

**REPORT ON LEGISLATION BY THE  
COOPERATIVE AND CONDOMINIUM LAW COMMITTEE  
AND THE HOUSING AND URBAN DEVELOPMENT COMMITTEE**

**A.8718  
S.6770**

**M. of A. Braunstein  
Sen. Liu**

AN ACT to amend the general obligations law, the real property law, and the real property actions and proceedings law, in relation to excluding tenant-shareholders in cooperative housing corporations from certain housing provisions

**THIS BILL IS APPROVED WITH MODIFICATIONS**

**I. BACKGROUND**

The Cooperative and Condominium Law and the Housing and Urban Development Committees of the New York City Bar Association (the “Committees”) support the underlying aims of A.8718/S.6770 (the “Bill”) and offer a few modifications to better achieve those aims.<sup>1</sup> The Bill provides necessary corrections to the Housing Stability and Tenant Protection Act of 2019 (HSTPA) in order to preserve the traditional relationships between cooperative housing corporations and their tenant shareholders. We support the Bill because it has been carefully crafted to maintain the HSTPA’s protections for rent stabilized and controlled tenants, tenants of sponsor held units, tenants who sublease cooperative units from individual owners, and tenants who rent condominium units.<sup>2</sup>

There is no indication of legislative intent for the HSTPA to affect coops and condos outside of two contexts: limiting conversions of rental buildings to coops and condos,<sup>3</sup> and in the

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<sup>1</sup> The Committees’ proposed modifications are attached as Appendix A.

<sup>2</sup> The City Bar and the Committees take no position on Section 4 of the Bill, which amends RPAPL §702, out of deference to the concerns raised by the City Bar’s Housing Court Committee. Specifically, members of the Housing Court Committee overwhelmingly believe that the definition of “rent” for the purposes of summary proceedings should not be amended to include non-possessionary fees, charges or penalties incurred by a tenant who is a shareholder of a cooperative housing corporation. The Housing Court Committee offers that a cooperative can use other remedies, such as obtaining a monetary judgment in Civil Court and/or enforcing its lien and foreclosing against the shareholder for non-possessionary charges. The Committees submit that such a process is overly burdensome, and in order for a cooperative to operate efficiently and not unduly tax all shareholders, the cooperative should be permitted to address all issues in one proceeding. Given a lack of consensus among committees on this point, the City Bar has determined to leave this particular issue to the legislative debate.

<sup>3</sup> Floor Transcript, New York State Senate (June 14, 2019), <https://www.nysenate.gov/transcripts/floor-transcript-061419txt>. (All links in this report were last checked on January 29, 2020).

context of mobile homes.<sup>4</sup> However, by applying its rental protection requirements to all “landlords” and “lessors”, the HSTPA - perhaps inadvertently - intervenes in the relationship between non-profit cooperative housing corporations and their proprietary lease shareholders and unduly burdens coops with provisions intended to address a conventional landlord/tenant relationship.<sup>5</sup> Additionally, because these HSTPA provisions apply to coops dealing with shareholders, but not to condos dealing with unit owners, if not corrected, they may enhance the economic and market advantage of condominiums over cooperatives, and reverse a legislative and judicial trend to treat both forms of multifamily homeownership equally, in terms of governance and individual owner/shareholder rights.<sup>6</sup>

Passage of the Bill would distinguish tenant-shareholders from rental tenants in six main ways, while maintaining full protections for all fair market and rent stabilized and controlled tenants in cooperative buildings, including tenants of sponsors or holders of unsold shares. The Bill makes changes to certain provisions of Part M of the HSTPA, which currently prevent coops, vis-à-vis their shareholders, from:

- receiving a deposit or advance exceeding one month’s rent;
- using an applicant’s past or pending landlord-tenant actions;
- charging applicants fees for the processing, review, or acceptance of an application except for background and credit checks;
- charging applicants more than \$20 for background and credit checks;
- charging in excess of \$50 for late payment of rent; and
- collecting fees, charges, or penalties other than rent in a summary proceeding.<sup>7</sup>

The Bill’s exemptions are narrowly drawn and would enable tenant-shareholders to continue to run their buildings in a fair and effective manner. The restriction on deposits, for example, prevents cooperatives from accepting marginal tenants and obtaining security from shareholders who perform extensive alterations. The limitations on use of background information, late fees, and application fees put the other shareholders at risk from prospective shareholders who may default on their obligations and place additional burdens for taxes and operating costs on the remaining shareholders.

