

Memorandum

To: Cooperative and Condominium Directors and Managers

From: BPMV Cooperative/Condominium Practice Group

Subject: Security Deposits

Date: April 15, 2009

A recent decision of the New York County Supreme Court¹ stressed that the statute governing the holding of security deposits² applies to cooperative apartments. Although, as a matter of practice, most cooperatives comply with the provisions of the statute, it is worth reviewing the statutory requirements. The statute requires all landlords (including cooperatives) that hold security deposits in connection with leases (including proprietary leases and subleases) to place such deposits into segregated bank accounts and not to commingle the deposits with any other funds. In addition, for buildings of six or more residential units, the segregated account must be interest-bearing, and the interest must be paid to the tenant no less than once per year (minus 1% that may be retained as an administrative fee). Failure to comply with these requirements entitles the tenant to receive an immediate and complete refund of the security deposit in addition to payment of interest.

All deposits of tenant-shareholders are governed by this rule: security for the payment of maintenance, for the performance of alterations, or for compliance by the tenant with any other obligation connected to the tenant's proprietary lease or use of the apartment. Therefore, it is important that all security deposits be placed by the managing agent in a segregated account. This also serves the practical purpose of permitting the managing agent and cooperative to keep track of the deposits.

Although there has been no case applying this law to condominiums, a condominium and its managing agent should keep any deposits of unit owners for the payment of common charges or other condominium matters in segregated accounts to permit easy tracking and to prevent loss of the funds. The obligations clearly do, however, apply to any rental of a condominium unit in which the tenant posts a security deposit, with the obligations then resting with the owner of the unit and not the board of managers.

If you have any questions or concerns about security deposits, please call us.

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¹ *Vidipax LLC v. Brown Bear Realty Corp.*, N.Y.L.J., Jan. 14, 2009, at 27, col. 1.

² N.Y. General Obligations Law § 7-103.

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1. *Sponsor Obligation to Sell Unsold Shares* – July 16, 2002
2. *The Pullman Decision – Objectionable Tenant-Shareholders* – May 21, 2003
3. *Liability for Sidewalk Injuries* – July 14, 2003
4. *Revisions to NYS Tax Law on Gain Realized Upon Sale of Co-ops by Nonresidents* – November 1, 2004
5. *Authority to Impose Fines* – May 24, 2005
6. *Condominium Boards' Right to Restrict Sales* – August 9, 2005
7. *Liability of Condominium Managers and Unit Owners for Injuries to Third Parties* – October 28, 2005
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9. *Board Elections and Shareholder Status* – April 28, 2006
10. *Interest on Unpaid Maintenance and Common Charges* – August 23, 2006
11. *Mold* – October 5, 2006
12. *Transfer on Death Designation* – February 15, 2007
13. *Amendment to the 80/20 Rule* – December 26, 2007
14. *Authorization of Board Action* – April 7, 2008
15. *Insurance—Prompt Notice of Claims* – December 2, 2008
16. *Unit Owner Monetary Defaults* – March 27, 2009