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## CITY ENACTS MANDATORY REPORTING REQUIREMENTS FOR ONLINE SHORT-TERM RENTAL PLATFORMS



By **Scott F. Loffredo**

On August 6, 2018, Mayor Bill de Blasio signed into law a bill which requires online “booking services” (defined as online, computer or application-based platforms that: (i) list or advertise offers for short term rentals, and (ii) either, accept such offers, or reserve or pay for such rentals) to file a monthly report with the Mayor’s Office of Special Enforcement (“MOSE”). The law goes into effect in February, 2019. The law is clearly aimed at AirBnB-type (and other) transient occupancy services.

The monthly report must disclose the following information for each transaction which takes place on its platform: (i) the physical address of the short term rental, (ii) the full legal name,

physical address, phone number and email address of the host of the short term rental, (iii) the individualized name and number and the URL of such advertisement or listing, (iv) a statement as to whether such short term rental involved the rental of the entire housing accommodation or a room within the housing accommodation, (v) the total number of days that the dwelling unit was to be rented as a short term rental through the platform, (vi) the total amount of fees received by the booking service, (vii) if the booking service collects rent on behalf of the hosts, (a) the total amount of such rent received and given to the hosts, and (b) the account name and identifier used by the host to receive payments from the booking service or an explanation as to why this

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information is not available.

A booking service that fails to submit a report in compliance with the law would be liable for a monthly civil penalty for each set of records which is missing, incomplete or inaccurate, of the greater of \$1,500 or the total fees collected during *the preceding year* by the booking service for transactions related to that listing.

The law also requires the booking service to obtain the lawful consent of the hosts using the platform to distribute this information to MOSE.

The law is sure to have a chilling effect on the amount of listings that AirBnB-type sites will have available on their platforms, since, among other things, the law effectively calls for the public

disclosure of admissions of violations of City and State law that prohibit such transient accommodations. Moreover, the centralized storage of this information may prove to be a treasure trove for owners litigating non-primary residence cases, illegal sublet cases, and illegal profiteering holdover proceedings in the Civil Courts, should an owner succeed in subpoenaing or serving a freedom of information law request on MOSE.

In the event you wish to speak to counsel about options available to a property owner who believes its tenants are engaging in this illegal activity, BBWG has extensive experience in this area of the law.

*Scott F. Loffredo is a partner in the Firm's Litigation Department, with expertise in this area, and can be reached at [sloffredo@bbwg.com](mailto:sloffredo@bbwg.com).*

## NOTABLE TRANSACTIONS

Partners **Daniel T. Altman** and **Lawrence Shepps** helmed client Dalan Management's \$54 million recapitalization of two midtown office buildings. In this complicated transaction, Messrs. **Altman** and **Shepps** negotiated a contract for the sale of several tenant-in-common fee interests in the two buildings to Boston investor Marcus Partners, with Dalan continuing to hold a minority stake and managing the properties.

Messrs. **Altman** and **Shepps** also handled the \$66 million joint investment purchase of two adjoining Upper West Side apartment buildings by Dalan with Miami-based Elion Partners, negotiating the purchase agreement and construction loan, as well as the joint venture agreement and management agreement between the two investors.

As reported in The Wall Street Journal, the Carlyle Group, LP has agreed to purchase the 45-story QPS Tower in Long Island City for \$284 million, making it the highest purchase price for a building in Queens. BBWG client Carlyle Group's regulatory due diligence on the property was performed by **Sherwin Belkin**, **Kara Rakowski** and **Damien Bernache** of the Firm's Administrative Law Department.

## NOTABLE CASES

Litigation Department partner **Lewis A. Lindenberg**, with the assistance of colleagues **Jeffrey S. Levine** and **Christina M. Browne**, successfully concluded a litigation on behalf of a major client against a commercial tenant resulting in the recovery of 70,000 square feet of below-market commercial space in Manhattan. Appeals group partners **Magda Cruz** and **Robert Jacobs** also contributed by prevailing on appeal sustaining the lower court's findings, thus clearing the way for the owner's recovery of the space.

**Mr. Lindenberg** and **Ms. Browne** also handled successfully a separate litigation resulting in all commercial tenants being removed from a building. BBWG's client, a for-profit affordable housing developer partnering with a non-profit affordable housing developer/service provider, plans to build a 21-story mixed use building on the site, to consist of approximately 140 units of traditional low-income housing and housing for survivors of domestic violence, and a 6,000-square foot retail base.

