

Memorandum

To: Cooperative and Condominium Directors and Managers

From: BPBMV Cooperative/Condominium Practice Group

Subject: Board Elections and Shareholder Status

Date: April 28, 2006

As we enter the season when many cooperatives and condominiums hold their annual meetings, it is important to make certain that the election of board members is conducted properly. Sometimes this can be difficult, especially in buildings that have contradictory or ambiguous by-law provisions. These uncertainties lead to acrimony and, occasionally, to litigation.

As an example of ambiguity, one provision may simply require that to become a board member the candidate must be a resident of the building (or sometimes just a resident of the state) and over 18 years of age, but not require that the candidate be a shareholder or unit owner. The same by-laws may then also state in another provision that if a board member or his or her spouse ceases to be an apartment owner, such board member will be deemed to have resigned from the board.

While some have simply interpreted these two provisions to mean that all board candidates or their spouses must own their apartments, others have taken the matter to court. In a decision rendered recently in Bronx County Supreme Court,¹ the judge hearing the issue held that such provisions were not contradictory and interpreted them to mean that a person need not be a shareholder to be a qualified candidate for the board of directors, but if a director or the director's spouse was a shareholder when the director was elected to the board, that director automatically ceases to be a director when the director or director's spouse ceases to be a shareholder because a key factor that led to such director's election (*i.e.* shareholder status) is no longer present. Even this decision does not fully relieve the uncertainty, since it is subject to appeal, and by-law provisions of this type remain subject to differing interpretations by courts in different counties.

Please call us if you have any questions concerning your elections in your buildings.

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¹ *Schapiro v. Grunberg*, N.Y.L.J., December 14, 2005 (Sup. Ct. Bronx Co.).