

Memorandum in Opposition

REAL PROPERTY LAW SECTION

RPLS #3

June 3, 2013

A. 2556

By: M. of A. Lavine
Assembly Committee: Housing
Effective Date: 60th day after it shall have
become a law

A. 4388

By: M. of A. Perry
Assembly Committee: Housing
Effective Date: 60th day after it shall have
become a law

AN ACT to amend the real property law, in relation to cooperative purchase applications.

LAW AND SECTIONS REFERRED TO: Real Property Law new Article 11, Sections 360-364.

THE REAL PROPERTY LAW SECTION OPPOSES THIS LEGISLATION

The Real Property Law Section opposes this legislation because: (1) it singles out the proposed sale of a cooperative apartment for particular regulation without rational basis; (2) it imposes arbitrary and impractical deadlines on action by cooperative boards of directors; and (3) it duplicates public policy aims that already exist in current statutes.

The preamble to this legislation states that the application process “at a minimum,” gives the appearance and has the potential to be misused to illegally discriminate against purchasers of cooperative apartments. There is no factual basis to support any finding that such illegal discrimination is taking place or that the existing laws, which prevent discrimination, are not fulfilling their stated purpose.

While the legislation states that it is trying to equate the process of purchase of a cooperative apartment to the purchase of a free standing single family home, there are essential differences between the two types of ownership, differences which purchasers of cooperative apartments are aware of and see as beneficial to their quality of life. The cooperative apartment building evolved over one hundred years ago as an instrumentality for the communal ownership and occupancy of apartments in multifamily apartment buildings as an alternative to renting and single family home ownership. Owners purchase stock in cooperative housing corporations, which entitle them to long-term leases as tenants of buildings owned by these corporations. The owners of these corporations are the tenants themselves, who establish the rules by which they live. The intimate nature of many households joined together to own and operate a multi-family apartment building requires that neighbors cooperate with one another and share facilities.

All of the shareholders contribute to the common expenses of the building, such as paying the blanket mortgage, real estate taxes, common utilities such as heat and hot water, and maintenance and repair costs. This element of common reliance is not present between single family home owners. The decisions as to who should join that community constitutes an essential part of cooperative ownership that involves collective financial and lifestyle choices.

Several sets of laws and regulations already exist to prevent illegal discrimination in the purchase process, including discrimination in the sale of cooperative apartment housing. See NY Civil Rights Law Sections 19-a and 19-b. See also the US Fair Housing Act (42 U.S.C. Section 3601), the NY Human Rights Law found in NY Executive Law Sections 290 and 296(5), and for buildings located within New York City, the NY City Human Rights Law (NYC Admin. Code Section 8-107). These laws have provided more than adequate protection to purchasers of any type of housing, including cooperative apartments, for many years. There is no factual evidence that cooperatives engage in discrimination at any wider rate than single-family homeowners. In fact, we believe that such discrimination would be less likely in cooperatives, since board members make collective decisions.

The Section also opposes the legislation for the following reasons:

- the legislation requires every cooperative to develop a standardized form of “Applications.” That might work for larger cooperatives, but small co-ops have such low turnover that they make up their own forms;
- the legislation would impose a duty on cooperative apartment corporations to act on a grossly unrealistic timetable, whether or not the boards actually receive the application, whether or not the application is properly filled out, whether or not management or board members have questions relating to issues raised in the application, whether or not an interview can be scheduled, and whether or not the volunteer board members on the Admissions Committee are physically present to perform their duties. Any time periods should only begin upon fulfillment of all the prerequisites for making an informed decision by the board. Again, purchasers have remedies under existing laws if they suspect discrimination;
- the legislation makes no allowance for conditional approvals, such as requiring that a security deposit be posted for maintenance payments or that an alteration be legalized;
- no protection is given to cooperatives if prospective purchasers disagree with the grounds for rejection. (If a cooperative states that the buyer’s finances were not satisfactory, is that determination protected from suit by a buyer who disagrees? How much specificity is required to satisfy the statute? What if the cooperative states that it simply “doesn’t like” the purchaser? Does the business judgment rule protect cooperatives from claims by disappointed buyers?); and
- proposed Section 364 essentially prohibits groups who choose to live together from setting the standards for joining the corporation in which they own shares. It is highly intrusive, much too broadly written, and will result in voluminous and unnecessary litigation and bestow rights on parties who are not party to agreements.

Based on the foregoing, the Real Property Law Section of the New York Bar Association **OPPOSES** this legislation.

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SECTION CHAIR: Benjamin Weinstock, Esq.