



Armstrong
Teasdale

Factors to Consider as Co-ops and Condos Create COVID-19 Policies – Session #1

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Introduction

- **Governmental Guidance – CDC, OSHA, DOH**
- **Executive Orders**
 - Are co-ops and condos subject to an EO?
 - Can co-ops and condos put in more stringent requirements?
- **Empire State Development Guidelines**
 - Essential vs. Non-Essential Services
- **Phased Reopenings**

Introduction (cont.)

- **Considerations for buildings as the city begins to reopen**
 - Safety of residents and building staff
 - Work with professionals – managing agent, architects, environmental professionals
 - Boards must perform a balancing act when considering each item
 - Alterations
 - Moves
 - Brokers
 - Meetings
 - Deliveries
- **Develop Interim Rules**
 - Reopening New York Safety Plan
 - Rules are subject to change
 - New Executive Orders, guidance, etc.
 - Board’s determination that a change is necessary

Use of Amenities

- Different considerations for indoor and outdoor amenities
- Face covering and social distancing
- Guests
- Consider reservations
- Hand sanitizing and cleaning protocols
- How are areas accessed/traffic patterns
- Consider maximum amount of people and extended hours
- Certification
- Waiver

Use of Amenities (cont.)

- **Amenity-specific considerations**
 - Gym
 - Playground
 - Benches
 - Pool
 - Running/ball playing

When Someone Tests Positive

- **Plan of action to be included in Safety Plan.**
 - https://www.governor.ny.gov/sites/governor.ny.gov/files/atoms/files/NYS_Business_ReopeningSafetyPlanTemplate.pdf
- **Who has tested positive**
 - Employee, resident, or visitor
 - Close contact with someone who has tested positive
- **Disclosure of positive test to:**
 - Governmental agencies
 - Employees
 - Residents
- **How much to disclose**
 - Privacy considerations
 - Discrimination
 - Chilling effect

When Someone Tests Positive (cont.)

- **Contact tracing**
 - Importance of log
- **Disinfecting**
 - <https://www.cdc.gov/coronavirus/2019-ncov/community/disinfecting-building-facility.html>
- **Screening and how to handle the information collected**
 - Temperature
 - Questionnaire
 - Symptomatic
- **When should isolation/quarantine end?**

Move In/Move Out Policy

- Scheduling and coordinating moves with the Resident Manager
- Obligations and certifications of the moving company
 - Take worker's temperatures
 - Certify that no worker has:
 - tested positive for COVID-19 in the last 14 days,
 - exhibited symptoms of COVID-19,
 - come into contact with anyone who, has tested positive for or exhibited symptoms of COVID-19, and
 - he/she has any reason to believe he/she has COVID-19.
- Right to deny entry or to cancel a move
- Face covering requirements

Move In/Move Out Policy (cont.)

- **Rules and Restrictions for Moves**
 - Limit moving hours
 - Limit total time for the move
 - Limit the number of movers in the building
 - Allowable v. prohibited areas for movers to enter within the building
- **Right to remove workers for non-compliance**
- **Apartment owner's responsibilities**
 - Standard fees, reimbursement of expenses, security deposits remain
 - Standard insurance and indemnification
 - Additional disinfecting requirements and fees

Virtual Shareholder Meetings

- **BCL Section 602 (a) states:**
 - Meetings of shareholders may be held at such place, within or without this state, as may be fixed by or under the By-laws, or if not so fixed, at the office of the corporation in this state
 - BCL 605 (a) also states that the notice of meeting must include “the place, date and hour” of the meeting
- **Most By-laws set forth the place**
 - Ex: At a location chosen by the Board in the country in which the co-op is located
- **But there must be a “place” or a “location”**
- **As such, the shareholder could attend in person, or by “proxy”; there was no other way to attend**

New BCL Section 602(b)

