch v. Bellmarc Mgt., Inc.*, 190 A.D.2d 383, 389, 597 N.Y.S.2d 962, 966 (1st Dep't 1993) (finding warranty of habitability inapplicable to condominiums).

89. Civ. Ct. Act § 1911(b).

90. *Levandusky v. One Fifth Ave. Apt. Corp.*, 75 N.Y.2d 530 537, 553 N.E.2d 1317, 1321, 554 N.Y.S.2d 807, 811 (1990) (quoting *Auerbach v. Bennett*, 47 N.Y.2d 619, 629, 926, 393 N.E.2d 994, 1000, 419 N.Y.S.2d 920 (1979)).

91. B.C.L. § 717.

92. *Levandusky*, 75 N.Y.2d at 538, 553 N.E.2d at 1322, 554 N.Y.S.2d at 812.

93. *Id.* at 537, 553 N.E.2d at 1321, 554 N.Y.S.2d at 811.

94. *Id.* at 538, 553 N.E.2d at 1321, 554 N.Y.S.2d at 811.

95. *Id.* at 539, 553 N.E.2d at 1322, 554 N.Y.S.2d at 812.

96. *Id.* at 540, 553 N.E.2d at 1323, 554 N.Y.S.2d at 813.

97. *Id.* at 535, 553 N.E.2d at 1320, 554 N.Y.S.2d at 810.

98. *Id.* at 540, 553 N.E.2d at 1322, 554 N.Y.S.2d at 813.

99. *Id.* at 538, 553 N.E.2d at 1321, 554 N.Y.S.2d at 811.

100. *Sherry Assocs. v. Sherry-Netherland, Inc.*, 273 A.D.2d 14, 15, 708 N.Y.S.2d 105, 106 (1st Dep't 2000) (mem.).

101. *Id.* at 14, 708 N.Y.S.2d 106.

102. *Id.* at 15, 708 N.Y.S.2d at 106.

103. *Jacobs v. 200 E. 36th Owners Corp.*, 281 A.D.2d 281, 281, 722 N.Y.S.2d 137, 137 (1st Dep't 2000) (mem.).

104. *Id.*, 722 N.Y.S.2d at 137.

105. *Rubinstein v. 242 Apt. Corp.*, 189 A.D.2d 685, 685, 592 N.Y.S.2d 378, 378 (1st Dep't 1993) (mem.).

106. *W.O.R.C. Realty Corp. v. Carr*, 262 A.D.2d 310 , 311, 691 N.Y.S.2d 104, 105 (2d Dep't 1999) (mem.).

107. *Whalen v. 50 Sutton Place S. Owners, Inc.*, 276 A.D.2d 356, 356-57, 714 N.Y.S.2d 269, 270-71 (1st Dep't 2000) (mem.).

108. *Id.* at 357, 714 N.Y.S.2d at 271.

109. *Ludwig v. 25 Plaza Tenants Corp.*, 184 A.D.2d 623, 624, 584 N.Y.S.2d 907, 908 (1st Dep't 1992) (mem.).

110. *Zimiles v. Hotel Des Artistes, Inc.*, 216 A.D.2d 45, 45, 627 N.Y.S.2d 382, 382-83 (1st Dep't 1995) (mem.).

111. *Chemical Bank v. 635 Park Ave. Corp.*, 155 Misc. 2d 433, 437, 588 N.Y.S.2d 257, 260 (Sup. Ct., N.Y. County).

112. *Oakley v. Longview Owners Inc.*, 165 Misc. 2d 192, 195, 628 N.Y.S.2d 468, 470 (Sup. Ct., Westchester County).

113. *London Terrace Towers, Inc. v. Davis*, 6 Misc. 3d 600, 602, 790 N.Y.S.2d 813, 815 (Hous. Part Civ. Ct., N.Y. County 2004) (Gerald Lebovits, J.).

114. *40 W. 67th St. Corp. v. Pullman*, 100 N.Y.2d 147, 150-52, 760 N.Y.S.2d 745, 748-50, 790 N.E.2d 1174, 1176-79 (2003).

