

Memorandum

To: Cooperative and Condominium Directors and Managers

From: BPBMV Cooperative/Condominium Practice Group

Subject: Authority to Impose Fines

Date: May 24, 2005

We have been asked from time to time by cooperative (“coop”) and condominium boards about their ability to impose fines to ensure compliance with house rules. While the fines that boards seek to impose are generally small, boards occasionally seek to charge considerable sums for repeated or continuing infractions.

You should be aware, however, that regardless of the amount, the legality of fines or penalty fees may be subject to question. Courts have determined that the New York Condominium Act authorizes a condominium board to impose fines. See *Sweetman v. Board of Managers of Plymouth Village Condominium*, 1998 WL 112655 (N.Y. Sup. Ct., App. Term, Apr. 3, 1998). Nevertheless, they have not yet ruled that a coop board may impose fines. In either case, fines are clearly not permitted unless the board has written authorization to impose them in the coop’s proprietary lease or the condominium’s declaration or by-laws. A board’s resolution alone is not enough. Even if the authority to impose fines is granted, the amount imposed cannot be so large as to be deemed “confiscatory”. See, e.g., *North Broadway Estates, Ltd. v. Schmoldt*, 147 Misc.2d 1098 (Civ. Ct., City of Yonkers, 1990); *333-335 East 209th St. HDFC v. McDonnell*, 134 Misc.2d 1022 (Civ. Ct., N.Y. Co., 1987); *Vernon Manor Co-operative Apartments, Section I, v. Salatino*, 15 Misc.2d 491 (Co. Ct., Westchester Co., 1958).

In sum, both condominium and coop boards should proceed with caution when considering the establishment of fines to ensure compliance with house rules.

Please feel free to call us if you are thinking about establishing fines or special charges in your coop or condominium.

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