New York Law Journal

SERVING THE BENCH AND BAR SINCE 1888

Web address: http://www.nylj.com

VOLUME 236—NO. 112 TUESDAY, DECEMBER 12, 2006 ALM

PERSPECTIVE

Bill Good for Lawyers, Bad for Co-op Residents

BY BOB FRIEDRICH

Many times we have seen laws passed with seemingly good intentions, only to discover that they have left a trail of ruin behind them. You know that phrase, "The road to hell is paved with good intentions"? Well, we are on the cusp of seeing just such a law being passed by the New York City Council. This bill would have such a detrimental effect on co-op owners in Queens that it surprised me to find many of its sponsors are the elected representatives of those same owners. I can only conclude that they have not read their own bill or they haven't spoken to any of the co-op leaders in their district.

The bill in question is "Intro No. 119," and it would require co-ops to provide a "specific reason" for rejection of any potential purchaser. Sure, to the uninitiated it sounds harmless and reasonable and who would oppose a bill called "The Fair and Prompt Disclosure Law" anyway? But to co-op presidents like myself who are responsible for co-op finances and the monthly maintenance fees it spells Disaster with a capital D. This bill is likely to increase monthly co-op charges and make the already difficult task of recruiting volunteer board members impossible. I have dubbed it the "2006 Lawyers Full Employment Act."

Here in Glen Oaks Village a volunteer admissions committee created by the board screens all new applicants. This screening process is what sets co-ops apart from other types of home ownership. Screening is done not to hassle folks, but to insure that all co-op residents truly understand the nature of co-op living. Living in a co-op is more akin to living in a fish bowl than residing in a private home. You have neighbors not only on both sides of you but also above or below you. This close proximity to one another creates all sorts of problems that homeowners rarely face. So the objective of any well-conceived admissions policy is to make sure that prospective buyers understand this. It is equally as important to ensure that new owners have the financial wherewithal to afford the cost of co-op living—which includes a monthly maintenance charge that finances the operation of the co-op. Any failure to pay by one becomes the burden of all. So the screening process seeks to weed out those whose finances may put the other owners at financial risk.

When a co-op rejects an application, it generally does so without providing a specific reason In our litigious society, that is quite understandable. In fact, the courts have consistently granted co-op boards great latitude in making such decisions, provided that they do not discriminate. All co-ops know the 14 protected classes under which a purchaser can easily bring an action if they believe their rejection was due to discrimination: Age, alien status, children, country of origin, creed, disability, gender, lawful occupation, marital status, military status, partnership status, race, religion, sexual orientation. The burden of proof rests with the individual alleging the discrimination. The co-op, like all citizens, is presumed innocent until proven guilty. To do otherwise would open the floodgates to protracted litigation and that is exactly what this bill would do. It would put the co-op on the defensive and force it to prove its innocence even without a scintilla of proof that it has engaged in such activity in the past. Every co-op rejection would likely find its way into court.

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The bill would require the co-op to provide a detailed explanation for the rejection. It would give the volunteer board members five days to produce this legal document and certify it. If a court found the reasons for rejection were improper, these volunteer board members could be subject to substantial civil and monetary damages. What a wonderful way to encourage volunteerism!

The overwhelming majority of screened applicants are approved. Certainly there are a few that are denied but this is done not as the legislative sponsors flippantly allege "to conceal arbitrary or discriminatory refusals" but to make the co-op community a better place to live. While most denials are for financial reasons I have seen prospective buyers denied because they did not understand nor care to understand our house rules. I have seen individuals appear at screening in an inebriated or belligerent state. It's doubtful the courts would find these denials permissible because the burden of proof would be too high and could never be met in court. Without a breathalyzer test how does a co-op prove its case? How does the co-op begin to prove belligerence or that the purchaser doesn't understand the concept of co-op living or its house rules? The screening process is designed to protect families who are simply seeking a safe, secure and family oriented environment. The end result will be a reversal of the boards rejection and an erosion of the co-ops ability to maintain high standards. The threat of costly litigation will force boards to accept individuals that they have every reason to believe should be rejected. Should the "Lawyers Full Employment Act" pass we can expect to see monies that would otherwise be used for community projects diverted to costly attorneys.

With so many problems to deal with why would the city council push such a bill when there has been no proof of systemic patterns of discrimination in co-ops? Because some councilmen who probably never lived in a co-op decided to introduce some feel good legislation. The Queens councilmen whose names appear on this bill need to re-think their support and disassociate themselves from this ill conceived piece of legislation.

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