S T A T E O F N E W Y O R K

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2009-2010 Regular Sessions

I N A S S E M B L Y

February 10, 2009

Introduced by M. of A. V. LOPEZ, BALL, GALEF -- Multi-Sponsored by -- M. of A. ENGLEBRIGHT -- read once and referred to the Committee on Housing

AN ACT to amend the general business law and the real property law, in relation to enactment of a residential cooperative and condominium owner's bill of rights

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. The general business law is amended by adding a new section 352-eeeee to read as follows:

S 352-EEEEE. RESIDENTIAL COOPERATIVE AND CONDOMINIUM OWNER'S BILL OF RIGHTS. THE ORGANIZATIONAL AND OPERATING DOCUMENTS OF EVERY RESIDENTIAL COOPERATIVE HOUSING CORPORATION AND EVERY RESIDENTIAL CONDOMINIUM ASSOCIATION ESTABLISHED OR OPERATING PURSUANT TO THE LAWS OF THE STATE SHALL GUARANTEE THE FOLLOWING TO EACH SHAREHOLDER OR UNIT OWNER:

1. THAT (A) ALL APPLICATIONS IN CONNECTION WITH MATTERS WHICH REQUIRE APPROVAL OF THE BOARD OF DIRECTORS OR BOARD OF MANAGERS AND (B) ALL REQUESTS FOR DETERMINATIONS BY THE BOARD OF DIRECTORS OR BOARD OF MANAGERS INCLUDING BUT NOT LIMITED TO REQUESTS FOR THE RESOLUTION OF DISPUTES BETWEEN OR AMONG SHAREHOLDERS OR UNIT OWNERS, DISPUTES BETWEEN SHAREHOLDERS AND THE COOPERATIVE CORPORATION OR BETWEEN UNIT OWNERS AND THE CONDOMINIUM ASSOCIATION SUCH AS DISPUTES CONCERNING RESPONSIBILITY FOR REPAIRS SHALL BE PROCESSED IN A REASONABLY EXPEDITIOUS MANNER ON A NON-DISCRIMINATORY BASIS PURSUANT TO UNIFORM PROCEDURES AND TIMETABLES ADOPTED IN WRITING AND ANY SUCH APPROVAL SHALL NOT BE UNREASONABLY WITHHELD. THE BOARD'S DECISION SHALL BE IN WRITING AND SHALL SET FORTH THE REASONS THEREFOR, EXCEPT THAT NO REASON SHALL BE REQUIRED WHEN APPROVAL IS GRANTED. A BOARD'S REFUSAL TO ALLOW A SHAREHOLDER OR UNIT OWNER TO SUBLET AN APARTMENT PURSUANT TO A UNIFORM POLICY WHICH IS REASONABLY DESIGNED TO PROHIBIT OR LIMIT SUBLETTING SHALL NOT BE DEEMED TO BE AN UNREASONABLE WITHHOLDING OF CONSENT PURSUANT TO THIS SUBDIVISION. THE

EXPLANATION--Matter in ITALICS (underscored) is new; matter in brackets [ ] is old law to be omitted.

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FOREGOING PROVISIONS OF THIS SUBDIVISION SHALL NOT PROHIBIT THE ENFORCEMENT OF UNIFORM REASONABLE POLICIES RELATED TO THE HEALTH, SAFETY AND WELFARE OF THE RESIDENTS AND THE SAFE AND PRUDENT OPERATION OF THE PREMISES.

2. THAT ELECTIONS FOR MEMBERS OF THE BOARD OF DIRECTORS OR THE BOARD OF MANAGERS BE HELD BY SECRET BALLOT, UNLESS WAIVED BY A UNANIMOUS VOTE OF THE SHAREHOLDERS PRESENT IN PERSON OR BY PROXY AT THE ELECTION MEETING, OR IN THE CASE OF AN UNCONTESTED ELECTION. A TALLY OF THE VOTES RECEIVED BY EACH CANDIDATE IN AN ELECTION FOR THE BOARD OF MANAGERS OR BOARD OF DIRECTORS SHALL BE POSTED WITHIN ONE DAY FOLLOWING THE AVAILABILITY OF SUCH INFORMATION IN A PROMINENT PLACE ACCESSIBLE TO ALL TENANTS IN EACH BUILDING COMPRISING THE COOPERATIVE OR CONDOMINIUM.

