

ANDERSON KILL CO-OP, CONDO & REAL ESTATE ADVISOR

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Eligibility and Amnesty Program

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We provide this update to advise of the extension of the “safe harbor” period for the return of PPP funding, which was recently

extended through May 14th. As explained below, our position is that, despite conflicting reports, cooperatives and condominiums are currently ineligible for PPP funding, and, therefore, absent congressional action, which is unlikely to come, retention of PPP funds which may have been received will subject buildings and the individual board members who signed the loan application to liability. Accordingly, we urge any of our clients who have received PPP funding to protect themselves by taking advantage of this final opportunity to return the funds without penalty.

As noted in our previous newsletters and in many other industry publications, Small Business Administration regulations, on their face exclude cooperatives and condominiums (as well as other residential real estate businesses) from eligibility for PPP loans.

Nonetheless, numerous boards have filed loan applications and apparently a few associations have received funding. The disbursement of loan proceeds is subject to audit by the Small Business Administration, and Congress has authorized an ample enforcement budget to effect these audits.

As part of the application process board members are required to sign certifications affirming, among other things, their good faith belief that their association is eligible to receive PPP funding. In the event auditors conclude that any filing of an application for a PPP loan lacked a valid basis, whether because

it was done contrary to the clearly stated eligibility requirements or otherwise, a return of the loan proceeds will no doubt be compelled, and the board member who signed the application certification would be subject to stringent penalties. Depending upon the nature of the Audit determination and the language of your Association’s governing documents any penalty assessed upon individual board members may not be indemnifiable by the Association.

With these enforcement proceedings in mind the Small Business Administration is permitting applicants to voluntarily return loan proceeds should they believe that they may not have been eligible for funding with “no questions asked.” This amnesty period originally ended May 7th, but has now been extended through May 14th.

Please feel free to reach out to the co-op and condo team at Anderson Kill should you have any questions as to the feasibility and desirability of returning the proceeds of any PPP loan your association might have obtained. ▲

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Anderson Kill's Cooperative and Condominium Law and Real Estate and Construction groups are a group of attorneys from various Anderson Kill departments, including insurance recovery, real estate, and corporate who have an interest in legal issues in the real estate and construction fields. The groups meet periodically to share insights on new developments in insurance, cooperative and condominium, construction, and real estate law, in the belief that an inter-disciplinary approach to legal problems will often maximize client profitability or recoveries, while minimizing costs.

Anderson Kill's Co-op, Condo & Real Estate Advisor is published periodically to inform clients, friends, and fellow professionals of developments in cooperative, condominium and real estate law. This publication was prepared by Anderson Kill P.C. 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. We invite you to contact the editor Bruce A. Cholst at (212) 278-1086 or bcholst@andersonkill.com with any questions or concerns.

Based in New York City, the firm also has offices in Philadelphia, PA, Stamford, CT, Washington, DC, Newark, NJ, Los Angeles, CA and Newton, MA.

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