

# Condominiums & Cooperatives

Cozen O'Connor's Condominium & Cooperative practice is conducted by experienced attorneys keenly attuned to the unique context in which condos and co-ops are created and operate. Our team helps residential, commercial, and mixed-use condos and co-ops navigate the labyrinth of local statutes and case law, wide-ranging federal and state laws, and ever-changing deal norms and political dynamics affecting condos and co-ops. As part of a full-service firm, our team is able to take a holistic approach to meet the full spectrum of our clients' legal needs.

## Sponsor/Developer Representation

Cozen O'Connor's Condominium & Cooperative attorneys help sponsor/developers structure the acquisition, financing, development, and sale of buildings and units to maximize profits; efficiently obtain necessary agency approvals and achieve regulatory compliance; manage liability and risk; and foster positive relationships with association boards and tenants.

We devise practical, workable solutions that can be implemented without drama or delay. Our team takes pride in being accessible and responsive, and will take your deal from inception to close. We continue the representation post-closing, helping to run the sponsor-controlled board in a way that minimizes conflict and prevents litigation. We serve as a one-stop shop for everything from due diligence to acquisition, financing, land use, construction, sale, governance, and dispute resolution.

## Board Representation

Our team serves as outside general counsel to condo and co-op boards, handling the full spectrum of issues they face. Our attorneys are experienced in all areas of corporate governance, including advising boards on liability avoidance, budgets and reserves, insurance, conducting building-wide and board meetings, and amending governing documents. The firm also negotiates contracts and agreements of all kinds on behalf of board clients, including construction, management and employment contracts, and license agreements with adjacent property owners. Our attorneys also have vast experience meeting board clients' transactional needs, including financing, unit combinations, sales of common areas, retail leasing, and cell tower leasing.

Our attorneys have achieved outstanding results for board clients in disputes relating to new construction and conversion matters, proxy contests, breach of fiduciary duty claims, construction defects, shareholder/unit owner violations and disputes, and collection of common and maintenance charges. While our attorneys pride themselves on their dispute resolution skills, when necessary, Cozen O'Connor represents the interests of condo and co-op boards in court, arbitration and/or mediation.

Our Condominium & Cooperative team partners closely with the firm's elite construction litigation department, and the firm has been winning complex commercial real estate and construction defect trials for more than 50 years. We are also experienced in the mediation of claims before the New York State Office of the Attorney General.

## Holistic Approach

Our clients benefit from a team of attorneys dedicated to Condominium & Cooperative practice while working within a full-service firm. This means we have deep experience in condo/co-op law as well as access to colleagues with broad experience in zoning, leasing, real estate finance, real estate litigation, construction litigation, tax, labor and employment, corporate, insurance coverage, and private client services, among others. Our full-service Litigation Department includes some of New York City's most prominent condo/co-op construction litigators. Through Cozen O'Connor Public



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## Related Practice Areas

- Business
- Real Estate
- Real Estate Development
- Real Estate Finance
- Real Estate Litigation

Strategies, our affiliated bipartisan lobbying firm, clients have access to government relations professionals with decades of experience navigating the governmental and political landscape unique to the condo/co-op space.

Other practice groups within the firm — such as the Real Estate Finance Group — turn to us for condo/co-op specific advice and counsel. For example, we act as advisory counsel for lenders and investors contemplating deals with condos and co-ops.

Finally, the members of our Condominium & Cooperative practice are thought leaders in the field. We serve on the condo/co-op committees of both the New York state and the New York City bar associations, and we frequently analyze condo/co-op issues for major media outlets. Simply put, we are here to answer any question, meet any challenge, and advance any goal for our condominium and cooperative clients.

