

Boards Should Prepare Now for a Potential Second Wave of COVID-19

Boards of cooperatives and condominiums have faced unique and profound challenges due to COVID-19. To date, boards seeking to take action have had their proverbial hands tied behind their backs during the COVID-19 bans on congregating. With Governor Cuomo having eased restrictions regarding meetings of 10 or fewer people, and Phase I opening in New York City on June 8, boards will have the opportunity to better arm themselves for a potential second wave of the virus and attendant quarantines and restrictions.

The governing documents of most boards do not provide the flexibility to conduct meetings and communicate under restrictions we have seen during the first wave of COVID-19. Most standard forms of proprietary leases and bylaws do not adequately address the novel issues and situations presented by the governor's shelter-in-place orders and other governmental agency and administrative quarantine protocols. Further, many board forms and agreements, such as alteration agreements and construction contracts, should be updated before work proceeds. Now, more than ever, we recommend that boards reevaluate their governing documents, forms, and agreements and adopt amendments and rules that better equip themselves for this new reality.

In particular, we suggest that boards take a close look at the following:

Virtual Board and Shareholder/Unit Owner Meetings. To comply with social distancing orders — and embrace the certainties of this new digitalized era — coops and condos should consider amending their bylaws to permit for virtual board and shareholder/unit owner meetings through the use of videoconference, teleconference, or other similar electronic means.

Electronic Notices/Registration of Email Addresses. As a result of the pandemic, many shareholders and unit owners have relocated outside of New York City. Amending the bylaws to permit notices to be sent through email would ensure that such individuals are able to receive notices in a timely manner and that boards are in compliance with their governing documents' notice provisions. Bylaws should explicitly require that each shareholder/unit owner register his or her email address with the managing agent to ensure that such notices are received.

Electronic Voting. To avoid challenges and unnecessary litigation, bylaws should be amended to explicitly permit voting via email or other digital voting platforms.

Ability to Fine. What's the purpose of having a rule if it has no teeth? Bylaws can be amended to grant the board authority to implement fines for shareholders/unit owners' violations of both the bylaws and rules and regulations of the coop or condo. With the authority to fine, boards are able to enforce the governing documents without the need to resort to the courts for such purposes.

Execution of Documents/Calling of Meetings. Consider amending the bylaws to permit each board member the authority to execute documents or call a special meeting in the event that other board members have temporarily relocated out of New York City or are unavailable at such time.

Compliance with Health Regulations and Other Governmental Orders. The governor's and mayor's executive orders require that individuals socially distance and wear face coverings in public. To ensure compliance with such requirements, and to avoid litigation, bylaws should explicitly grant the board authority to institute rules and regulations that are in accordance with governmental orders, administrative orders, and health organization protocols and recommendations. For example, a board should have the authority to limit the use of common areas and access to building amenities such as playrooms, pools, and gyms, including restricting such use of amenities to residents of the building. In addition, boards can be empowered to



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implement protocols requiring all coop or condo occupants to wear personal protection in common areas and regulate access to elevators.

Authority to Restrict Guests and Nonessential Employees from Entering the Building.

Many boards have implemented temporary restrictions banning caregivers, housekeepers, guests, food deliveries, and other nonessential workers from entering the building. Furthermore, boards have prohibited move-ins and move-outs and stopped all alterations. Such bans are ripe for litigation, because most proprietary leases and bylaws do not explicitly grant boards the authority to implement such restrictions. Proprietary leases and bylaws can be amended to explicitly authorize boards to implement such bans during a state of emergency.

Alteration Agreements and Construction Contracts. Boards should also take a fresh look at their current form of alteration agreement and consider updating it to require all workmen to comply with the New York state published construction guidelines, wear personal protective equipment, and be trained in COVID-19 protocols. Further, the indemnification provisions of alteration agreements and construction agreements should require the unit owner/shareholder and/or contractor to take responsibility for any fines incurred for failing to follow governmental or other administrative orders, regulations, and protocols. Boards should consider riders (incorporating the foregoing provisions) to previously executed alteration agreements and construction contracts as a prerequisite to resuming alteration or construction work.

Regulating Move-Ins, Move-Outs, and Apartment Showings. Amendments to the bylaws and/or the rules and regulations of a coop or condo may also include authorization for the board to govern move-in and move-outs in the building. Apartment showings can be limited to “by appointment only” and coordinated with management. Finally, such amendments can permit the board to temporarily restrict move-ins, move-outs, and apartment showings during a state of emergency.
