

4725

2009-2010 Regular Sessions

I N   S E N A T E

April 27, 2009

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Introduced by Sen. LEIBELL -- read twice and ordered printed, and when printed to be committed to the Committee on Housing, Construction and Community Development

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:

1     Section 1. The general business law is amended by adding a new section  
2     352-eeeeee to read as follows:  
3     S 352-EEEEEE. RESIDENTIAL COOPERATIVE AND CONDOMINIUM OWNER'S BILL OF  
4     RIGHTS. THE ORGANIZATIONAL AND OPERATING DOCUMENTS OF EVERY RESIDENTIAL  
5     COOPERATIVE HOUSING CORPORATION AND EVERY RESIDENTIAL CONDOMINIUM ASSO-  
6     CIATION ESTABLISHED OR OPERATING PURSUANT TO THE LAWS OF THE STATE SHALL  
7     GUARANTEE THE FOLLOWING TO EACH SHAREHOLDER OR UNIT OWNER:  
8     1. THAT (A) ALL APPLICATIONS IN CONNECTION WITH MATTERS WHICH REQUIRE  
9     APPROVAL OF THE BOARD OF DIRECTORS OR BOARD OF MANAGERS AND (B) ALL  
10    REQUESTS FOR DETERMINATIONS BY THE BOARD OF DIRECTORS OR BOARD OF MANAG-  
11    ERS INCLUDING BUT NOT LIMITED TO REQUESTS FOR THE RESOLUTION OF DISPUTES  
12    BETWEEN OR AMONG SHAREHOLDERS OR UNIT OWNERS, DISPUTES BETWEEN SHARE-  
13    HOLDERS AND THE COOPERATIVE CORPORATION OR BETWEEN UNIT OWNERS AND THE  
14    CONDOMINIUM ASSOCIATION SUCH AS DISPUTES CONCERNING RESPONSIBILITY FOR  
15    REPAIRS SHALL BE PROCESSED IN A REASONABLY EXPEDITIOUS MANNER ON A NON-  
16    DISCRIMINATORY BASIS PURSUANT TO UNIFORM PROCEDURES AND TIMETABLES  
17    ADOPTED IN WRITING AND ANY SUCH APPROVAL SHALL NOT BE UNREASONABLY WITH-  
18    HELD. THE BOARD'S DECISION SHALL BE IN WRITING AND SHALL SET FORTH THE  
19    REASONS THEREFOR, EXCEPT THAT NO REASON SHALL BE REQUIRED WHEN APPROVAL  
20    IS GRANTED. A BOARD'S REFUSAL TO ALLOW A SHAREHOLDER OR UNIT OWNER TO  
21    SUBLET AN APARTMENT PURSUANT TO A UNIFORM POLICY WHICH IS REASONABLY  
22    DESIGNED TO PROHIBIT OR LIMIT SUBLETTING SHALL NOT BE DEEMED TO BE AN  
23    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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1 FOREGOING PROVISIONS OF THIS SUBDIVISION SHALL NOT PROHIBIT THE ENFORCE-  
2 MENT OF UNIFORM REASONABLE POLICIES RELATED TO THE HEALTH, SAFETY AND  
3 WELFARE OF THE RESIDENTS AND THE SAFE AND PRUDENT OPERATION OF THE PREM-  
4 ISES.

5 2. THAT ELECTIONS FOR MEMBERS OF THE BOARD OF DIRECTORS OR THE BOARD  
6 OF MANAGERS BE HELD BY SECRET BALLOT, UNLESS WAIVED BY A UNANIMOUS VOTE  
7 OF THE SHAREHOLDERS PRESENT IN PERSON OR BY PROXY AT THE ELECTION MEET-  
8 ING, OR IN THE CASE OF AN UNCONTESTED ELECTION. A TALLY OF THE VOTES  
9 RECEIVED BY EACH CANDIDATE IN AN ELECTION FOR THE BOARD OF MANAGERS OR  
10 BOARD OF DIRECTORS SHALL BE POSTED WITHIN ONE DAY FOLLOWING THE AVAIL-  
11 ABILITY OF SUCH INFORMATION IN A PROMINENT PLACE ACCESSIBLE TO ALL  
12 TENANTS IN EACH BUILDING COMPRISING THE COOPERATIVE OR CONDOMINIUM.

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

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

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

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

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

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

47 (C) BANKING ACCOUNT AND FINANCIAL INVESTMENT STATEMENTS;

48 (D) VENDOR LISTS AND COMPETITIVE BIDDING SUBMISSIONS;

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

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

4 (F) REPORTS BY MUNICIPAL AND/OR COUNTY INSPECTORS CONCERNING COMPLI-  
5 ANCE WITH HEALTH, BUILDING AND HOUSING CODES AND REGULATIONS.

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

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

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

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

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

36 S 4. This act shall take effect immediately; provided, however, that  
37 as to residential cooperative housing corporations and residential  
38 condominium associations existing and operating as such on the effective  
39 date of this act the boards of directors of such corporations and the  
40 boards of managers of such associations shall within 1 year of the  
41 effective date of this act take all steps necessary to amend the appro-  
42 priate organizational and operating documents of such corporations or  
43 associations to implement the provisions of this act.