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<sup>4</sup> Floor Transcript, New York State Assembly (June 14, 2019), <http://www2.assembly.state.ny.us/write/upload/transcripts/2019/6-14-19.pdf#search=%228281%22>.

<sup>5</sup> Queens County Politics, *Queens Lawmakers Go To Bat For Co-Op Clarification Bill* (November 7, 2019), <https://queenscountypolitics.com/2019/11/07/queens-lawmakers-go-to-bat-for-co-op-clarification-bill/>.

<sup>6</sup> Chpt. 305 of Laws of 2017 (conflict of interest disclosure); *Pomerance v. McGrath*, NY Slip Op 06462, Oct. 4, 2016, Appellate Div. First Dept. (access to records).

<sup>7</sup> See n. 1, *supra*.

This is not the first time that legislation intended to protect tenants has unintentionally included coops. In the New York City Council, after realizing Local Law 64 conflated Housing Development Fund Corporation (HDFC) cooperatives with rent-regulated apartments, the legislative body is moving swiftly to rectify a law that went beyond its intended purpose.<sup>8</sup>

## II. NOTE CONCERNING HDFC'S

The Committees believe that the Bill correctly does not distinguish HDFC cooperatives from the larger universe of cooperatives operating in New York State. They believe that the Bill's exemption of cooperatives from certain provisions of the HSTPA should apply equally to HDFC's because the reasons for doing so are the same. Indeed, some argue that the burdens that fall on non-delinquent shareholders when a shareholder cannot meet his or her obligations are exacerbated in HDFC's (which often do not have the resources and reserves of non-HDFC cooperatives). The Housing Court Committee disagrees, with a majority of members expressing the view that the HSTPA is meant to protect low-income individuals, including those owning shares in HDFC's.<sup>9</sup> They argue that HDFC's, in particular, should not return to the *status quo* that existed prior to passage of the HSTPA. It seems undeniable that the Legislature will hear many conflicting views on the topic of HDFC's as they relate to both the aims of the Bill and perhaps other policy aims and legislation. As such, the City Bar takes no position on the matter of HDFC's vis-à-vis the Bill and leaves this issue to the larger legislative debate.

## III. CONCLUSION

Although not without some controversy within the City Bar's committees, we believe that the Bill, with certain technical clarifications that are suggested on the following pages, will preserve the legislative intent of the HSTPA. Passage of the bill will protect rental tenants without damaging the ability of cooperative house corporations throughout the state to operate in an efficient manner, and further New York's goal of promoting affordable home ownership.

Thank you for your consideration.

Cooperative and Condominium Law Committee  
Margery N. Weinstein, Chair

Housing and Urban Development Committee  
Daniel M. Bernstein, Co-Chair

February 2020

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<sup>8</sup> Michael Gartland and Anna Sanders, *City Council law draws ire of private co-op owners after their buildings were erroneously included in legislation meant to target rent-regulated landlords*, New York Daily News, (October 10, 2019), <https://www.nydailynews.com/new-york/ny-hdfc-city-council-ben-kallos-john-mcbride-20191010-xrzxybdg5azflpvf5yzq3japm-story.html>.

<sup>9</sup> There are more than 1,300 HDFC coops in NYC. The sole corporate purpose of HDFC coops is to serve persons of low income. The vast majority of HDFC coops serve persons at or below 165% of the area median income. Some HDFC coops have regulatory agreements with the government; others do not. See *Fact Sheet for HDFC Cooperative Shareholders*, <https://www1.nyc.gov/assets/hpd/downloads/pdfs/services/hdfc-coop-fact-sheet.pdf>.