## Services

### Board Work

- Drafting, revising, and modernizing governing documents, including proprietary leases, declarations, bylaws, house rules, and rules and regulations
- Preparing documents necessary for annual and special meetings of unit owners (e.g., notices, proxies, proposed resolutions, and amendments to bylaws and proprietary leases)
- Running or attending annual and special meetings of shareholders and unit owners, rendering advice with respect to the procedures at such meetings, and answering questions from shareholders and unit owners
- Pursuing claims of construction defects against sponsors on behalf of boards and unit owners
- Advising clients on employment law issues, preparing employment and occupancy agreements for employees, negotiating labor union contracts, and defending boards against employee claims, including charges of discrimination, harassment, and wrongful termination of employees at the city, state, and federal levels
- Advising in connection with unit or share purchases or other ownership transfers
- Preparing, reviewing, and negotiating the terms of all contracts submitted to the board for approval, including AIA construction contracts, service agreements, and leases
- Reviewing the legal accuracy of all communications to be delivered to shareholders and unit owners
- Preparing apartment alteration agreements
- Reviewing and rendering advice regarding litigation proposed to be initiated or defended by the board, and advising and guiding boards on insurance coverage and notification regarding defense of actual and potential claims and litigation
- Serving as litigation counsel for real estate, cooperative, condominium, commercial, employment, and construction-related litigation
- Negotiating and drafting retail and commercial leases, including garage agreements, leases, and licenses
- Helping clients navigate emerging issues, such as hurricanes, COVID-19, and the Climate Mobilization Act
- Representing cooperatives and condominiums in appearances before and in negotiations with governmental and administrative agencies, including the New York State Department of Law, New York City Department of Finance, New York State Department of Taxation, New York City Department of Buildings, New York City Commission on Human Rights and New York State Division of Human Rights, New York City Environmental Control Board, and New York City Division of Real Property
- Advising clients on the impact of the Americans with Disabilities Act (ADA) Title II requirements and compliance responsibilities on property operations and management, as well as reasonable

accommodation issues for residents, employees, and guests

- Advising clients on budgets and allocation of expenses
- Negotiating access and license agreements with neighboring properties
- Advising on zoning issues, including allowable use of roof space, and negotiations with neighboring developers over use and sale of air rights
- Assisting with the financing of cooperatives and condominiums
- Bringing and mediating claims before the New York State Office of the Attorney General

#### Sponsor Work

- Working with sponsor-developers and architects to conceptualize condominium structure
- Working with sponsor-developers in the negotiation of construction loan documents
- Working with the New York State Office of the Attorney General and the Department of Finance with respect to creation and compliance, including drafting and submitting offering plans, no-action applications, tax maps, declarations, and amendments.
- Representing sponsor-controlled boards to facilitate peaceful transition to unit owner control
- Defending sponsor-developers from claims brought by unit owners and boards
- Helping sponsor-developers navigate investigations by the New York State Office of the Attorney General, and when necessary, negotiating settlement agreements

## Experience

Represented one of three residential sections and a master condo association of a full-block luxury condominium in Lincoln Square in negotiating a multi-board resolution governing a massive façade restoration project. The residential tower is divided into three sections and the commercial section of the condominium spans four floors. The governing documents made each section responsible for its own façade, but performing work separately would have cost each section millions more in soft costs and time. The 20+ year-old tax maps and ambiguously drafted by-laws created disagreements among the sections. Using diplomacy and construction experience, we negotiated with each section to sign onto a detailed resolution banding the sections together for this large project. The resolution prescribed allocation of expenses, choice of contractor, and appointed delegates from each section for project management. We negotiated the AIA contract for the work and access to units as needed.

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Drafted detailed House Rules and By-Law amendments governing two full-floor amenity suites, including health and wellness, fitness, simulators, basketball, squash and racquetball courts, ballroom, spa, and conference rooms.

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Successfully managed unit owner communications and claims throughout a six-year construction defect litigation. This representation involved working with the board in drafting notices to owners, producing carefully drafted Q&As, and hosting town hall meetings; addressing unit owner concerns to prevent litigation against the board; securing access to units despite refusal from several high-profile owners; advising the board regarding, and communicated directly with, lenders when banks refused to lend due to construction defect litigation; and managing multiple claims across numerous insurance carriers.