# DOMESTIC VIOLENCE ISSUES AND LANDLORD AND TENANT RESPONSIBILITIES



**By Martin Meltzer**

Landlord/tenant issues run the gamut from nonpayment of rent, to nuisance behavior such as hoarding and drug dealing, illegal short term rentals, illegal subletting, and unauthorized harboring of pets, to name a few. However, it is uncommon for a victim of domestic violence to involve his/her landlord in such private issues. Thus, owners are generally not equipped to address a domestic violence issue when it is brought to the owner's attention. (This article is not intended to define what domestic violence is or what the victim of domestic violence can legally do to protect him/herself, but to discuss an owner's legal obligations.)

Unbeknownst to many, an owner is legally required to have a plan when it is notified of domestic violence in its building. Additionally, an owner cannot turn a blind eye when it knows that there is a domestic violence issue in its building. Clear and decisive action must be taken by ownership; issues of liability could arise if an owner fails to act.

Generally, various lease provisions and statutes will allow an owner to bring an appropriate eviction proceeding to terminate the tenancy of the aggressor. The notice must be supported by more than the victim's word. A court-ordered restraining notice should serve as sufficient grounds and should identify the aggressor. Each scenario must be weighed on a fact sensitive basis, similar to any other proceeding.

New York State Real Property Law § 227-c allows a victim of domestic violence to terminate a residential lease or rental agreement without penalty provided certain conditions are met. That statute further permits a lessee or tenant for whose benefit an order of protection has been issued by a court of competent jurisdiction to seek an order of that court authorizing such lessee or tenant to terminate his/her lease or rental agreement.

The federal Violence Against Women Act of 1994 (VAWA), signed by President Clinton (42 U.S.C. §§ 13701-14040), addresses domestic violence in housing situations for tenancies involving premises within the Low Income Housing Tax Credit Program (LIHTC). It is crucial for owners who participate in the LIHTC program to be knowledgeable of, and to comply with, all the requirements.

While landlord/tenant law is complicated enough, adding the issue of domestic violence further complicates housing and building management. Such issues can have an impact on criminal issues and premises liability, in addition to Housing Court issues. An owner or its management team's ability to navigate the statutes and how to deal with protective orders and other court mandates will come into play. Owners should have at least a basic understanding of what is required. An owner confronted with domestic violence issues in its building must consult with competent, knowledgeable counsel immediately.

*Martin Meltzer is a partner in the Firm's Litigation Department, and heads its non-payment group.*

## NOTABLE ACHIEVEMENTS

Litigation partner **Martin Meltzer** completed serving a three-year term on the Housing Court Committee of the Association of the Bar of the City of New York. The Committee focuses on changes in landlord/tenant law, the structure and function of the City's Housing Courts, and participates in the evaluation of candidates for Housing Court judges.

# A CAUTIONARY TALE ON ONE PARTY'S RELIANCE ON ADDITIONAL INSURANCE COVERAGE



By Robert Jacobs

In the real estate industry, it is common for parties to require contractors to name them as additional insureds on commercial liability policies to afford protection from third party claims caused by the contractor's negligence. In construction license agreements, for instance, owners of properties adjoining construction sites require the developer's contractor to name them as additional insureds. Parties routinely confirm such coverage by requiring the production of certificates of insurance. However, since such certificates are for informational purposes only, reliance on certificates of insurance without examining the underlying additional insurance endorsement in the policy itself could be a costly mistake.

On March 27, 2018, the New York Court of Appeals rendered a decision that denied additional insurance coverage to a party despite being named as additional insured in a certificate of insurance. In *Gilbane Building Co. v. St. Paul Fire & Marine Insurance, et al.*, the New York State Dormitory Authority had contracted with Samson Construction Company ("Samson") for construction of a new forensic laboratory for New York City, to be built next to Bellevue Hospital. The Dormitory Authority also contracted with a joint venture between Gilbane Building Company and TDX Construction Crop ("Gilbane") to be the project's construction manager. The Dormitory Authority's contract with Samson required Gilbane to be named as additional insured, which coverage was evidenced by a certificate of insurance provided by Samson.

In 2006, the Dormitory Authority sued Samson and the project's architect alleging that Samson damaged the excavation support system by negligently removing steel plating, causing the foundation of a neighboring building to settle. The architect then commenced an action against Gilbane, and Gilbane provided notice to Liberty Insurance Underwriters ("Liberty"), the insurance company providing the additional insurance coverage.