115. *Id.* at 154-55, 760 N.Y.S.2d at 751, 790 N.E.2d at 1180.

116. *Id.* at 153, 760 N.Y.S.2d at 749, 790 N.E.2d at 1179.

117. *13315 Owners Corp. v. Kennedy*, 4 Misc. 3d 931, 932, 782 N.Y.S.2d 554, 556 (Hous. Part. Civ. Ct., N.Y. County 2004) (Gerald Lebovits, J.).

118. *Id.* at 950-51, 782 N.Y.S.2d at 570-71.

119. *Id.*, 782 N.Y.S.2d at 570-71.

120. *Id*.

121. *London Terrace Towers*, 6 Misc. 3d at 603, 790 N.Y.S.2d at 816.

122. *Carnegie Hill 87th St. Corp. v. Heller*, 9 Misc. 3d 1106(A), 806 N.Y.S.2d 444, 2005 WL 2205724, 2005 N.Y. Slip Op. 51417(U), *2 (Sup. Ct., N.Y. County 2005).

123. 2005 N.Y. Slip Op. 51417(U), at *3.

124. *1050 Tenants Corp. v. Lapidus*, 39 A.D.3d 379, 835 N.Y.S.2d 68 (1st Dep't), *lv. denied*, 9 N.Y.3d 807, 875 N.E.2d 29, 843 N.Y.S.2d 536 (2007).

125. *Id*. at 380-82, 835 N.Y.S.2d at 70-71.

126. *Id.* at 382, 835 N.Y.S.2d at 71.

127. *Id.*, 835 N.Y.S.2d at 71-72.

128. N.Y.C. Admin. Code § 27-2009.1.

129. *See, e.g.*, *Bd. of Managers v. Lamontanero*, 206 A.D.2d 340, 341, 616 N.Y.S.2d 744, 745 (2d Dep't 1994) (mem.) (condominium by-laws prohibit pets); *Linden Hill No. 1 Co-Op Corp. v. Kleiner*, 124 Misc. 2d 1001, 1002, 478 N.Y.S.2d 519, 520 (Hous. Part Civ. Ct., Queens County 1984) (proprietary lease prohibits pets in cooperative).

130. *Seward Park Housing Corp. v. Cohen*, 287 A.D.2d 157, 162, 734 N.Y.S.2d 42, 47 (1st Dep't 2001) (applying Pet Law to publicly funded cooperatives); *Corlear Gardens Hous. Co, Inc. v. Ramos*, 126 Misc. 2d 416, 420, 481 N.Y.S.2d 577, 579 (Sup. Ct., Bronx County 1984) ("This Court finds that all tenants, including cooperative tenants, are in need of the protection of the Pet Law."); *Linden Hill No. 1 Co-Op*, 124 Misc. 2d at 1007, 478 N.Y.S.2d at 523.

131. *Lamontanero*, 206 A.D.2d at 341, 616 N.Y.S.2d at 745.

132. *Bd. of Managers of Parkchester N. Condominium v. Quiles*, 234 A.D.2d 130, 130, 651 N.Y.S.2d 36, 36 (1st Dep't 1996) (mem.).

133. G.B.L. § 352 *et seq.*; G.B.L. § 352-e 1(a) provides that "it shall be illegal and prohibited . . . to make or take part in a public offering or sale in or from the state of New York of securities constituted of participation interests in real estate . . . including cooperative interests in realty, unless and until there shall have been filed with the department of law, prior to such offering, a written statement . . . which shall contain the information and representations required by paragraph (b) of this subdivision. . . ."

134. *Id.* § 352-e(1)(b).

135. For regulations promulgated by the Attorney General, see 13 N.Y.C.R.R. Part 18.

136. Stuart Saft, *Understanding a Condominium Offering Plan*, N.Y.L.J., Nov. 29, 2004, at 1, col. 4.

137. *Vermeer Owners v. Guterman,* 78 N.Y.2d 1114, 1116, 578 N.Y.S.2d 128, 129, 585 N.E.2d 377, 378 (1991) (mem.); *CPC Int'l v. McKesson Corp.,* 70 N.Y.2d 268, 275, 519 N.Y.S.2d 804, 806, 514 N.E.2d 116, 118 (1987).