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Secured an appellate victory for a cooperative corporation and members of its board in a suit, spanning two decades, filed by a famous fashion designer who sought to perform substantial alterations to his penthouses to create an enormous residence atop the building owned by the corporation. The unanimous Appellate Division not only dismissed the entire complaint against all but two of the individual defendants, but also dismissed various claims against the corporation at the pleading stage — including violation of the business corporations law, breach of fiduciary duty, fraudulent misrepresentation, and negligent misrepresentation — for which the plaintiff sought damages in excess of \$50 million on each of four of the causes of action. *Tahari v 860 Fifth Ave.*

Negotiated a high-stakes settlement on behalf of the board of an iconic luxury condominium to resolve a dispute with the owner of a \$30 million-plus unit who undertook a non-approved retrofit and added a large outdoor pergola that marred the building's architecturally significant exterior. Under the creative, tri-party settlement among the board, the unit owner, and the developer, the retrofit at issue was removed at no cost to the board, while the architecture firm that designed the building redesigned the outdoor space with an aesthetically suitable pergola. This settlement kept a potentially high-profile dispute out of court and the public eye.

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Secured a cash settlement for a board of managers of a luxury condominium in New York City to resolve construction defect and warranty claims associated with a customized glass curtain wall, where water infiltration and other defects were observed more than ten years after construction was complete. Through our assistance, the board engaged an engineer who determined that the latent defects were due to the improper manufacturing and installation of the window system. With expiring statutes of limitations and limited warranties threatening to leave the board bearing the cost of remediation, we filed suit and persuaded all of the defendants to agree to the settlement. This outcome was a win-win for the board in that it fulfilled its fiduciary duty to unit owners by vigorously pursuing its claims, and the settlement significantly offset the repair costs.

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Negotiated a favorable settlement on behalf of an Upper East Side luxury cooperative board with a delinquent shareholder. The shareholder illegally pledged its shares to a lender for \$9 million and subsequently defaulted on the loan and on maintenance payments to the cooperative. The lender foreclosed on the UCC-1 and was the successful bidder at the foreclosure sale, but because the board never recognized the loan, the cooperative had full leverage over the lender. We used that leverage to negotiate a settlement that made the cooperative whole – receiving all past due maintenance, interest, late fees, and legal fees, and control over the marketing and sale of the shares to a bona fide third-party purchaser.

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Represented the board of directors of an iconic Manhattan cooperative in connection with a loan work out involving a lender's collateral interest in the shareholder-borrower's shares of the cooperative. The shares were improperly pledged to the lender without the consent of the cooperative, and the shareholder-borrower was in default under the loan. Through negotiations with the shareholder's lender, we were able to assist with the transfer of the shares to an approved third-party assignee while simultaneously guaranteeing (i) that all outstanding maintenance and charges owed to the cooperative were paid upon closing and (ii) the discharge of all federal and state tax liens recorded against the cooperative as a result of the shareholder's actions.

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Negotiated a favorable settlement on behalf of a luxury New York City Condominium Board in a law suit filed against the sponsor and sponsor principals over the misallocation of condominium funds and expenses. After development of the condominium and sales of the residential units, the sponsor retained ownership of the commercial portions of the condominium, maintained control of the condominium board, and modified the condominium budget to the detriment of the residential unit owners. After helping the owners take control of the condominium board and uncovering the sponsor's malfeasance, we filed suit, asserting claims against the sponsor-developers and individual principals, and subsequently entered into a standstill agreement allowing room for a negotiation. The final settlement required the sponsor-developers to pay the board hundreds of thousands of dollars, reallocated the budget fairly and properly, and included the installation of submeters.

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Converted a mixed-use rental building in Long Island City into a mixed use condominium for the purpose of creating separate commercial and residential-use units for tax benefits and financing. The conversion was achieved by No Action Letter from the New York State Attorney General, and we

secured the approvals from the New York State Office of Attorney General and the New York City Department of Finance against the difficult backdrop of the COVID-19 shutdown.

