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Law Requiring Notice Of Interested Transactions Amended To Cover Condominium Boards

Stephen Lasser · Thursday, April 26th, 2018

As you may recall from one of our previous newsletters, a new New York State law was enacted, effective January 1, 2018, which requires cooperative board members involved in interested transactions to provide disclosure of these transactions to the owners in their associations. (Here is a link to the previous newsletter)

On April 18, 2018, Governor Cuomo passed an amendment to this new law specifying that the law also covers condominiums. Although the wording of the April 18, 2018 amendment probably should have been more detailed, it seems clear that the intent of the law is to require condominium board members to disclose to the condominium's unit owns on an annual basis whether any board members have engaged in interested transactions with the condominium. An interested transaction is a contract or business transaction with the condominium association in which a board member has a substantial personal financial interest. (E.g., a board member's contracting company doing work for the condominium association.) We recommend that condominium board members and property managers consult with legal counsel to ensure compliance with this new law.

(Note: although the BCL and NPCL generally only apply to cooperatives and homeowners' associations, it would be prudent for boards of unincorporated condominiums to follow the same procedures.) The responsibility for compliance with these new legal requirements falls upon the association. Therefore, as a practical matter, managing agents and board presidents should try to ensure compliance by their associations.

In order to comply with these new legal requirements, ***at least once each year*** the association must:

1. Provide a copy of BCL Section 713, http://codes.findlaw.com/ny/business-corporation-law/bsc-sect-715.html (or NPCL Section 715, if applicable, http://codes.findlaw.com/ny/notforprofit-corporation-law/npc-sect-715.html) to each board member. (Practice Tip: each board member should be required to sign a form stating that he or she received a copy of the statute at the time it is distributed.)
2. Provide an annual report to all owners that lists all contracts voted upon by the board which involved an interested board member or a report stating there were no interested contracts voted upon by the board. The annual report must include the following information for each specific contract that involved an interested board member:a. A description of the work or services being performed, information on the contract recipient, and the amount and purpose of the contract;b.

A list of all meetings held by the board to discuss or vote on the contract, including board member attendance, how each board member voted, and the results of the vote; and. The date the contract would be and remain valid.d. Each board member must sign the annual report.e. If during the year there were no contracts voted upon which involved an interested board member, the board members must all sign and send to all owners a disclosure statement stating that “No actions were taken by the board that were subject to the annual reporting requirements pursuant to Section 727 of the BCL (or Section 715 of the NPCL).”

One practical way to comply with these new disclosure requirements would be to distribute the annual report together with the annual meeting notice which is sent to all owners each year prior to the association’s annual meeting.

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