- The Board may authorize “reasonable measures” to provide participation in meetings “substantially concurrent” with the meeting, and/or “provide reasonable measures to enable shareholders to vote or grant proxies by means of electronic communication.”
- The Board must implement reasonable measures to verify that each person is a shareholder of record, and must keep a record of any vote by such shareholder.
- Nothing required above shall limit, restrict or supersede another form of voting or participation.
- “Reasonable measures” for voting “shall include but not be limited to telephonic and internet voting.”
- Under 602(b), you can now hold a meeting and have people join via telephone, by Zoom or by some other platform.
- **BUT THE MEETING, FOR THOSE WHO WANT TO ATTEND IN PERSON, MUST STILL BE AT A PLACE!**

Governor Cuomo's Executive Order

- Executive Order 202.8 temporarily suspends the provisions of Section 602(a) which requires meetings to occur at a “place,” as well as BCL Sections 605(a) and (b) which require prior notice of annual meetings and certain adjournments thereof, “to the extent they require meetings of shareholders to be noticed and held at a physical location.”
- It's unclear when this expires, but even if it expires on June 28, which some people believe is the date, most experts believe it will be extended, since the Governor will still want to discourage large gatherings (especially in NYC).

Notice of Meetings

- How do you give notice? Follow the By-laws.
- BCL 605 states that notices of shareholders meetings can be given “in writing or electronic”; but the By-laws may say something else (example: by mail).
- It is strongly suggested that the Board consider amending the By-laws to allow for email notices. But until then, mail or deliver as required, AND send by email.
- The entire meeting and voting process must be carefully explained in the Notice.

Planning Ahead

- **Take nominations prior to the meeting. This will allow the use of a “directed proxy.”**
 - Consider allowing each candidate to prepare a personal statement, that can be distributed with the proxies.
- **Use proxies. By doing so, the issue of obtaining a “virtual quorum” may not be important.**
 - Note: for the past few years, electronic proxies have been permitted.
 - Request that EVERYONE submit a proxy, whether or not they intend to attend the meeting by Zoom or phone.
 - If it is awkward for shareholders to fill out the proxy sent to them by email, scan it and then resend it. Consider enclosing proxy language in the notice, and ask them just to reply with that language.
- **If the co-op usually has a Candidates Night, do it through Zoom or another platform. Do not have the candidates make speeches or take questions the night of the meeting.**
 - For this year, consider personal statements instead.

The Meeting

- Attendees should be muted. Questions or comments can be either submitted by the “chat” or “Q&A” feature in Zoom, or provide an email address or text phone number, and have someone read them.
- If someone wishes to vote at the meeting, this can be done by emailing to an address or texting to a phone number provided in the Notice.
- Remember: to be counted for a quorum or to vote electronically, there must be a reasonable way to ascertain that the person is the shareholder. Management should have email addresses for all shareholders. If not, consider a mailing to request such information.

Virtual Condo Unit Owners Meeting

- Check very carefully the By-laws for what is required and what might be done.
- The BCL does not apply to condominiums. Yet, on many occasions, the courts will look to the BCL and to decisions regarding the BCL in determining the decision.

Virtual Board Meetings

- Prior to the COVID-19 pandemic, Board members were permitted to partake in a meeting by phone or Zoom provided that everyone could hear one another. Thus, conference calls or speaker phones were permitted to allow a director to join a meeting.
- BCL 708(b) stated that the Board could act outside of a meeting if there was unanimous written consent to the action of the Board.
- However, under an Executive Order, gathering (i.e. meetings) were not permitted.
- Executive Order 202.5 temporarily suspended the law governing Board meetings, and an actual meeting need not take place. The result is a vote by the requisite number of Board members by email is enough to take action. Unanimous consent is not required anymore.
- This is temporary, and as noted before, it may expire June 28, 2020, although it is expected to be renewed.

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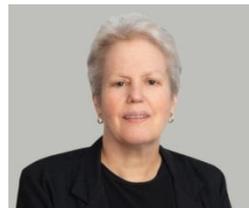
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