

Memorandum

To: Cooperative and Condominium Directors and Managers

From: BPMV Cooperative/Condominium Practice Group

Subject: Authorization of Board Action

Date: April 7, 2008

On March 31, 2008, the Supreme Court for New York County rendered a decision illustrating the importance for cooperatives and condominiums of documenting board and owner action properly. As cooperatives and condominiums age, the proper keeping of records has become an issue for many of them. It is an issue that should not be overlooked.

In *Pello v. 425 E. 50 Owners Corp. et al.*, 2008 N.Y. Slip Op. 30939(U) (Sup.Ct., N.Y. Co., Walter Tolub, J., March 31, 2008), a cooperative claimed to have enacted and subsequently modified a flip tax by board amendments to its by-laws. However, the coop was unable to present any documentation with respect to the initial enactment of the flip tax, either by the shareholders or the board, and with respect to the subsequent amendment of the flip tax by the board alone, the coop produced only unauthenticated waivers of notice of a board meeting and “an unsigned loose piece of paper with no seal or other authenticating mark purporting to be the minutes of that meeting” The cooperative was a small, seven unit building, but it was not allowed leeway because of this fact. The court noted that running a small building on an informal basis “may be understandable, [but] is not acceptable.”

Although this decision does not reflect any changes in the law, it speaks directly to the need for all actions, regardless of the size of the cooperative or condominium, to comport with the applicable governing documents *and* to be adequately documented at the time of enactment. Clear and proper records should be made and maintained for all such actions, particularly actions that impose any flip taxes or other monetary charges or that establish significant policies or procedures. If you feel that your cooperative or condominium is currently enforcing any fees, policies, or procedures that have not been appropriately adopted by the board, shareholders or unit owners, or that have not been sufficiently documented, please call us.

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