

# CLIENT ADVISORY

FEBRUARY 2001

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## SALES TAX EXEMPTION FOR CONDO AND COOP OWNERS PARKING

For the past several years, owners of homes in homeowner's associations (which are defined to include cooperatives and condominiums), who rented parking spaces from their homeowner's association in parking facilities located on the premises were entitled to an exemption from the payment of sales taxes for those parking spaces. Unfortunately, the statute provided this exemption only in cases where the unit owner rented his or her parking space directly from the homeowner's association. Since most cooperatives and condominiums lease their garages to parking garage operators, this benefit was unavailable to those shareholders and unit owners. A change in the law, however, became effective last October. In an amendment to §1105 (c) (6) and §1107 (c) of the Tax Law, and §§11-2002 (g) and 11-2049 of the New York City Administrative Code, the legislature has now made such payments exempt from City and State sales taxes, even if the payment is made to a parking facilities operator, who is leasing the parking facility from the homeowner's association. The following limitations apply:

- The homeowner's association must own or operate the garage, parking lot, or other parking facility (whether or not it is operated exclusively for its members).
- The homeowner's association must be an association whose membership is comprised exclusively of owners or residents of residential dwelling units (such as single-family homes, condominium units, or cooperative housing or apartments).
- The dwelling units must be in a defined geographical area, such as a housing development or subdivision, and the parking facility must be located within that defined geographical area.
- The parking charge must be paid by the members to either the homeowner's association or to a lessee of the parking facility who leases from the homeowner's association.

## INSURANCE POLICY COVERAGE LIMITED

On April 19, 1999, a fire occurred in a stove of an apartment in the Cooperative located at 61 Jane Street, apparently due to the escape and accidental lighting of natural gas. The fire was confined to the stove, and no damage to the building was caused. However, the fire department, being unable to identify the gas line which served the affected apartment, turned off the gas for the entire building.

Under the provisions of the New York City Building Code and the procedures of Con Edison, before gas service can be restored to a building to which service has been cut off, the building's gas distribution system must be rigorously tested for leaks. That testing turned up numerous leaks in various parts of the system, requiring extensive and expensive repairs.

The Cooperative then filed a claim with its insurer, Great American Insurance Co., seeking indemnity for the costs of restoring gas to the building. Great American refused to pay, claiming essentially that the loss was due to the existing gas leaks in other parts of the building, and did not stem directly from the fire. The Cooperative sued, in a case entitled 61 Jane Street Tenants Corp. v. Great American Ins. Co. (2001 WL 40774), which case was heard before Judge Gerard Lynch. The Cooperative based its claim, in part, upon the ruling which Judge Kevin T. Duffy had issued in a similar case in 1996, entitled 30 East 35 Owners Corp. v. Great Am. Ins. Co. (1996 WL 438172), interpreting language which also appeared in the Jane Street policy. In that case, Judge Duffy interpreted the following policy language:

*“[The Insurer]...will pay (1) For loss or damage caused by enforcement of any ordinance or law that requires the demolition of parts of the same property not damaged by a covered cause of loss”*

The insurer claimed that the gas distribution system was defective prior to the fire and therefore, the cost of repairs to the system should not be covered as a loss under the policy. Judge Duffy did not agree with the insurer's position, but found that the replacement of portions of the existing gas system was not simply the result of “an ordinance or law regulating construction” but was the result of the enforcement of an ordinance that required destruction of certain parts of the same property that had not been damaged by the fire. Since the language was ambiguous, the Court held that it should be construed in favor of the insured. Unfortunately, the Cooperative's reliance upon the 30 East 35 decision was misplaced. It seems that after losing the 30 East 35 case, Great American added a new endorsement to its policies which reads as follow:

*“We will not pay under this endorsement for the cost associated with the enforcement of any ordinance or law which requires any Insured to test plumbing, gas or other building systems for integrity or condition.”*

According to Judge Lynch, “Whatever ambiguity existed in the policy concerning whether repairs occasioned by the gas testing requirement were covered by the demolition exception has now been clarified by language making clear that an ordinance requiring testing of gas systems is not an ordinance requiring the demolition of undamaged portions of the property.” Consequently, the Court concluded that the repairs occasioned by the testing under the New York City Code were not covered under the policy, and therefore the Cooperative was not entitled to coverage.

This decision and other recent decisions regarding environmental liability and similar exclusions serve as a reminder that all Cooperatives and Condominiums should periodically review their own insurance policies, and consider obtaining additional coverage, where appropriate.