

## *Memorandum*

**To:** Cooperative and Condominium Directors and Managers

**From:** John Van Der Tuin  
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**Subject:** Sponsor Obligation to Sell Unsold Shares

**Date:** July 16, 2002

You may have seen articles in the press about a recent court decision concerning a cooperative sponsor's obligation to sell unsold shares. We thought an explanation of the decision might be of use to you.

The decision was issued by New York State's highest court, the Court of Appeals, in a case named 511 West 232nd Owners Corp. v. Jennifer Realty Co. In Jennifer the Court concluded that the shareholders and board of a residential cooperative may be able to sue the cooperative's sponsor for breach of contract where the sponsor has failed to sell most of the shares of the cooperative. The Court reasoned that even though there was no express promise by the sponsor in the cooperative offering documents to sell any specific number of shares, there was an implied promise to make good faith efforts to sell a sufficient number of shares to make the corporation a viable, functioning cooperative. No guidelines are set forth in the Court's opinion to define what constitutes a good faith effort or a sufficient number of shares.

The decision hands a powerful tool to the boards and shareholders of cooperatives in which the sponsor retains a substantial number of unsold shares to force the sponsor to at least continue to make reasonable efforts to sell apartments. Where there is a large percentage of sponsor-held apartments, the sponsor cannot simply hold apartments as rental apartments with no effort to sell them.

At the same time, however, the factual circumstances before the Court in Jennifer were egregious and the reach of the Court's opinion may be limited to its facts. The conversion in Jennifer was declared effective after just 15% of the shares were sold. The sponsor had sold no shares since 1990 and retained over 62% of the shares – 41 of the 66 apartments. The sponsor let its offering plan lapse in 1996 and thereafter rejected *bona fide* purchase offers from prospective purchasers of vacant apartments. The plaintiffs contended this made their owner-occupied apartments less valuable and marketable, increased financing costs, increased wear and tear on the building from transient rental tenants, and precluded operation of the building as a viable cooperative. The Court concluded that in these circumstances, the plaintiffs had a claim that could not be dismissed immediately; it did not decide what the plaintiffs would have to prove at trial, nor the remedy to which they would be entitled if they prevailed at trial.

If you are involved in a cooperative (or perhaps even a condominium) in which the sponsor retains a substantial percentage of unsold apartments, you need to consider the impact of this decision.

If you have questions, we would be pleased to discuss your specific circumstances.