

Memorandum

To: Cooperative and Condominium Directors and Managers

From: BPBMV Cooperative/Condominium Practice Group

Subject: Interest on Unpaid Maintenance and Common Charges

Date: August 23, 2006

Most cooperative proprietary leases and condominium by-laws permit the board to charge interest on unpaid maintenance or common charges and set forth a fixed percentage or amount for the interest. Some leases and by-laws, including the forms recommended by our firm to its clients, provide authority to the board to set and change the interest rate or late fees from time-to-time. However, where the by-laws or lease set a fixed interest rate or formula, it is important that the interest actually charged by the board and managing agent complies with the terms of the lease and by-laws.

The amount of such fixed interest may not be increased – or additional late fees imposed – without an amendment to the proprietary lease or by-laws. Furthermore, unless the lease or by-laws permits the compounding of interest, no interest may be charged on previously unpaid interest. Despite this prohibition, many cooperatives and condominiums charge interest on the prior interest due.

Although many cooperative and condominium owners pay interest, late fees, or compounded fees improperly charged by the board without challenging them (usually upon the sale of their apartments), courts will not enforce them. This becomes an issue when a cooperative or condominium must go to court to compel the payment of maintenance or common charges. At that time, if any interest charged on unpaid fees is not re-computed at the non-compound rates specified in the by-laws or proprietary lease, the court will not permit the cooperative or condominium to collect them and may assess the apartment owner's legal fees against the board. Boards, and their managing agents, should therefore calculate and bill interest on unpaid maintenance or common charges from inception in accordance with the terms of the lease or by-laws and without compounding.

If you have any questions concerning the calculation of interest on unpaid charges or the imposition of other late fees, please call us.

BPBMV Cooperative/Condominium Practice Group:

*Eric D. Balber
Michael T. Manzi
Todd S. Pickard
Robin T. Silberzweig
John T. Van Der Tuin*