## APPENDIX A

### AMENDMENTS PROPOSED BY THE NEW YORK CITY BAR ASSOCIATION COOPERATIVE AND CONDOMINIUM LAW COMMITTEE AND THE HOUSING AND URBAN DEVELOPMENT COMMITTEE A.8718 (AM Braunstein) / S.6770 (Sen. Liu)

#### Legend:

Matter in underlined bold are proposed additions.

Matter in [bold brackets] are proposed deletions.

## STATE OF NEW YORK

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8718

2019-2020 Regular Sessions

### IN ASSEMBLY

October 23, 2019

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Introduced by M. of A. BRAUNSTEIN -- read once and referred to the Committee on Judiciary

AN ACT to amend the general obligations law, the real property law, and the real property actions and proceedings law, in relation to excluding tenant-shareholders in cooperative housing corporations from certain housing provisions

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

- 1 Section 1. Section 7-108 of the general obligations law, as added by section 25 of part  
2 M of chapter 36 of the laws of 2019, is amended to read as follows:
- 3 § 7-108. Deposits made by tenants of non-rent stabilized dwelling units. 1. This  
4 section shall apply to all dwelling units in residential premises, unless such dwelling unit  
5 is specifically referred to in section 7-107 of this title or the deposit or advance is  
6 charged by a cooperative corporation to a current or prospective shareholder.<sup>1</sup>

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<sup>1</sup> Explanation: The existing HSTPA language prohibits cooperative corporations from requiring deposits or advances in excess of one month's rent from shareholders performing alterations or seeking to purchase shares in the corporation. Deposits for alterations protect the cooperative corporation, and its members, from expenses and risk caused by individual owners' alterations to their individual apartments. Deposits from prospective shareholders allow cooperatives to accept less wealthy applicants while insuring the other members of the corporation that maintenance and

1     **§ 2.** Paragraph (a) of subdivision 1-a of section 7-108 of the general obligations law, as  
2 added by section 25 of part M of chapter 36 of the laws of 2019, is amended to read as  
3 follows:

4     (a) No deposit or advance shall exceed the amount of one month's rent under such  
5 contract, except in dwelling units which are a cooperative housing corporation and where  
6 the tenant would become a shareholder of such dwelling unit.

7     § **[2] 3.** Section 227-f of the real property law is amended by adding a new subdivision  
8 3 to read as follows:

9     3. This section shall not apply to **[a prospective tenant] an applicant who applies to**  
10 **become a shareholder** of a cooperative housing corporation~~]~~, where such prospective  
11 tenant would become a shareholder of such cooperative housing corporation~~]~~.<sup>2</sup>

12     § **[3] 4.** Subdivisions 1 and 2 of section 238-a of the real property law, as added by  
13 section 10 of part M of chapter 36 of the laws of 2019, are amended to read as follows:

14     **§ 238-a. Limitation on fees. In relation to a residential dwelling unit, except with**  
15 **respect to payments, charges or fees charged to prospective or current cooperative**  
16 **corporation shareholders.**<sup>3</sup>

17     1. (a) Except in instances where statutes or regulations provide for a payment, fee or  
18 charge, no landlord, lessor, sub-lessor or grantor may demand any payment, fee, or  
19 charge for the processing, review or acceptance of an application, or demand any other  
20 payment, fee or charge before or at the beginning of the tenancy, except background

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other communal obligations will be paid. The language we propose above protects sublessees of shareholders who cannot be charged more than one month's rent. As written, the Bill only allows deposits in excess of one month from applicants who are accepted as shareholders, not all applicants or shareholders doing alterations.

<sup>2</sup> Explanation: Because of the risk to other shareholders of a fellow shareholder who defaults on proprietary lease obligations, the shareholders have a legitimate interest in the applicant's past history. As written, the Bill covers only applicants who "would become shareholders", suggesting it only applies to successful applicants, not all those applying.