138. G.B.L. §352-eeee.

139. *322 W. 57th Owner LLC v. Penhurst Productions, Inc.*, 15 Misc. 3d 1105(A), 836 N.Y.S.2d 504, 2007 WL 824105, 2007 N.Y. Slip Op. 50515(U) , at *2 (Hous. Part Civ. Ct. N.Y. County 2007).

140. G.B.L. § 352-eeee.

141. *Id.* § 352-eeee(1)(b).

142. *Id.*

143. *Id.*

144. *Id.* § 352-eeee(2)(c)(ii).

145. *Id.*

146. *Id.*

147. *Id.* § 352-eeee(2)(c)(iii).

148. *Id.* § 352-eeee(2)(c)(iv).

149. *Paikoff v. Harris,* 185 Misc. 2d 372, 378, 713 N.Y.S.2d 109, 113 (App. Term 2d Dep't 2d & 11th Jud. Dists. 1999) (mem.) ("We do not read this provision, as do the tenants, as focusing on the size of the increase. Rather, its clear meaning is that the rent may not be increased beyond the rents being charged for comparable apartments. Contrary to what tenants may believe and the Housing Court may have indicated, the purpose of the statute was not to institute a system of rent regulation for 'non-purchasing tenants' but to prevent sponsors from charging these tenants above-market rents as a means of forcing them out.").

150. *Id.*, 713 N.Y.S.2d at 113.

151. G.B.L. § 352-eeee(2)(c)(v).

152. *Id.* § 352-eeee(2)(d)(i).

153. *Id.* § 352-eeee(2)(d)(ii).

154. *Id.* § 352-eeee(2)(d)(iii).

155. *Id.*

156. *Id.* § 352-eeee(2)(d)(ii); G.B.L. § 352-eeee (2)(d)(iii).

157. 69 N.Y.2d 448, 454, 515 N.Y.S.2d 740, 742, 508 N.E.2d 652, 654 (1987).

158. The opinion covered four similar cases, consolidated and decided together.

159. *De Kovessy v. Coronet Props.*, 69 N.Y.2d at 458, 515 N.Y.S.2d at 744, 508 N.E.2d at 656.

160. 70 N.Y.2d 785, 787, 521 N.Y.S.2d 414, 415, 515 N.E.2d 1212, 1213 (1987) (mem.).

161. *Id* at 786. 521 N.Y.S.2d at 414, 515 N.E.2d at 1212.

162. *Id.* at 787, 521 N.Y.S.2d at 415, 515 N.E.2d at 1213.

163. *Id.*, 521 N.Y.S.2d at 415, 515 N.E.2d at 1213.

164. *Penhurst Productions,* 15 Misc. 3d at 1105(A), 836 N.Y.S.2d 504, WL 824105, N.Y. Slip Op. 50515(U), *5.

165. *Id.* at *2.

166. *Id.* at *5.

167. *Id.* at *7.

168. *Id.* at *11.

169. 185 Misc. 2d 372, 374, 713 N.Y.S.2d 109, 110 (App. Term 2d Dep't, 2d & 11th Jud. Dists. 1999) (mem.).

170. *Id.* at 374-75, 713 N.Y.S.2d at 111.

171. *Id.* at 377-78. 713 N.Y.S.2d at 113.

172. 166 Misc. 2d 439, 441, 636 N.Y.S.2d 577, 578 (App. Term 2d Dep't, 2d & 11th Jud. Dists. 1995) (mem.).

173. DiLorenzo, *supra* note 4, at § 11:8.

174. *Berkowners, Inc. v. Dime Savings Bank of N.Y., FSB*, 286 A.D.2d 695, 696, 730 N.Y.S.2d 339, 341 (2d Dep't 2001).