3. THAT THE BOARD OF DIRECTORS OR BOARD OF MANAGERS ACT IN A TIMELY FASHION TO FILL ANY VACANCIES WHICH OCCUR ON SUCH BOARDS.

4. THAT ANY MEMBER OF A BOARD OF DIRECTORS OR BOARD OF MANAGERS WHO IS ELECTED WHILE A SHAREHOLDER OR UNIT OWNER IN THE COOPERATIVE CORPORATION OR CONDOMINIUM ASSOCIATION, WHO SELLS HIS OR HER APARTMENT OR THE SHARES ALLOCATED THERETO, AND WHO, SUBSEQUENT TO SUCH SALE SHALL NO LONGER BE A SHAREHOLDER OR UNIT OWNER IN SUCH CORPORATION OR ASSOCIATION, SHALL RESIGN FROM SUCH BOARD NO LATER THAN THE CLOSING DATE OF SUCH SALE.

5. THAT COMPLETE AND ACCURATE FINANCIAL STATEMENTS AND ANY OTHER STATEMENTS ORDINARILY PROVIDED TO SHAREHOLDERS OR UNIT OWNERS BE PROVIDED IN A TIMELY FASHION PURSUANT TO ESTABLISHED TIMETABLES AT LEAST ONCE ANNUALLY. FOR THE PURPOSES OF THIS SUBDIVISION "FINANCIAL STATEMENTS" SHALL INCLUDE THE BALANCE SHEETS AND STATEMENTS OF INCOME AND EXPENSE FOR EACH OF THE THREE MOST CURRENT FISCAL YEARS. ATTACHED TO SAID FINANCIAL STATEMENTS SHALL BE A STATEMENT WHICH DISCLOSES (A) ANY KNOWN INTEREST, DIRECT OR INDIRECT, BENEFICIAL OR OTHERWISE, WHICH ANY DIRECTOR, ASSOCIATION MEMBER, OFFICER, EMPLOYEE, AGENT, SHAREHOLDER OR CONDOMINIUM OWNER OR RELATIVE OF ANY SUCH PERSON HAS IN ANY SUPPLIER OF SERVICES OR MATERIAL TO SAID COOPERATIVE OR CONDOMINIUM AND (B) ANY CONSIDERATION, FINANCIAL OR OTHERWISE, WHICH SAID DIRECTOR, ASSOCIATION MEMBER, OFFICER, EMPLOYEE, AGENT, SHAREHOLDER OR CONDOMINIUM OWNER OR RELATIVE OF ANY SUCH PERSON HAS RECEIVED OR IS RECEIVING FROM SUCH SUPPLIER.

6. THAT THE FOLLOWING DOCUMENTS BE MADE AVAILABLE FOR INSPECTION OR COPYING BY SHAREHOLDERS OR UNIT OWNERS AT REASONABLE TIMES ON NO MORE THAN TEN DAYS WRITTEN NOTICE TO THE BOARD OF DIRECTORS OR BOARD OF MANAGERS:

(A) APPROVED MINUTES OF BOARD OF DIRECTORS OR BOARD OF MANAGERS MEETINGS, PROVIDED THAT SUCH BOARDS SHALL HAVE FIFTEEN DAYS FROM THE DATES OF THE MEETINGS AT WHICH THE MINUTES ARE APPROVED TO PREPARE SUCH MINUTES;

(B) AGREEMENTS AND BILLS FOR GOODS AND SERVICES. ALL SUCH AGREEMENTS AND BILLS SHALL FULLY DESCRIBE THE GOODS PROVIDED OR SERVICES PERFORMED AND APPORTION THE TOTAL COST FOR SPECIFIC GOODS OR SERVICES;

(C) BANKING ACCOUNT AND FINANCIAL INVESTMENT STATEMENTS;

(D) VENDOR LISTS AND COMPETITIVE BIDDING SUBMISSIONS;

(E) REPORTS OF ACCOUNTANTS, CONSULTANTS AND EXPERTS RETAINED OR HIRED TO PERFORM SERVICES FOR OR ON BEHALF OF THE CORPORATION OR ASSOCIATION INCLUDING FINANCIAL STATEMENTS AS DEFINED IN SUBDIVISION FIVE OF THIS SECTION PROVIDED, HOWEVER, THAT SUCH REPORTS MAY BE WITHHELD WHERE THE REPORT CONCERNS OR MAY CONCERN LITIGATION, WHERE THE REPORT WAS PREPARED IN CONNECTION WITH THE LITIGATION AND WHERE A MAJORITY OF THE MEMBERS OF THE BOARD HAVE VOTED TO WITHHOLD SUCH INFORMATION. WHERE THE MATTER CONCERNS ALLEGED CONFLICT OF INTEREST OR MALFEASANCE INVOLVING BOARD

