

APRIL 26, 2018



NYS issues corrections to condo and co-op conflicts of interest law

By Erica Buckley and Ari Glatt

Our recent real estate alert (linked [here](#)) discussed new requirements imposed on condominium and cooperative corporations formed pursuant to the BCL or the NPCL, which must provide at least once a year (i) a copy of the conflicts of interest law to each of its directors and (ii) an annual report to its shareholders regarding related party transactions. Until this past week, the conflicts of interest legislation did not appear to apply to most condominiums since condominiums generally are unincorporated associations. However, on April 18, 2018, amendments were signed into law clarifying the types of condominiums and cooperative housing corporations that are required to submit annual reports.

What does this new amendment accomplish?

The new amendment is a technical correction to address the ambiguity as to which housing corporations must abide by the conflicts of interest law.

Which housing corporations are affected by this technical correction?

The technical correction clarifies that all condominiums must properly disclose its conflicts of interest. Even condominiums that are unincorporated associations formed pursuant to Article 9-B of the New York Real Property Law, known as the Condominium Act, are affected by the conflicts of interest law.

Incorporating the recent technical correction, what are the aggregate requirements now imposed on boards?

- Cooperative corporations organized pursuant to the BCL must annually provide each director a copy of Section 713 of the BCL. Cooperative corporations organized pursuant to the Not-For-Profit Corporation Law must annually provide each director a copy of Section 715 of the NPCL. Condominium corporations organized pursuant to the real property law must annually provide each director a copy of Section 713 of the BCL.
- In each case, an annual report must be sent to all members or shareholders of the corporation, signed by all directors, stating all contracts or transactions that were voted upon by the board

that involved an interested director. The report must also include:

- (1) Information on the recipient, amount and the purpose of the contract;
 - (2) A record of the meetings of the directors, including attendance and how each director voted; and
 - (3) The date of the vote and the date the contract is valid.
- If there were no transactions that involved an interested director, the board must still prepare a document signed by all directors to all members or shareholders of the corporation, which states that no actions were taken by the board that were subject to the annual report requirement.

Condominium boards and sponsors should be aware of this change.

All condominiums—and any affected cooperative corporations that have not yet done so—should consider amending their governing documents to ensure they are compliant with the statutes. Best practice for housing corporation boards would be to establish a procedure to provide each director a copy of the applicable statute and track when the annual reports will be circulated.

The technical correction still does not fix enforcement issues.

Although the amendment now spells out which corporations the rules apply to, the law is still completely silent on enforcement and oversight, so shareholders and members will likely only be able to address violations of the conflicts law through litigation. Or they can always wait until the next technical correction for this law to be refined further.

Many of our condominium and cooperative clients have requested that we assist them with these fluctuating annual reporting requirements. Nixon Peabody's team of cooperative and condominium attorneys would be happy to help develop carefully worded policies in compliance with this law.

For more information on the content of this alert, please contact your Nixon Peabody attorney or:

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