Moritt Hock & Hamroff LLP
ATTORNEYS AT LAW
STRENGTH IN PARTNERSHIP®

MHH Condo/Co-op Digest

Vol. VI, April 2024

This newsletter explores the emerging legal topics and issues affecting the condominium and cooperative services industry. Thought-leading attorneys from Moritt Hock & Hamroff's Condominium and Cooperative Services Practice Group share their legal insight, experience and best practices on this rapidly evolving area of law.

As always, if you have any questions regarding the matters raised in this Digest, please feel free to contact Bill McCracken of our New York City office at ***wmccracken@moritthock.com,*** *or your regular contact at the firm.*

About The Group

Moritt Hock & Hamroff's Condominium and Cooperative Services Practice Group represents clients in all aspects of condominium and cooperative law.

View Our Practice Group Page Here

Court Of Appeals Decision Threatens To Upend NYC Property Tax System

On March 19, 2024, the New York State Court of Appeals issued a **decision** in *Tax Equity Now NY, LLC v. City of New York et al.*, Index No. 153759/2017 (Sup. Ct. N.Y. Co.), opening up a path forward to challenging New York City's property-tax system on the basis that it allegedly "imposes substantially unequal tax bills on similarly-valued properties that bear little relationship to the properties' fair market value," and results in "staggering inequities and a regressive tax system that hurts those who can least afford to pay heavy taxes."

The plaintiff, Tax Equity Now NY, LLC (aka TENNY), brought its lawsuit all the way back in 2017, and sought declaratory and injunctive relief for alleged constitutional and statutory violations caused by the City's property tax system. The City and State defendants unsuccessfully moved to dismiss the entire complaint at the trial court level, but in February 2020, the Appellate Division, First Department modified the order to dismiss the entire complaint. TENNY appealed that decision to the Court of Appeals, which last month issued a 4-3 decision reversing the Appellate Division.

For condominium and cooperative apartment buildings, the TENNY litigation is of significant concern because, as a group, they are the beneficiaries of the allegedly "staggeringly inequitable" current system. As the **TENNY** complaint discusses, co-ops and condos are

valued for tax purposes not on their fair market value, but instead on what they would rent for based on comparable rental apartments in the area (including artificially low-rent rent-regulated apartments), which in some cases "will value some $4,500 per square foot cooperatives as if they were rent-regulated apartments worth $188 per square foot." Any effort to reform this valuation system, therefore, would in all likelihood result in significantly higher property tax bills for many co-ops and condos.

For those co-op and condo board members alarmed by the Court of Appeals' decision, a bit of perspective may be helpful. First, the Court of Appeals' decision did not find that any of TENNY's claims actually had merit – there is no Court order directing the City and State to raise property taxes on co-ops and condos. Rather, the Court simply held that TENNY's claims survived the defendants' motion to dismiss. After discovery, additional motion practice, a trial, and appeals, it would not be a surprise if there is another 7 years before a binding order affecting the current property tax system is issued.

Second, the current system has been in place more or less since 1981, and there has never been sufficient political will to fundamentally reform it since then, even though most parties acknowledge that the tax system is not, to say the least, a model of rationality. Having said that, the TENNY decision could conceivably catalyze existing political coalitions to undertake meaningful reforms. It is notable that this year's NYC City Council's response to the Mayor's **preliminary budget proposal**, included a new section calling for "a clear timeline for the release of its long-promised reforms to the City's property tax system." However, that same section tacitly acknowledges the difficulty in legislating real reform, as it notes the need to secure the agreement of the Mayor, City Council, State Assembly, State Senate, and the Governor, any one of whom could effectively kill any legislative initiative.

The bottom line is that there is unquestionably new momentum to reform the existing NYC property tax system, but given the slow pace of litigation and the difficulties of assembling a political coalition capable of actually changing it, the current tax system is unlikely to significantly change in the near future.

Local Law 88 Lighting & Submetering Deadlines Are Approaching

Although it gets most of the attention these days, Local Law 97 is not the only NYC-mandated energy efficiency initiative with a rapidly-approaching compliance deadline. **Local Law 88** (as amended by **Local Law 132** and **Local Law 134**), which requires most co-ops and condos to upgrade to their lighting systems and to install submetering for commercial tenants, also has an upcoming compliance deadline of December 31, 2024.

Local Law 88 is a bit of an unusual law in that its main requirements are by now common sense and standard practice for most well-managed buildings. You don't need a law in 2024 to tell you that LED lights are much more efficient than incandescent bulbs and pay for themselves almost as soon as you install them.

However, boards should not automatically assume that they have complied with all of the requirements of Local Law 88 just because they have picked this low-hanging fruit. Buildings also need to ensure that the entire building's lighting system complies with New York City's **Energy Conservation Code**, which requires, among other things, the installation of compliant interior and exterior lighting, lighting controls (interior lighting controls, light reduction controls and automatic lighting shutoff), and tandem wiring.

As for submetering, covered buildings must install electrical submeters and provide individual tenants in such spaces with regular, accurate readings of their energy use, on the well-founded theory that when provided with this information, tenants tend to reduce their energy consumption.

The specific requirements for a given building can be highly technical and **under the rules adopted by the DOB**, have to be certified by a registered design professional, licensed master electrician, or special electrician and filed with the DOB by January 1, 2025. Accordingly, any building that has not already retained a specialist consultant to oversee the upgrades and certify the work should do so as soon as possible

DOB Publishes Final Rules Requiring Natural Gas Detectors

On February 14, 2024, the NYC Department of Buildings **published final rules** requiring natural gas detectors to be installed in most residences, including multifamily residences like condominiums and cooperatives, by May 1, 2025. The rule sets out the requirements for the types of natural gas detectors must be used and where they must be located.

These rules have been a long time coming – since 2016, when the NYC City Council passed **Local Law 157** in response to the fatal East Village and East Harlem gas explosions. Local Law 157 directed DOB to create a natural gas detector requirement, but only after an industry standard had been developed. That didn't happen until 2022, and the DOB rule followed from that.

Condo and co-op boards should consult with management as how best to coordinate compliance efforts with the new DOB rules. Boards also should be mindful that there are different types of compliant detectors, some of which may be more expensive but which might also reduce the risk of a false alarm and resulting gas shutdown. Finally, boards should consider amending their house rules and alteration agreements to alert their residents to the requirement that these natural gas detectors must be installed.

FOLLOW US

moritthock.com

Attorney Advertising. Published as a source of information only. The material contained within should in no way be relied upon or construed as legal advice. ©2024 Moritt Hock & Hamroff LLP