When Liberty denied additional insurance coverage, Gilbane commenced a declaratory judgment action for a declaration that Liberty should be compelled to provide coverage. In that case, the relevant portion of the policy under "Additional Insured-By Written Contract" provided as follows:

WHO IS AN INSURED (Section II) is amended to include as an insured any person or organization with whom you have agreed to add as additional insured by written contract but only with respect to liability arising out of your operations or premises owned by or rented to you. (Emphasis supplied.)

Although Gilbane had no written contract directly with Samson, it argued that no contract was necessary because that requirement would conflict with the plain meaning of the Liberty endorsement. Preliminarily, the Court of Appeals noted that the endorsement contained the word "with" before "whom" in the endorsement, requiring privity of contract between Gilbane and Samson. Since there was no direct contract between those two parties, the Court of Appeals held that Liberty's denial of coverage was justified.

Notably, there is an additional insurance endorsement available that would have spared Gilbane the agony of defeat. Specifically, commercial general liability endorsement CG 20 38 04 13 contains additional language after the paragraph requiring privity of contract, as follows:

Any other person or organization you are required to add as additional insured under the contract or agreement described ... above.

The moral of this story is that anyone requiring additional insurance coverage from a contractor or subcontractor should also require production of the underlying additional insurance endorsement, especially if there is no direct contract with such party. This will enable you to make sure that the party providing the additional insurance has a policy containing an additional insured endorsement similar to the above. Significantly, a certificate of insurance is for informational purposes only and not binding on the insurance company. If you have doubts as to whether or not there is proper coverage, an insurance advisor or attorney familiar with this area of law should be consulted.

*Robert Jacobs is a partner in BBWG's Transactional Department. For information on certificates of insurance and related topics, please contact Mr. Jacobs at [rjacobs@bbwg.com](mailto:rjacobs@bbwg.com).*

# HPD REQUIRES NEW APPLICATION FORMS FOR CERTIFICATION OF NO HARASSMENT AND EXEMPTION



**By Alexa Englander**

Effective August 1, 2018, the New York City Department of Housing Preservation and Development requires that Applications for Certification of No Harassment (“CONH”), or Exemption from the CONH requirements, be submitted on new application forms.

The new Exemption application form is much more extensive than the prior (2012) form. The new form requires that the applicant provide personal information for individual owners, as well as for officers and directors of corporate owners. This disclosure of corporate officer information and the provision of personal information for owners, officers and directors was not previously required on Exemption applications.

The new CONH application form is, essentially, a combination of the two separate application forms previously required for (i) traditional applications for a CONH for single-room occupancy (“SRO”) buildings and (ii) the more extensive form required for applications for a CONH for multiple dwellings located in special anti-harassment districts. In addition to requiring more extensive information regarding the owning entity and its officers, other notable changes are listed below:

- **Fees:** The prior application required a fixed application fee based on the number of units in a building (which fee was capped at \$3500 for a building with 50 or more units). The new application form requires a fee of \$160 per unit. For large buildings, the application fee may be tens of thousands of dollars.
- **DHCR Registrations:** The new application form requires the applicant to disclose whether units in the building

are rent stabilized, to state whether the stabilized units have been registered annually during the relevant inquiry period (which is 3 years for an SRO building but can date back to 1973 for multiple dwellings in special anti-harassment districts), and to provide copies of “all rent registrations for each unit” filed within the relevant time period. This information and documentation—which could be voluminous—was not previously required.

- **Additional Documentation:** The new application form requires that the applicant provide “original documentation of mortgages and any net leases” for the building during the relevant inquiry period, which was not previously required.

Notably, we had already seen a tremendous slow-down in HPD’s processing and issuance of an initial determination of applications for a CONH. In previous years, applications were determined in 6 to 9 months, on average. However, some applications filed in the summer of 2017 still remain pending now, over one year later.

We are advised that HPD will promulgate an entirely new and different application form for buildings requiring a CONH under the City’s Pilot Program, which is scheduled to go into effect on September 27, 2018. We expect that the new application forms, new application requirements and initiation of the Pilot Program will only serve to further stall HPD’s processing and determination of applications for a CONH. Owners who have been considering applying for a CONH may wish to contact us to establish a strategy and realistic development timeline in light of these recent changes.

