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MHH Condo/Co-op Digest

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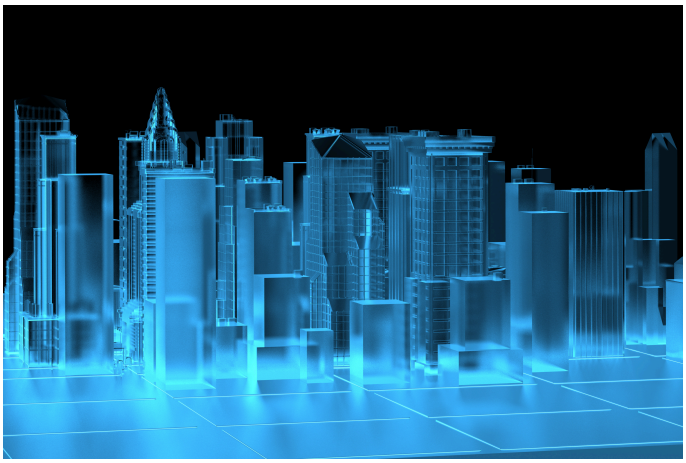
This newsletter explores the emerging legal topics and issues affecting the condominium and cooperative services industry. Thought-leading attorneys from Moritt Hock & Hamroff's Condominium and Cooperative Services Practice Group share their legal insight, experience and best practices on this rapidly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

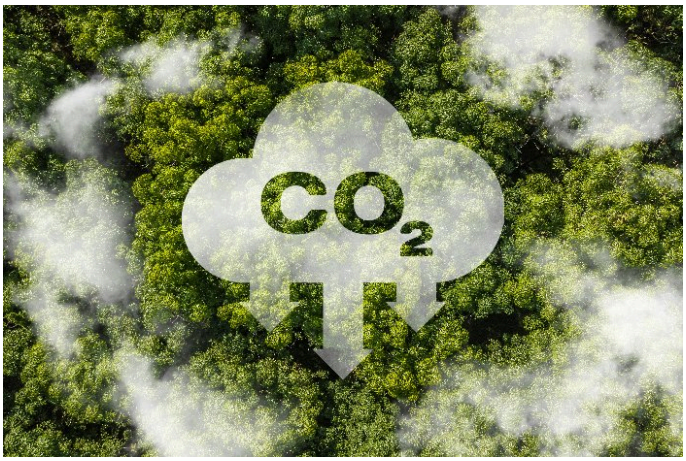
View Our Practice Group Page Here



New York Delays Implementation Of Its LLC Transparency Act

We have written previously about legislative initiatives to require greater disclosure of beneficial ownership of corporate entities – most notably the Federal government's Corporate Transparency Act, but also New York State's LLC Transparency Act ("LLCTA"). As discussed in the **January 2024 edition of the Digest**, the LLCTA was originally written to establish a searchable public database of beneficial ownership information of limited liability companies, but was watered down to eliminate the public disclosure aspect of the law. Thus, beneficial ownership information would be disclosed to law enforcement, but not to the public at large.

The revised LLCTA **has now been enacted**, and there has been one further change to the law's requirements that will provide relief to beneficial owners. Originally, the LLCTA was scheduled to come into effect at the end of this year on December 21, 2024, but the law's effective date has now been postponed to January 1, 2026. This change will give New York limited liability companies one additional year to prepare to make these disclosures.



For NYC Buildings Covered By Local Law 97, The Annual May 1 Compliance Deadline Will Take On Greater Significance Beginning Next Year

May 1 has long been an important deadline for large buildings in New York City to submit energy usage data to the City of New York. **Local Law 84**, aka the Benchmarking Law, which was enacted in 2009, requires owners of large buildings to submit their energy usage annually on that date.

Beginning next year, the May 1 deadline will take on even greater significance, because for buildings subject to **Local Law 97** (*i.e.*, the law intended to reduce carbon emissions in New York City's buildings sector to net zero by 2050), that is the date by which covered buildings are required to file their first emissions reports to the NYC Department of Buildings.

