
CLIENT ADVISORY

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NEW NOISE CONTROL LEGISLATION WILL IMPACT NEW YORK CITY PROPERTY OWNERS

Legislation adopted by the New York City Council to regulate ambient sound levels, effective July 1, 2007, will increase property owners' obligations to control sound levels at their premises.

The New York City Noise Control Code sets maximum permissible sound levels for certain noise-producing circumstances. The revised Noise Control Code reduces some of the maximum permissible sound levels and brings certain noise-producing circumstances within the scope of the Code for the first time. Of particular interest to property owners, including cooperatives and landlords, is that the new code subjects air conditioners and air circulation devices located near each other to overall sound-level limits. Individual air conditioners and air compressors are also subjected to stricter noise standards. The legislation also imposes detailed restrictions on sound levels from construction activities; from bars, restaurants, and night clubs; from motor vehicles and car alarms; and from lawn-care devices, leaf blowers, and snow blowers, among other things.

Violations of the Noise Control Code are adjudicated by the New York City Environmental Control Board and can result in fines measured in the thousands of dollars, particularly for repeated violations at the same premises within a two-year period. Accordingly, property owners whose premises generate substantial sound levels from any source may wish to consult with counsel or with a qualified acoustical engineer prior to the effective date of the new legislation to avoid any potential violations. Conversely, owners or residents who have had noise problems with neighboring properties may obtain some relief under the new sound-level limitations.

WHEN REQUIRED, SHAREHOLDER APPROVAL OF ASSESSMENTS MAY BE GRANTED RETROACTIVELY

Although the by-laws of many cooperative buildings authorize the board of directors to levy assessments against shareholders, some by-laws require shareholder approval of certain assessments. In a recent decision, a court held that where a board initially levies an assessment without obtaining a required shareholder approval, such approval can be conferred on a retroactive basis.

In **Blackstone Owners Inc. v. Harris**, L&T Index No. 06/4653 (Civil Court Bronx County Aug. 11, 2006), a cooperative sued a shareholder-tenant couple to collect unpaid assessments for several capital projects as well as an assessment to cover fuel price increases. The shareholder-tenants contended that the assessments had been illegally imposed. They relied on a by-law provision requiring shareholder approval for any assessments for capital improvements so long as unsold shares constituted 25% or more of the cooperative's outstanding shares, which undisputedly was the case. The cooperative first argued that this by-law was invalid under the Attorney General's regulations concerning cooperatives. The court found that it did not have to decide that issue and indicated that the Housing Part of Civil Court would not have jurisdiction to resolve such a question.

Instead, the court held that any error by the board in imposing the assessments for capital repairs on its own was cured when the assessments were later put to a vote and retroactively approved at a shareholders' meeting. The fact that the shareholders at the time of ratification were different

from those at the time the board first imposed the assessments was held to be immaterial. The court also held that under the by-laws, the assessment to cover fuel price increases did not require shareholder approval. Accordingly, the court ordered the respondent shareholders to pay the assessments in full and scheduled a hearing to address issues regarding late fees and attorneys' fees.

FEDERAL COURT FINDS RECONSTRUCTION OF COOPERATIVE TO INCREASE ACCESSIBILITY NOT READILY ACHIEVEABLE

Title III of the Americans with Disabilities Act of 1990 (ADA) was enacted to increase the accessibility of places of public accommodation to persons with disabilities. Premises constructed or undergoing major alterations after 1992 must meet detailed accessibility standards set forth in the Code of Federal Regulations. In general, premises constructed before 1992 are not required to meet the accessibility standards unless compliance is "readily achievable." The statute defines this term as meaning "easily accomplishable and able to be carried out without much difficulty or expense," taking into account the costs that would be incurred and the financial impact of the proposed modification on the facility involved.

An ADA claim against a cooperative apartment complex was recently rejected by the federal court in **Roberts v. Royal Atlantic Corp., 2006 WL 2382151 (E.D.N.Y. Aug. 15, 2006)**. The premises involved in this case were a group of oceanfront apartment units located at a resort in Montauk, New York. The units were cooperative apartments owed by shareholder-tenants who often rent out their units during the summer months. The premises were constructed in the 1970's, long before the ADA was enacted. The plaintiff, an individual with a disability requiring him to use a wheelchair, asserted that he faced a host of accessibility problems during his stay at the resort. These included difficulty maneuvering his wheelchair through a gravel parking lot and lack of a wheelchair-accessible route to enter the resort; inability to enter the bathroom in the unit because the doorway was too narrow; and inability to use his wheelchair to enter the pool area of the resort.

Both parties retained expert witnesses to evaluate whether modifying the premises to satisfy the ADA requirements could be readily achieved. The court also designated an independent architect to report on this issue. After a trial, the court evaluated the expert testimony in detail and concluded that the various renovations suggested by plaintiff were not practicable or would be unduly burdensome on the property owners, taking into account the existing layout and configuration of the premises as well as a comparison between the cost of modifying a given unit and the cash-flow generated by the rental of each unit. Emphasizing that the plaintiff had the burden of proof, the court held that plaintiff had failed to establish that the reconstruction he sought was readily achievable.

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