*Alexa Englander is a partner in BBWG’s Administrative Department, and can be reached at [aenglander@bbwg.com](mailto:aenglander@bbwg.com) for questions.*

# LANDLORD/TENANT COURT ALLOWS SOCIAL MEDIA DISCOVERY



**By Joseph P. Burden**

Generally, discovery is not allowed in summary proceedings. However, Courts have repeatedly approved discovery in cases arising from non-primary residence or succession cases where facts regarding occupancy of the apartment are peculiarly within the tenant's knowledge. Although such discovery may delay the resolution of the summary proceeding, there is no prejudice when the landlord has decided that clarification of the facts is preferable to a quick resolution.

A recent decision from Brooklyn Housing Court granted discovery of social media posts that the tenant made during the two-year period prior to the expiration of the last renewal lease.

The Court rejected the tenant's contention that the privacy settings on social media govern the scope of disclosure in these types of cases. Rather, the Court held that discovery requests need only be appropriately tailored and reasonably calculated to yield relevant information. For example, the Court did not allow disclosure of the tenant's entire Facebook account, but rather limited it to the discovery sought to disprove the tenant's defense that she had primarily resided at the apartment for at least two years prior to the relevant timeframe. In addition, the tenant was directed to execute authorizations to release her federal and state tax returns.

As far as social media was concerned, the Court ordered disclosure of all social media posts, including but not limited to Instagram, Twitter, YouTube and Facebook, subject to the

following conditions:

- (a) If the post contained a location and date, then the tenant could redact all content, including photographs and third-party statements, except for the location and date stated on the post;
- (b) If the post contained any comment or statement made by the tenant in which she stated a location, then the tenant could redact only the photograph contained within the post; and
- (c) If the post contained a comment or statement made by the tenant which contained the word home, house, apartment or other synonym of the word residence, then the entire content of the post was to be produced with no redaction.

It is evident that the Court balanced the right of liberal discovery with privacy protections so that the landlord's attorney did not go on a fishing expedition.

It is recommended that when litigating a non-primary residence or succession case, detailed requests for social media be made routinely as part of any discovery requests.

An owner faced with a potential primary residence case or a succession case should consult experienced counsel before commencing litigation.

*Joseph Burden is co-head of BBWG's Litigation Department, and has litigated a plethora of non-primary residence and succession cases during his time with the Firm.*

# CO-OP | CONDO CORNER



By Aaron Shmulewitz

Aaron Shmulewitz heads the Firm's co-op/condo practice, consisting of more than 300 co-op and condo boards throughout the City, as well as sponsors of condominium conversions, and numerous purchasers and sellers of co-op and condo apartments, buildings, residences and other properties. If you would like to discuss any of the cases in this article or other related matter, you can reach Aaron at 212-867-4466 or [ashmulewitz@bbwg.com](mailto:ashmulewitz@bbwg.com).

## **BUILDING OWNER REQUIRED TO INSTALL WHEELCHAIR RAMP FOR DISABLED RESIDENT**

*Espino v. NYCHA Civil Court, Bronx County, L&T Part*

COMMENT | While involving a NYCHA rental tenant, this case is instructive for co-op and condo Boards as well. The Court held that this ramp was a reasonable accommodation for this resident, who would be unable to leave the building without it.

## **CO-OP CAN REMOVE TERRACE AWNING ENCLOSURE ERECTED BY SHAREHOLDER WITHOUT BOARD CONSENT**

*Gramercy Park Residence Corp. v. Ellman Appellate Division, 1st Department*

COMMENT | The co-op was also awarded reimbursement of its legal fees.

## **CO-OP SHAREHOLDER CAN SUE BOARD FOR FAILURE TO TREAT BEDBUG INFESTATION**

*Stinner v. Epstein Appellate Division, 2nd Department*

COMMENT | This Board apparently paid one Board member \$25,000 in reimbursement for water damages, while allegedly failing to act on plaintiff's bedbug complaints, thus enabling the Court to find apparent disparate treatment between shareholders. Boards, take heed.

## **SUCCESSFUL BIDDER AT CO-OP FORECLOSURE SALE MUST PAY PRE-FORECLOSURE MAINTENANCE ARREARS**

*Stavinsky v. Prof-2013-S3 Legal Title Trust Supreme Court, New York County*

COMMENT | The Court held that the terms of sale made clear that obligation, and the bidder was free to not bid under those terms.

