

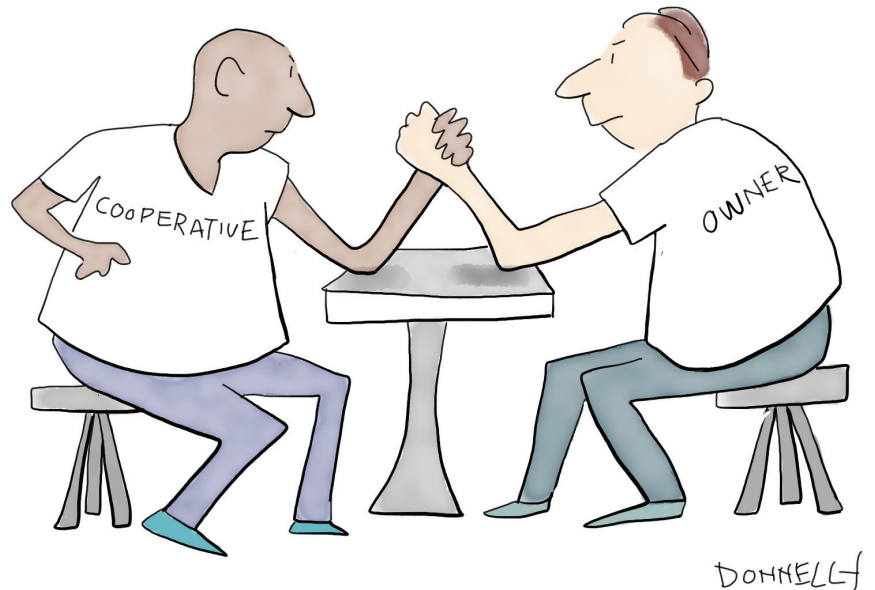
Wrestling Over What's "Reasonable"

BY DALE J. DEGENSHEIN

➤ **WHAT DOES IT** mean when a co-op's proprietary lease or a condo's bylaws state that "consent shall not be unreasonably withheld"? Is the Business Judgment Rule standard used? If not, what is the standard? These are the issues addressed by the court in *Perrault vs. Village Dunes Apt. Corp.*

Philip Perrault owned a unit at the Village Dunes co-op in Montauk on the eastern tip of Long Island, and he wanted to make improvements to his apartment. The proprietary lease required that he first receive the consent of the co-op board, which was not to be "unreasonably" withheld. Certain of the proposed renovations were disputed, including the removal of second-story walls and ceilings, with the remaining wall to be supported by the building's roof. In effect, the ceiling of the unit would be the underside of the roof. Further, the space on the roof above the current ceiling would be walled off from the common area, so that the area would be accessible only by Perrault. The court noted that Perrault submitted a letter by a professional engineer stating that the "proposed alterations are feasible."

The courts (lower and appellate) discussed the distinction between the Business Judgment Rule and situations where a cooperative's proprietary lease states that consent cannot be "unreasonably" withheld. Under the Business Judgment Rule, the courts will defer to a board's judgment as long as the board acts for the purposes of the cooperative or condominium, within the scope of its authority, and in good faith. If, however, there is language in the governing documents that requires a board to be "reasonable" in its decision-making, the Business Judgment



Rule will not apply and the board's actions must be "legitimately related to the welfare of the cooperative."

Importantly, if the Business Judgment Rule applies, the burden is on the apartment owner to demonstrate that the board violated the rule. However, if the reasonableness standard is used, it is the co-op or condo that must demonstrate that its acts were reasonable.

Here, the courts concluded that it was reasonable for the board to deny a request that called for removal of essential structural members that supported the roof and walls, even if replaced with another system. Further, Perrault's plan would have converted common space to space accessible only by him, which was an independent ground for the board to have denied consent. Perrault's complaint was dismissed.

Reading the Ruling

There are some co-op proprietary leases and condo bylaws that require that certain acts of the board be reasonable or that its consent not be unreasonably withheld. These are found most often in provisions concerning alterations and the establishment of house rules, or other rules and regulations. When reasonableness language is present, the burden is on the cooperative or condominium to demonstrate that its acts were "reasonable." ■

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