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Represented a condominium board in negotiating a favorable 99-year lease, including beneficial tax base and escalation clauses, for a portion of the commercial first floor of the building. This lease will facilitate residential use of additional ground floor space and provide an entrance to the building from an adjacent street.

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Represented the board of a large, new-construction Manhattan condominium in negotiating a multimillion-dollar settlement with a well-known sponsor-developer.

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Represented a condominium board in connection with borrowing \$3 million to finance capital improvements using its common charge income as collateral.

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Represented a foreign sponsor-developer in its first new construction condominium. This representation included drafting the offering plan and working with the construction lender.

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Represented a condominium board in connection with the termination and eviction of its superintendent, and the subsequent hiring and housing of his replacement.

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Represented condominium board in a multi-phase rehabilitation of the exterior façade of several buildings, and helped them finance the cost of the project.

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On behalf of a New York City new construction luxury condominium, we reached a final settlement with a sponsor-developer in connection with a multitude of construction defects affecting the building. Initially, the condominium's sponsor-developer refused to come back and make repairs or pay for the cost of same. However, with the threat of prolonged litigation combined with tactful negotiations, the sponsor-developer ultimately agreed to pay the condominium a cash settlement, covering more than 80 percent of its original claim and to complete the work and filings necessary to obtain a final certificate of occupancy. This result was particularly welcomed given that it occurred amid the COVID-19 pandemic, with backlogged courts and many sponsors filing for Chapter 11 relief.

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Negotiated a monetary payment and various protections for a condominium in a dispute with a neighboring developer who demanded access to the condominium during a long period of construction.

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Represented a condominium board in connection with a negotiation for license agreements with two neighboring properties to gain access onto those properties for the purpose of performing repairs to the condominium's facade.

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Resolved a long-standing and hard fought construction defect case on behalf of the boards of three condominiums, securing an agreement from the developer-defendants to perform approximately \$12 million of bonded remedial work, plus a cash settlement to cover the clients' expenses. This case was particularly challenging because the buildings in question sustained flooding during Hurricane Sandy, giving the defendants an argument that the defects at issue were caused by the storm.

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Successfully represented a luxury condominium board in a dispute with a neighboring developer who overbuilt and encroached by 3-5 feet on the client's property line. Working with a surveyor, and without going to court, we convinced the neighboring developer to remove the encroachment and negotiated the terms of the removal, protecting the client's property from damage.

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Represented a residential developer facing substantial civil and criminal penalties in connection with a State Attorney General investigation into alleged violations of the Martin Act and 421a tax incentive

program, ultimately negotiating a small cash settlement and preserving the client's right to continue with a planned condo conversion.

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Represented a sponsor-developer in connection with the Lighthouse Pointe mixed-use development on the Staten Island waterfront. The property was acquired through a ground lease from the City of New York's Economic Development Corporation.

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Represented a luxury condominium board in a particularly challenging dispute with developers centered on the gut renovation of a 100-unit, mixed-use condominium in Manhattan. We achieved a favorable monetary settlement for the client as well as an affirmative agreement to bind the sponsor to obtain the final Certificate of Occupancy for the building.

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Represented a condominium board in amending governing documents to reallocate expenses between residential and commercial units.

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Represented the board of a luxury new-construction condominium against the individual principals of the sponsor-developer. Settled with each principal individually and received an assignment to pursue the General Contractor and its insurance carrier.

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Represented a condominium board in connection with collection of common charges from its commercial unit owner, representing 15 percent of the annual budget.

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Represented a condo board in the negotiations of an American Institute of Architects contract for a large façade renovation and roof replacement project.

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Represented a co-op board after a contractor's negligence caused severe damage. Settled claim with the contractor's insurance for interior damage and caused the contractor to finish the job free of charge to the co-op.

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