

# MALLIN & CHA, P.C.

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## MAY 2014 NEWSLETTER

### **Cooperative Transfers: The Application Process and Preventing Claims of Impermissible Discrimination**

New York case law is firmly settled that the directors of a co-op housing corporation may restrict the transfer of co-op apartments for any or no reason, absent impermissible discrimination. And yet, in the event a claim alleging discrimination is brought, directors can face liability both for the corporation as well as individually. Members of New York co-op boards must balance the discretion they are given to approve or disapprove co-op apartment transfers under case law with both constitutional and statutory prohibitions on discrimination.

In order to avoid allegations of discrimination from rejected applicants, below are a few steps to follow.

The first step in any transfer

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should be to require a comprehensive application. This is a good way to start gathering basic information about an applicant. With the application should be included a copy of the contract of sale, copies of financial statements and tax forms, financial and business reference letters, and other documents attesting to financial stability. Applications which are incomplete should not be considered.

After reviewing the application, the next step is holding an interview of the purchaser and his or her spouse. In most cases, applicants should only be brought in for an interview to confirm the board's initial reaction to the application that the purchaser is acceptable subject only to a face to face meeting. It is always advisable that more than one board member be present at the interview to safeguard against later claims of improper questions or conduct at the interview by a board member.

At any stage, questions cannot be asked regarding

### **HDFC INCOME GUIDELINES FOR YEAR 2014**

Different cooperatives and Housing Development Fund Corporations (HDFCs) have different eligibility definitions for "affordability".

You should consult with your attorney and review the corporate documents to determine and understand who are actually eligible to become shareholders of your HDFC cooperative.

If you live in a building that uses a percentage of the median area income as income guideline, you should understand that New York County, Kings County, Bronx County, Putnam County, Queens County and Rockland County are all part of NY Housing and Urban Development (HUD) Metro Fair Market Rent (FMR) area and have the same income limit guidelines determined by HUD. These guidelines are updated annually and the guidelines you refer to should be adjusted accordingly.

For a full copy of Fiscal Year 2014 Income Limits based on HUD guidelines, please contact our office at 212-285-1200.

race, religion, gender, sexual orientation, age, creed, or disability. Penalties for unlawful discrimination can be substantial and can include equitable relief, compensatory damages, punitive damages and the recovery of attorney's fees.

Once the interview has been conducted, as soon as the decision whether to approve or reject an applicant has been made, the reason for the decision should be documented

in an internal confidential communication to your attorney. The applicant should be informed verbally or in writing simply that the board declines or accepts their application.

An improper discriminatory motive in rejecting an applicant will subject both the co-op and individual board members to substantial liability.

Co-ops under New York law have an obligation to treat shareholders fairly and evenly,

thus in the event of an internal transfer, the standard for rejecting an existing shareholder is often more stringent than the standard generally applied to an outside purchaser.

For more information about properly screening and responding to prospective co-op purchasers, e-mail us at [fhayes@mallinlaw.com](mailto:fhayes@mallinlaw.com).

## TENANT ACTIONS GOING TO THE DOGS: RECENT DEVELOPMENTS IN DISABILITY ACCOMODATIONS

Less than twenty years ago, the argument that a family pet is actually a legally protected reasonable accommodation for a disability was laughable. However, medical support animal claims have taken off in the past decade, and now buildings are expected to make reasonable accommodations for disabled individuals and make room for Fido.

Arguments that a tenant needs a pet for medical reasons and rely upon them for emotional support are generally raised as a defense to actions brought by the landlord to remove an offending animal that is in violation of a pet clause or pet policy in a lease.

As cases surrounding support animals have become more common, however, they have also become easier to win due to a series of legal developments.

As far back as 1983, the city's administrative code provided for the "90-day-rule," which remains the single strongest line of defense for New York tenants with pets. This rule states that if a tenant has a pet "openly and notoriously" for 90 days with the landlord's knowledge, and the landlord does not object, the landlord waives any right to enforce a no-pet policy. See *EQR Hudson Crossing A, LLC v. Kalouf*, 33 Misc.3d 140(A), 941 N.Y.S.2d 537 (App.Term 1st Dept. 2011)

This rule was made stronger in 2001 when the courts ruled that absentee landlords could no longer claim no knowledge of the pet. See *Seward Park Hous. Corp. v. Cohen*, 287 A.D.2d 157, 734 N.Y.S.2d 42 (2001). Instead, knowledge of the landlord's agents, including the super, the doorman, or the rent collector, can be imputed to the landlord.

Such loopholes have now been extended to the realm of disability litigation. Now, co-op boards cannot ask whether a buyer needs an accommodation prior to approval, and cannot rescind approval later if it is revealed that he does – even if that accommodation is in the form of a pet. Disabilities in the context of support animals have been very broadly defined and can include chronic depression and or anxiety.

Cooperatives cannot assume that a pet clause or pet policy will be enforced without a fight. If a medical professional states that there is any medical connection to keeping an animal, it may be enough to prove the basic elements of a case.

For more information on pet regulation in your building, e-mail us at [fhayes@mallinlaw.com](mailto:fhayes@mallinlaw.com).