

## Impact of New York's Housing Stability and Tenant Protection Act of 2019 on Condo and Coop Boards

New York's Housing Stability and Tenant Protection Act of 2019 (the Act) was signed into law on June 14, 2019, leaving condo and coop boards with grave concerns — if not outright panic — about how it impacts their day-to-day operations. While the Act certainly does have negative impacts, it does not have such sweeping and insurmountable consequences you might think. Furthermore, many industry groups are taking steps to amend the law to exempt condos and coops from coverage.

Unless and until the law is amended, our advice for condo and coop boards is as follows:

**Condo boards** are barely impacted by the Act. If a condo board owns a unit in the condominium (including the superintendent's unit), it is technically a landlord of that unit, and all of the provisions that apply to coop boards (discussed below) will apply to it with respect to that unit. If a condo board requires a tenant of a unit owner to deposit an escrow to secure payments in connection with reviewing a rental application, it is possible this could run afoul of the Act. To avoid this possibility, condo boards can draft the escrow language to make it clear that it is the owner of the unit that is posting the escrow. There is no prohibition against condo unit owners posting security or rent escrows.

**Coop boards** are impacted by the Act in the following ways:

1. Security deposits and rent advances cannot exceed one month's maintenance.

**Consider requiring guaranties rather than escrows as conditions upon approval of purchase applications.**

2. Late payment penalties cannot exceed the lesser of 5 percent of the overdue amount or \$50. Coop boards are required to send late payment notices by certified mail to shareholders who become five days late in payment of their maintenance.

**Consider adopting more aggressive non-payment enforcement procedures to deter late payment rather than relying upon late fees.**

3. Application fees to prospective shareholders, including charges for background and credit checks, may not exceed \$20. If any fee is charged the applicant must be provided with copies of the reports.

**Consider shifting the fees to the selling shareholders, or consider positioning the application fee as solely related to the purchase of shares rather than in connection with the proprietary lease.**

4. Coop boards are prohibited from seeking legal fees, late fees, or any other "fees, charges or penalties" in a landlord-tenant proceeding brought against a shareholder.

**Consider bringing a separate plenary action to seek payment of those fees.**

5. Coop boards are prohibited from considering landlord-tenant proceeding history in making its determination about accepting or rejecting an applicant. If the board gathers this information, the assumption will be that it was used as a basis for rejection.

**Consider foregoing searching court records for litigation history.**

6. Notice periods to defaulting shareholders are extended for notices of default.



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**Consult with your attorney before sending default notices.**

7. Coop boards are required to provide written receipts in connection with non-traditional methods of receiving maintenance payments, such as payments in cash, and are required to keep records of same.

**Consider adopting a policy regarding receipt of cash payments and maintaining records of same for at least three years. Records should include date, amount, identity of the property, the period for which paid, and the name and title of the person who received the payment.**

8. A rebuttable presumption of unlawful retaliation arises if a coop board commences an eviction proceeding within one year of the shareholder filing a good faith complaint with the board or government agency regarding a violation of any health or safety law or any law that has as its objective the regulation of the premises.

**Boards should keep records of complaints about and by shareholders and review those records carefully before commencing eviction proceedings. Timing may be key.**

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