

Co-op / Condo Ombudsman Bill Making Its Way through State Senate

by Bill Morris Dec. 10, 2010

Some years ago, the satirical group Chicago City Limits presented a sketch in which two tough-talking neo-Nazis forced a confession out of a frightened prisoner. The gag? He was a co-op applicant. The image of co-op boards hasn't changed much since: power-hungry prima donnas, arbitrary and capricious, who give benefits to themselves that they don't give to others.

In response to this perception, State Senator Liz Krueger (D-Manhattan) this past May offered up the latest version of a legislation that has been introduced regularly since 1988. Her bill, S7958, which is now before the finance committee, would create an "Office of the Cooperative and Condominium Ombudsman."

That office would seek to educate co-op / condo dwellers and professionals about their legal rights and responsibilities. It would also monitor board elections; mediate disputes; and conduct public hearings. The ombudsman could subpoena witnesses and question them under oath, and could also require any books or papers relevant to any dispute. The salaried position would be appointed by the state attorney general. The money for that and related office expenses would come from an annual \$6 fee charged to every co-op and condo unit in the state.

"This office addresses a lot of housing issues," explains Katie Kincaid, Krueger's spokesperson.

"Something that comes up a lot is that residents of co-ops and condos have questions and concerns when they feel they're not being treated fairly by their board. Right now there's nobody checking co-op and condo boards. The only course of action is legal action, which can be very costly for individuals, boards, and, ultimately, all shareholders and unit-owners."

Disputes such as the one shareholder Dianne Stromfeld had when she ran for the co-op board of the sprawling 1,844-unit North Shore Towers, located at the point where Glen Oaks, Queens, abuts Nassau County. She lost by a whisker — 806 shares out of a total of 5 million that were cast. Despite the thin margin of defeat, she says the board refused to do a recount.

"So I went to court to get the ballots so I could pay to have a forensic accountant look at them," says Stromfeld, a real-estate broker. "By the time the judge ruled in my favor, it was time for a new election."

In 2008 and again in 2009, Stromfeld ran for the board and lost, fair and square, but the bitter experience from 2007 stuck with her. The board had paid \$86,000 to the law firm Jaspan Schlesinger to deal with Stromfeld's lawsuit, while her legal bills, paid out of her own pocket and by sympathetic shareholders, came to about \$5,000.

"The board said it was my fault that they had to spend that money," she notes. "The real question was: Why did the board approve \$86,000 for an attorney? If we had an ombudsman, a group of shareholders could have shown him what they have been able to uncover, and he could protect them."

But as Warren Schreiber sees it, paying an ombudsman is not the way to resolve such disputes. A retired transit authority employee who is board president at the 200-unit Bay Terrace Co-op Section 1, in Bayside, Queens, he disapproves of any new bureaucracy in what he calls New York's "dysfunctional state government," and believes any ombudsman position would be "a patronage job" and thus inherently bad.

"I've read this bill," he says, "and based on my experience as a board president — and from speaking to other board presidents — I know there are going to be problems on a number of fronts. One is cost," he predicts. "That \$6 fee won't last. And if we have a shareholder who decides to go the arbitration route, the ombudsman can demand our presence and our documents at a hearing. I'm not going to go to that hearing without my counsel. He's going to charge the co-op for that — and that's going to get charged back to the shareholders."

His misgivings don't stop there. "Another problem with the bill," Schreiber continues, "is that the ombudsman's office would have the right to monitor board elections, if as few as 15 percent of the shareholders want them to. I hope nobody is naive enough to think that having a monitor present won't affect the outcome of that election. There will be a perception," he believes, "that if there's a monitor present, there must be something wrong." Schreiber suggests that, "If people are unhappy" with their co-op / condo board, "they can vote out the board or run for the board themselves."

Bay Terrace's attorney, Geoffrey Mazel, a partner at Hankin & Mazel, agrees. "The system isn't perfect," he says, "but if you're ready to do some real work, and it's hard work, you can effectuate change. Besides, all the mechanisms are in place to resolve shareholder disputes without having to go to an ombudsman. ... You can contact your board or your managing agent and ask to be heard."

Mazel, like Schreiber, sees a "third-party government agency" as unnecessary and wasteful. "I don't think it would be good for the co-op community," Mazel says. "To me, it's a can of worms."

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The Habitat article about the Ombudsman Bill is a good piece, but the stated arguments against the bill are illogical. The need is real, & the bill makes sense.

I don't know Warren Schrieber, & make no assumptions about how well he runs his co-op...but he's a "poster child" for this legislation.

The Ombudsman's office would allow co-op shareholders (or condo owners) to call for monitors if they felt it necessary to ensure a fair & effective election. This provision could not be used by a disgruntled owner to create a nuisance, due to the minimum threshold of 15%; this ensures that monitors are brought in only if there's widespread concern.

Yet, Schreiber disdains the use of monitors; his solution is for unhappy shareholders to simply "vote out the board or run for the board themselves." Right. If your problem is undemocratic elections, or if your building doesn't bother to hold elections at all, you just need to get yourself elected so you can fix things.

Think about this classic chicken-&-egg problem: you need fair elections to get a seat on the board, & you need to be on the board in order to ensure that fair elections are held. Exactly how, absent outside influence, will you ever bring about constructive change? The answer is, you won't.

Dianne Stromfeld spent money, time & energy pursuing election records. By the time the courts gave her access to the info she needed, it was time for another election anyway. The only winners of this game are the lawyers. It shouldn't be this costly...or this hard.

Schreiber's attorney, Geoffrey Mazel, is speaking from the same fantasy world when he says all you need to do to resolve disputes is "contact your board or your managing agent and ask to be heard." Of course, there are many boards, & many agents, that respond to owner/shareholder concerns in a timely & equitable fashion. (It should be noted that such boards & agents will barely notice that the ombudsman office exists.)

But when the board stonewalls, & the agent doesn't respond to your calls, emails & certified letters, what are your options as an owner? You can't use mediation, because it's voluntary—and boards nearly always decline to participate (remember that you & your neighbors are paying their legal costs, & ratcheting up costs for individual owners is a common board tactic). Too often, the choice is between hiring an attorney to bring an action...& finding a new place to live.

There's a better way. Having an ombudsman will level the playing field for apartment owners statewide.

I'm a past board president. I've discussed this legislation with many, many co-op & condo owners, & also with current & past board members. The board members have been split, with some strongly in favor, some strongly opposed, & most tentative—they think it could be a good thing, but they're (understandably) a bit nervous.

I have yet to encounter an individual owner or shareholder who doesn't favor the Ombudsman Bill.