

ANDERSON KILL

CO-OP, CONDO & REAL ESTATE ADVISOR

Conflict of Interest or Not — New Law Says That Co-Op and Condo Boards Have to Disclose

By Andrew B. Freedland and Cathleen K. Hung

Effective as of January 1, 2018, cooperatives and condominiums in New York are required to report to their shareholders any contracts entered into by the cooperative or condominium that fall within the scope of Section 713 of the Business Corporation Law or Section 715 of the Not-For-Profit Corporation Law. Since most cooperative housing corporations are incorporated pursuant to the BCL, we will focus on its amendment. Furthermore, while the law as originally drafted would not affect condominiums because they typically do not incorporate, as of the date of this article the legislature has an amendment in the works to include condos in the disclosure requirement.

First, if and when your cooperative or condominium is subject to the law, every current member of the board must receive a copy of the law governing conflicts of interest. For most cooperatives, this is BCL Section 713 regarding interested directors. The law does not specify how the board is to be furnished

with this statute, but the board should probably plan to distribute it to all directors in the early part of each year beginning in 2018. Following receipt of this statute, the board must review its contracts from the prior year and determine if any of them fall within the purview of Section 713. Following this review, an annual report must be circulated to all shareholders or unit owners, listing the following information concerning any contracts that were made, entered into or otherwise voted on concerning an interested party:

1. The contract recipient, the amount of the contract and the purpose of such contract.
2. Records of the board meetings in which each contract was voted on — with the date the vote took place, the board members in attendance, how each board member voted and the dates when the contract remain valid.

If a board did not vote on any contracts that fell within the purview of Section 713, then

Andrew B. Freedland is a shareholder in Anderson Kill's New York office. Mr. Freedland concentrates his practice in real estate and cooperative and condominium law. Mr. Freedland's practice focuses on the representation and counseling of purchasers and sellers of commercial and residential real estate, lenders, condominiums, cooperatives and sponsors/developers. He is also counsel to numerous cooperative and condominium buildings throughout New York City.

(212) 278-1083 | afreedland@andersonkill.com

Cathleen K. Hung is an attorney in Anderson Kill's New York office. Ms. Hung represents sellers, purchasers, and sponsors in the purchase and sale of condominiums, cooperative apartments, and other residential real estate. She also counsels condominium and cooperative boards on amendments to organizational documents, leases, licensing agreements, and construction contracts.

(212) 278-1088 | chung@andersonkill.com

the annual report would simply state that “no actions taken by the board were subject to the annual report required pursuant to Section 727 of the Business Corporation Law.” The annual report disclosing any contracts with an interested director or manager, or lack thereof, must be signed by all members of the board.

Section 713 of the BCL requires that certain contracts in which a director has a direct financial interest is void or voidable unless the material facts of such interest are disclosed to the board and such contract is approved by a sufficient vote excluding the vote of the interested director.

The purpose of the new legislation is to further deter self-dealing and to create an atmosphere of transparency when it comes to contracts or transactions where a board member may recognize a financial benefit.

As previously mentioned, as of the date of this article this statute does not universally affect condominiums because they are not

formed under the Business or Not-For-Profit Corporation Laws, and the language of the statute says it applies to, “every condominium or cooperative incorporated pursuant to this chapter.” However, an amendment to the statute is currently under consideration in Albany, NY, and we are confident that this additional piece of legislation will pass the New York State Senate and Assembly to fill the gap in the statute as it is presently written.

The current law does not create any penalties or other mechanisms for ensuring compliance by those cooperatives and condominiums that must comply, although shareholders may have a cause of action against the corporation if the board fails to comply with the requirements of BCL Section 727.

Should you have any further questions about how the reporting requirements of BCL Section 727 apply to your cooperative or condominium, the attorneys at Anderson Kill will be happy to guide you through this statute. ▲

About Anderson Kill

Anderson Kill practices law in the areas of Insurance Recovery, Commercial Litigation, Environmental Law, Estates, Trusts and Tax Services, Corporate and Securities, Antitrust, Banking and Lending, Bankruptcy and Restructuring, Real Estate and Construction, Foreign Investment Recovery, Public Law, Government Affairs, Employment and Labor Law, Captive Insurance, Intellectual Property, Corporate Tax, Hospitality, and Health Reform. Recognized nationwide by Chambers USA, and best-known for its work in insurance recovery, the firm represents policyholders only in insurance coverage disputes — with no ties to insurance companies and has no conflicts of interest. Clients include Fortune 1000 companies, small and medium-sized businesses, governmental entities, and nonprofits as well as personal estates.

This publication was prepared by Anderson Kill PC to provide information of interest to readers. Distribution of this publication does not establish an attorney-client relationship or provide legal advice. Prior results do not guarantee a similar outcome. Future developments may supersede this information.

© 2018 Anderson Kill P.C.

New York, NY • Philadelphia, PA • Stamford, CT • Washington, DC • Newark, NJ • Los Angeles, CA