<sup>3</sup> Explanation: This language exempts cooperative/shareholder charges from each section of 239-a, including application and other fees charged an applicant shareholder before occupancy, and late fees, while protecting sublessees. As written, the Bill only covers managing agent application fees from successful applicants, the actual costs of cooperatives in obtaining credit reports, and late fees. It does not include direct cooperative corporation review fees or other fees associated with a prospective new owner applicant.

1 checks and credit checks as provided by paragraph (b) of this subdivision, provided that  
2 this subdivision shall not apply to entrance fees charged by continuing care retirement  
3 communities licensed pursuant to article forty-six or forty-six-A of the public health law,  
4 assisted living providers licensed pursuant to article forty-six-B of the public health law,  
5 adult care facilities licensed pursuant to article seven of the social services law, senior  
6 residential communities that have submitted an offering plan to the attorney general, or  
7 not-for-profit independent retirement communities that offer personal emergency  
8 response, housekeeping, transportation and meals to their residents. Nothing in this  
9 paragraph shall prohibit a cooperative housing corporation from demanding from a  
10 prospective tenant any payment, fee or charge which is necessary to compensate a  
11 managing agent for the processing, review or acceptance of such prospective tenant's  
12 application where such prospective tenant would become a shareholder of such  
13 cooperative housing corporation.】

14 (b) A landlord, lessor, sub-lessor or grantor may charge a fee or fees to reimburse costs  
15 associated with conducting a background check and credit check, provided the  
16 cumulative fee or fees for such checks is no more than the actual cost of the background  
17 check and credit check or twenty dollars, whichever is less, and the landlord, lessor, sub-  
18 lessor or grantor shall waive the fee or fees if the potential tenant provides a copy of a  
19 background check or credit check conducted within the past thirty days. The landlord,  
20 lessor, sub-lessor or grantor may not collect the fee or fees unless the landlord, lessor,  
21 sub-lessor or grantor provides the potential tenant with a copy of the background check or  
22 credit check and the receipt or invoice from the entity conducting the background check  
23 or credit check. Notwithstanding the provisions of this paragraph, a cooperative housing  
24 corporation shall be permitted to charge a fee or fees to reimburse costs associated with  
25 conducting a background check and credit check in excess of twenty dollars, where the  
26 potential tenant would become a shareholder of such cooperative housing corporation,  
27 provided the cumulative fee or fees for such checks is no more than the actual cost of  
28 such background check and/or credit check.】

29 2. No landlord, lessor, sub-lessor or grantor may demand any payment, fee, or charge  
30 for the late payment of rent unless the payment of rent has not been made within five

1 days of the date it was due, and such payment, fee, or charge shall not exceed fifty dollars  
2 or five percent of the monthly rent, whichever is less~~["except that this subdivision shall~~  
3 ~~not apply to a tenant of a cooperative housing corporation, where such tenant is also a~~  
4 ~~shareholder of such cooperative housing corporation"]~~.

5 § ~~[4]~~ **5**. Section 702 of the real property actions and proceedings law, as added by  
6 section 11 of part M of chapter 36 of the laws of 2019, is amended to read as follows:

7 § 702. Rent in a residential dwelling. In a proceeding relating to a residential dwelling  
8 or housing accommodation, the term "rent" shall mean the monthly or weekly amount  
9 charged in consideration for the use and occupation of a dwelling pursuant to a written or  
10 oral rental agreement. No fees, charges or penalties other than rent may be sought in a  
11 summary proceeding pursuant to this article, notwithstanding any language to the  
12 contrary in any lease or rental agreement, except that such additional fees, charges or  
13 penalties may be sought in a summary proceeding brought by a cooperative housing  
14 corporation against a tenant who is a shareholder of such cooperative housing  
15 corporation.

