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

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Effective as of January 1, 2018, cooperatives and condominiums are required to report to their shareholders any contracts entered into by the co-op or condo that

fall within the scope of Section 713 of New York’s Business Corporation Law (BCL). This annual disclosure requirement is set forth in BCL Section 727, and specifically applies to both condos created pursuant to real property law and co-op housing corporations created pursuant to the BCL. Here we will focus on the steps for compliance as they apply to co-op boards.

First, every current member of the board must receive a copy of the law governing conflicts of interest. For most co-ops, 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 this statute 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 each board meeting 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 contracts remain valid.

If a board did not vote on any contracts that fell within the purview of Section 713, then the annual report would simply state “No actions taken by the board were subject to the annual report required pursuant to Section

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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 where a director has a direct financial interest in such contract are 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.

The current law does not create any penalties or other mechanisms for ensuring compliance by those co-ops and condos that must comply, although shareholders may have a cause of action against the corporation for the board’s failure 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 co-op or condo, the attorneys at Anderson Kill are able to guide you through this statute. ▲

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