



Albany bill would cause problems for co-op and condo boards

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State Sen. Liz Krueger's (D-Manhattan) Senate Bill S7958 is an assault on the legitimate governance of co-ops and condominiums in our city. This new, unfunded mandate seeks to marginalize the powers of duly elected boards of directors by creating an ombudsman office within the state Department of Law and appointed by the state attorney general.

According to this legislation, the co-op/condo "czar" shall "... educate shareholders of cooperatives and owners of condominiums, their boards of directors and boards of managers, professionals working with and for such boards, property managers, and other interested parties about their legal rights and responsibilities under federal, state and local laws and regulations."

A plethora of organizations whose mission is to do precisely that already function statewide. So why are we reinventing the wheel to fix a problem that does not exist?

Even the Senate sponsor of the bill acknowledges that "many cooperative and condominium boards act in the best interest of their buildings, are financially prudent, and responsive to the needs of shareholders and unit owners" Do we throw out the baby with the bath water and overhaul the entire system to remedy a few bad apples?

The legislation which would grant the ombudsman subpoena power "... and require the production of any books and papers deemed relevant to any dispute pending before the office ..." is legislative overkill whose unintended consequences will imperil the tight budgets of our co-op and condominium communities and will be felt by owners and renters alike.

This misguided legislation seeks to circumvent the landmark Levandusky ruling, wherein the state Court of Appeals unanimously decided that as long as a co-op board is acting in good faith for the legitimate purposes of the co-op and not engaged in illegal behavior, the courts will not second guess its actions. The decision, which enshrined the "business judgment rule," has protected boards and co-ops from micro-management and frivolous and costly lawsuits.

The Levandusky decision allows New York co-op boards to successfully manage diverse and unique properties without having to look over their shoulders after every decision. The principles enumerated in Levandusky have helped facilitate stability of common living arrangements and are largely responsible for the smooth operation of many co-ops. Krueger's bill will undo all of this.

The cost burdens of this bill are real and palpable. It creates a new co-op/condo tax initially pegged at \$6 per residential unit. Needless to say, this fee will increase exponentially given our state's insatiable appetite for revenue. For upscale co-ops like North Shore Towers, the new tax will begin at \$11,000. For garden apartment communities like Glen Oaks Village, the tax will be \$20,000.

This money could be better spent fixing sidewalks or installing ramps for the disabled or seniors of our communities. The cost burden of this bill does not stop at the tax collector's door. The ombudsman's office will further increase housing costs by injecting burdensome reporting and filing requirements and inserting an irreversible layer of bureaucracy and red tape into the process. The state Legislature has already imposed the nation's heaviest tax burden on us, yet the state is still bankrupt with a \$9.5 billion deficit.

Cooperative and condominium boards are duly elected and accountable to their resident owners. Board members spend each day working to improve the quality of life of their residents. Our co-ops are the last bastion of affordable housing in our city and have enabled the dream of homeownership for millions of New Yorkers.

Krueger's bill will kill the goose that lays the golden egg. Before foisting this legislative boondoggle onto the backs of co-op and condominium owners, perhaps the state Legislature should seek to get its own house in order first.


Bob Friedrich

President

Glen Oaks Village

Owners of co-ops and condos need Senate 'ombudsman bill'

Thursday, July 29, 2010 12:11 PM EDT

 [Comment \(No comments posted.\)](#)  [Email To a Friend](#)

Bob Friedrich wrote in his June 17-23 letter that the state Senate co-op and condo "ombudsman bill" (S7958) addresses "a problem that does not exist." We wish he was right.

At the Alliance of Condo & Co-op Owners, we hear stories every week of self-dealing, fiscal abuse, failure to hold proper elections, harassment and more. Sadly, some boards breach their by-laws and the business corporation law — often flagrantly. When this happens, owners need and deserve tools to facilitate correcting bad behavior without relying on an overburdened and slow court system — especially since, when litigating against boards, owners pay both sides' legal costs.

Frustrated owners often call us after they have tried the attorney general. Except in limited cases where sponsors or offering plans are involved, the attorney general simply says, "If the situation is serious enough, you may want to retain a private attorney." No help there.

The attorney general also says, "Remember that members of co-op/condo boards generally want to resolve problems and keep peace in the building." Friedrich is similarly optimistic: "Board members spend each day working to improve the quality of life of their residents."

While we would like these statements to be true of all boards and board members, the reality is that, as with politicians everywhere, some are good and some are not.

Exacerbating the problem is the fact that managing agents are unlicensed. Answering to no state agency, they too often owe allegiance to board officers rather than to the association and owners.

While we agree with Friedrich in that a "plethora of organizations" exists to educate condo and co-op boards about their "legal rights and responsibilities," virtually none wield any enforcement authority or oversight on these matters. Further, buildings whose board members are active in these groups, such as the Council of New York Cooperatives and Condominiums and the Federation of New York Housing Cooperatives & Condominiums, who read Habitat and the Cooperator and attend the seminars and housing forums they sponsor, are not those from which we get complaints. These groups preach only to the choir.

Finally, Friedrich manages to complain in one breath that this bill is an "unfunded mandate" and in the next that the bill's built-in funding is an unconscionable tax burden. It cannot be both. The actual cost is \$6 — per apartment, per year — and most owners we know would find this "burden" most welcome.

ACCO strongly supports the ombudsman bill. We believe this legislation will provide to hundreds of thousands of New York residents resources and support to help them achieve and maintain democratic representation, fair play and accountability in their housing communities. Where housing associations already enjoy these things, boards need only to continue their management practice and remain accountable to owners.

Friedrich is a long-time co-op board president. Half of our directors and the entire ACCO executive committee are or were board members themselves, including sitting and past presidents. We all know this job requires hard work and long hours and is often thankless. We also know how gratifying it is to run a building well on behalf of all owners and to build an enduring sense of community that transcends brick-and-mortar concerns, thereby enhancing the quality of life.

Larry Simms

President

Alliance of Condo & Co-op Owners

Manhattan