16 § **[5]** **6**. Section 234 of the real property law, as amended by section 8 of part M of  
17 chapter 36 of the laws of 2019, is amended to read as follows:

18 § 234. Right to recover attorneys' fees in actions or summary proceedings arising out  
19 of leases of residential property. Whenever a lease of residential property shall provide  
20 that in any action or summary proceeding the landlord may recover attorneys' fees and/or  
21 expenses incurred as the result of the failure of the tenant to perform any covenant or  
22 agreement contained in such lease, or that amounts paid by the landlord therefor shall be  
23 paid by the tenant as additional rent, there shall be implied in such lease a covenant by  
24 the landlord to pay to the tenant the reasonable attorneys' fees and/or expenses incurred  
25 by the tenant as the result of the failure of the landlord to perform any covenant or  
26 agreement on its part to be performed under the lease or in the successful defense of any  
27 action or summary proceeding commenced by the landlord against the tenant arising out  
28 of the lease, and an agreement that such fees and expenses may be recovered as provided  
29 by law in an action commenced against the landlord or by way of counterclaim in any  
30 action or summary proceeding commenced by the landlord against the tenant. A landlord,

1 **other than a cooperative housing corporation in an action involving a shareholder,**<sup>4</sup>  
2 may not recover attorneys' fees upon a default judgment. Any waiver of this section shall  
3 be void as against public policy. Nothing in this section shall prohibit a cooperative  
4 housing corporation from recovering attorneys' fees in an action against a tenant where  
5 such tenant is also a shareholder of such cooperative housing corporation.

6 § **[6] 7.** Section 235-e of the real property law, as added by section 9 of part M of  
7 chapter 36 of the laws of 2019, is amended to read as follows:

8 § 235-e. Duty to provide a written receipt **or notice, except for payments made by or**  
9 **due from cooperative corporation shareholders.**<sup>5</sup> (a) Upon the receipt of the payment  
10 of rent for residential premises in the form of cash, or any instrument other than the  
11 personal check of the lessee, it shall be the duty of the lessor, or any agent of the lessor  
12 authorized to receive rent, to provide the lessee with a written receipt containing the  
13 following:

14 § **[6] 7.** Subdivision (d) of section 235-e of the real property law, as added by section 9  
15 of part M of chapter 36 of the laws of 2019, is amended to read as follows:

16 (d) If a lessor, or an agent of a lessor authorized to receive rent, fails to receive  
17 payment for rent within five days of the date specified in a lease agreement, such lessor  
18 or agent shall send the lessee, by certified mail, a written notice stating the failure to  
19 receive such rent payment. The failure of a lessor, or any agent of the lessor authorized to  
20 receive rent, to provide a lessee with a written notice of the non-payment of rent may be  
21 used as an affirmative defense by such lessee in an eviction proceeding based on the non-

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<sup>4</sup> Explanation: This modification allows the cooperative to recover legal fees in any default action involving a shareholder, including an action brought by the shareholder. As written, the Bill only allows legal fees in an action against a shareholder.

<sup>5</sup> Explanation: The existing HSTPA language requires detailed receipts if payment is made by a means other than personal check and requires a 5-day notice, by certified mail of any late payment. This proposed revision allows shareholders to make payments by ACH or other electronic methods - which provide written proof of payments - without requiring managing agents or buildings to give additional detailed receipts. Managed buildings give monthly detailed statements, including arrears, and do not accept cash payments. Proprietary leases have termination notices, and cure periods, which advise shareholders of any unpaid amounts, so additional notices are not necessary. As written, the Bill does not fix the ACH payment problem and only allows the coop a longer notice period by a method other than certified mail, if provided in the proprietary lease.



1 payment of rent. Notwithstanding the provisions of this subdivision, a lessor which is a  
2 cooperative housing corporation may provide for a deadline in excess of five days and a  
3 method of sending notice other than by certified mail, as long as such deadline and  
4 method of sending notice is provided for in the proprietary lease, and the lessee is a  
5 shareholder of such cooperative housing corporation.

6 § **[7] 8.** This act shall take effect immediately and shall apply to actions and  
7 proceedings commenced on or after such effective date.