MEMBERS THE REPORT MAY BE WITHHELD ONLY UPON A VOTE OF THE MAJORITY OF DISINTERESTED BOARD MEMBERS. IF ALL BOARD MEMBERS ARE INTERESTED PARTIES THE REPORT MAY NOT BE WITHHELD; AND

(F) REPORTS BY MUNICIPAL AND/OR COUNTY INSPECTORS CONCERNING COMPLIANCE WITH HEALTH, BUILDING AND HOUSING CODES AND REGULATIONS.

7. THAT IN ADDITION TO ANY OTHER NOTICE REQUIRED BY THE COOPERATIVE CORPORATION'S OR CONDOMINIUM ASSOCIATION'S ORGANIZATIONAL OR OPERATING DOCUMENTS, NOTICE OF ALL BOARD AND SHAREHOLDER OR UNIT OWNER MEETINGS BE POSTED IN A PROMINENT PLACE ACCESSIBLE TO ALL SHAREHOLDERS AND UNIT OWNERS IN EACH BUILDING COMPRISING THE COOPERATIVE OR CONDOMINIUM.

8. THAT THE BOARD OF DIRECTORS OR BOARD OF MANAGERS SHALL NOT IMPOSE SPECIAL ASSESSMENTS, OR ENTER INTO CONTRACTS FOR EXTRAORDINARY EXPENSES BEYOND CUSTOMARY OPERATING OR MAINTENANCE COSTS, WITHOUT APPROVAL BY A VOTE OF THE SHAREHOLDERS OR UNIT OWNERS. A VOTE OF THE SHAREHOLDERS OR UNIT OWNERS MAY BE WAIVED BY THE BOARD IN THE CASE OF (A) AN EMERGENCY EVIDENCED BY AN APPROVED RESOLUTION OF THE BOARD, (B) A REQUIRED REFINANCING OF AN EXISTING MORTGAGE OR (C) WHERE SHAREHOLDERS OR UNIT OWNERS HAVE BEEN NOTIFIED OF THE PROPOSED ACTION IN WRITING WITHIN A REASONABLE PERIOD OF TIME PRIOR TO THE PROPOSED DATE OF IMPLEMENTATION OF THE ACTION AND WHERE SUCH NOTICE PROVIDES THAT THE BOARD MAY WAIVE A VOTE UNLESS AT LEAST A CERTAIN PERCENT OF THE SHAREHOLDERS OR UNIT OWNERS DEMAND IN WRITING THAT THE ACTION BE PUT TO A VOTE. SUCH PERCENTAGE MAY NOT EXCEED FIFTY PERCENT.

S 2. Subdivision 1 of section 339-v of the real property law is amended by adding a new paragraph (k) to read as follows:

(K) THAT A MEMBER OF THE BOARD OF MANAGERS WHO IS ELECTED TO FILL A VACANCY, UNLESS ELECTED BY A GENERAL VOTE OF THE UNIT OWNERS, SHALL HOLD OFFICE UNTIL THE NEXT MEETING OF UNIT OWNERS AT WHICH THE ELECTION OF A MEMBER OR MEMBERS OF THE BOARD OF MANAGERS IS IN THE REGULAR ORDER OF BUSINESS, AND UNTIL HIS OR HER SUCCESSOR HAS BEEN ELECTED AND QUALIFIED.

S 3. Within 6 months of the effective date of this act the attorney general shall promulgate a handbook summarizing the rights of shareholders and unit owners vis-a-vis cooperative corporations and condominium associations and the procedures and processes available to shareholders and unit owners to enforce such rights.

S 4. This act shall take effect immediately; provided, however, that as to residential cooperative housing corporations and residential condominium associations existing and operating as such on the effective date of this act the boards of directors of such corporations and the boards of managers of such associations shall within 1 year of the effective date of this act take all steps necessary to amend the appropriate organizational and operating documents of such corporations or associations to implement the provisions of this act.