175. *Saada v. Master Apts. Inc.*, 152 Misc. 2d 861, 863, 579 N.Y.S.2d 536, 538 (Sup. Ct., N.Y. County 1991); DiLorenzo, *supra* note 4, at § 11:9.

176. *McMillan v. Park Towers Owners Corp.*, 225 A.D.2d 742, 743-44, 640 N.Y.S.2d 144, 145 (2d Dep't 1996) (mem.); *Saada v. Master Apts. Inc.*, 152 Misc. 2d 861, 863, 579 N.Y.S.2d 536, 538 (Sup. Ct., N.Y. County 1991).

177. DiLorenzo, *supra* note 4, at § 11:6.

178. 86 N.Y.2d 643, 658 N.E.2d 1034, 635 N.Y.S.2d 161 (1995).

179. *Id.* at 648, 658 N.E.2d at 1036, 635 N.Y.S.2d at 163.

180. *Id.*, 658 N.E.2d at 1036, 635 N.Y.S.2d at 163.

181. *Id.* at 649, 658 N.E.2d at 1036, 635 N.Y.S.2d at 163.

182. 81 N.Y.2d 1033, 1034, 616 N.E.2d 848, 848, 600 N.Y.S.2d 191, 191 (1993) (mem.).

183. *Id.* at 1036, 616 N.E.2d at 850, 600 N.Y.S.2d at 193.

184. *In re State Tax Com. v. Shor*, 43 N.Y.2d 151, 400 N.Y.S.2d 805, 371 N.E.2d 523 (1977); *Cibro Petroleum Products, Inc. v Fowler Finishing Co.*, 92 Misc. 2d 450, 450-51, 400 N.Y.S.2d 322, 322-23 (Sup. Ct., Albany County 1977); DiLorenzo, *supra* note 4, at § 11:9.

185. *See Joint Queensview Hous. Enterprise, Inc. v. Balogh,* 174 A.D.2d 605, 606, 571 N.Y.S.2d 312, 314 (2d Dep't 1991); *Will of Katz*, 142 Misc. 2d 1073, 1076, 539 N.Y.S.2d 659, 662 (Sur. Ct., N.Y. County 1989).

186. 8 Misc. 3d 1026(A), 806 N.Y.S.2d 444, 2005 N.Y. Slip Op. 51294(U), 2005 WL 1961330 (Sup. Ct. N.Y. County 2005).

187. 2005 N.Y. Slip Op. 51294(U). *2.

188. 2005 N.Y. Slip Op. 51294(U), *8.

189. *Joint Queensview Hous. Enterprise*, 174 A.D.2d at 605, 571 N.Y.S.2d at 313.

190. *Id.* at 606. 571 N.Y.S.2d at 313.

191. *Id.*, 571 N.Y.S.2d at 313.

192. CPLR 213(7).

193. *Yatter v. William Morris Agency, Inc.*, 256 A.D.2d 260, 261, 682 N.Y.S.2d 198, 199 (1st Dep't 1998) (mem.).

194. CPLR 217 & 7802; *Buttitta v. Greenwich House Cooperative Apts., Inc.*, 11 A.D.3d 250, 251, 783 N.Y.S.2d 26, 27 (1st Dep't 2004) (mem.).

195. *Excelsior 57th Corp. v. Winters*, 227 A.D.2d 146, 147, 641 N.Y.S.2d 675, 676 (1st Dep't 1996) (mem.).

196. RPL § 234.

197. *Rubinstein v. 242 Apt. Corp.* 189, A.D.2d 685, 685, 592 N.Y.S.2d 378, 378 (1st Dep't 1993) (mem.).

198. *Silber v. Schwartzman*, 150 Misc. 2d 1, 2, 575 N.Y.S.2d 226, 227 (App. Term 1st Dep't 1991) (per curiam).

199. *930 Fifth Ave. Corp. v. Shearman*, 2007 N.Y. Slip Op. 52153(U), 2007 WL 3353570, at **1-4 (Hous. Part Civ. Ct. N.Y. County 2007) (Gerald Lebovits, J.).

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