## **CO-OP PENTHOUSE SHAREHOLDER'S EXCLUSIVE RIGHTS EXTEND ONLY TO TERRACE OUTSIDE APARTMENT; CO-OP HAS EXCLUSIVE RIGHTS TO ROOF ATOP APARTMENT**

*Rushmore v. Park Regis Apartment Corp. Supreme Court, New York County*

COMMENT | The Court held that the co-op could install a common roof garden atop the apartment, and that any alleged diminution in value of the apartment was speculative and non-compensable. Rights to outdoor space is a frequent area of litigation for co-ops and condos.

## **PLAINTIFF ENTITLED TO HAVE CO-OP APARTMENT IN HIS NAME ALONE, REMOVING FORMER PARAMOUR AS CO-OWNER**

*Redstone v. Herzer Appellate Division, 1st Department*

COMMENT | The parties' agreement stated that the apartment would be transferred to her upon plaintiff's death, which has not yet occurred.

## **CONDO UNIT OWNER'S FAILURE TO COMPLY WITH CONTRACTOR'S INSTRUCTIONS FOLLOWING REPAIRS VOIDS CONDO'S OBLIGATION TO HAVE WORK DONE IN "WORKMANLIKE MANNER"**

*Houston v. Board of Managers, Deer Run Condominium Appellate Division, 2nd Department*

COMMENT | As a result, the Unit Owner was barred from suing the condo now to compel such repairs.

## LEGAL FEES AWARDED TO CO-OP THAT PREVAILED IN LITIGATION BY SHAREHOLDERS REDUCED BY 63%

*Cruz v. Seward Park Housing Corporation Supreme Court, New York County*

COMMENT | In awarding \$175,000 instead of the \$464,000 sought, the Court used unusually florid language in an emotionally written decision critical of how the co-op's large law firm chose to litigate this case.

## CO-OP DID NOT DISCRIMINATE BASED ON NATIONALITY IN IMPOSING CONDITIONS FOR CONSENT TO PROPOSED PURCHASE OF APARTMENT AS RESIDENCE FOR FRENCH AMBASSADOR

*Farkas v. River House Realty Co., Inc. Supreme Court, New York County*

COMMENT | The seller sued after France declined to proceed with the purchase subject to the Board's conditions, which dealt primarily with the number and size of gatherings to be held in the apartment.

## CONDO BUYER'S FAILURE TO TIMELY NOTIFY SELLER OF FAILING TO OBTAIN MORTGAGE COMMITMENT CONSTITUTED WAIVER OF MORTGAGE CONTINGENCY, ENTITLING SELLER TO KEEP DEPOSIT

*Sanjana v. King Supreme Court, New York County*

COMMENT | Unlike what apparently happened here, purchasers' counsel must ensure that purchasers are aware of, and comply with, all deadlines that trigger contingencies.

## CO-OP SHAREHOLDER'S FAILURE TO COMPLY WITH PRIOR STIPULATION OF SETTLEMENT ENTITLED CO-OP TO EVICT HER

*35 Jackson House Apartments Corporation v. Yaworski Appellate Division, 2nd Department*

COMMENT | In the underlying holdover eviction proceeding for unauthorized alterations, the stip had required the shareholder to provide names, license information, and insurance information for contractors by a stated deadline; she failed to do so.

## BBWG IN THE NEWS

Founding partner **Sherwin Belkin** was quoted in [The New York Times](#) Sunday Real Estate section on July 22 in an item in the Q & A feature on emotional support animals in no-pet buildings and in [Habitat](#) on July 24 on the same issue.

**Aaron Shmulewitz**, head of the Firm's co-op/condo practice, was quoted in a July 28 article on [cnbc.com](#) on the legal issues involved in unmarried couples buying property together.

**Steven Kirkpatrick**, a partner in the Firm's Litigation Department, authored an op-ed in the June 20 [Commercial Observer](#) decrying a proposed new City law as commercial rent control. **Mr. Kirkpatrick** was also quoted in an article in [The New York Post](#) on July 23 on bogus disability access suits under the ADA. **Mr. Kirkpatrick** also appeared as a panelist on a July 22 [NY1 News](#) feature on "Will Regulating AirBnB Hosts' Transparency Create A Chilling Effect?"

**Robert Marshall's** joining BBWG as a Transactional Department partner was featured in [Citybizlist.com](#) on July 16 and in [Real Estate Weekly](#) on August 1.



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