Building owners and managers reading this should hopefully already be well aware of this deadline and taking appropriate steps to prepare. Among other things, they should know: (a) whether their building is a "covered building" required to comply with the law (a list of such buildings is conveniently available **here**); (b) whether the building is an "Article 320" or "Article 321" building (more on that below); (c) the "gross floor area" of their building (a number which ideally would be recently remeasured, as it is one of the numbers used to calculate the building's emissions limits); (d) whether the building will meet or exceed their projected emissions limits (by now buildings should have over four months of actual data to help make that calculation); and (e) to the extent that a building is facing fines in 2025 for exceeding its emissions limits, a plan of action to reduce emissions and/or mitigate penalties. Any building owners who have not taken these steps need to get on the phone immediately.

The distinction between Article 320 and Article 321 buildings is worth noting here, as it affects the type of filing that will need to be made on May 1, 2025. "Article 320" buildings (outlined, naturally, in Article 320 of

Title 28 of the NYC Administrative Code) mostly consist of all of the large market-rate buildings with no more than 35% of units that are rent regulated, and must meet the prescribed emissions limits and file reports **annually** beginning on May 1, 2025.

In contrast, "Article 321" buildings are those that have greater than 35% of units subject to rent regulation, are an HDFC co-op (not a rental), or have units that participate in certain Federal or NYC affordable housing programs. These buildings have to either show that their emissions are below their prescribed emissions limits or complete certain so-called Prescriptive Energy Conservation Measures, and then file a **one-time** report by May 1, 2025.

In addition, the DOB has released a comprehensive and extremely thorough **Article 321 Filing Guide** for use by Article 321 buildings. The counterpart filing guide for Article 320 buildings is still in the works.

We also expect DOB to release rules harmonizing and hopefully simplifying filing obligations for buildings subject to both Local Law 84 and Local Law 97.

Cooperatives Need To Maintain Signed, Current Proprietary Leases On File

We have noticed an uptick in cooperatives needing to bring nonpayment proceedings against shareholders delinquent in maintenance payments. Ordinarily, a nonpayment petition will open with allegations that the cooperative is the landlord of the apartment premises, that the shareholder owns shares allocated to the apartment premises, and that the shareholder is in possession of the apartment premises pursuant to a written proprietary lease. However, these simple and obvious propositions are sometimes difficult for a cooperative to prove because the cooperative is required to produce a signed proprietary lease and stock certificate as evidence. Unfortunately, we have observed that many cooperatives do not have these records available, either because the proprietary lease and its amendments have not been properly

noticed, or because signed proprietary leases and copies of stock certificates have been lost or misplaced.

It is important for cooperatives to maintain current and complete records. Housing courts will dismiss nonpayment proceedings that are not properly supported by sufficient ownership records. See, for example, ***6 West 20th St. Tenants Corp. v. Dezertzov***, 75 Misc. 3d 135(A) (N.Y. App. Term. 2022) ("A nonpayment proceeding may only be maintained to collect rent owed pursuant to an agreement between the parties, express or implied, and here petitioner failed to meet its burden to establish the existence of an agreement with respondents to pay the rent and other charges demanded in the petition"); ***Lincoln Amsterdam House, Inc. v. Tymus***, 50 Misc. 3d 1209(A), (N.Y. Civ. Ct. 2016) (dismissing petition for failure to meet petitioner's burden "to establish the existence of an agreement to pay the rent demanded").

In a cooperative, where each form of proprietary lease is required by law to be identical, the failure to have a signed, current copy of the proprietary lease with amendments and a copy of the stock certificate on file is not necessarily fatal to the bringing of a nonpayment proceeding, but it makes the litigation more complicated and uncertain. We encourage cooperative boards to have their management companies review their files and make sure that their shareholder records are up-to-date to avoid this potential problem in court.

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