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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.

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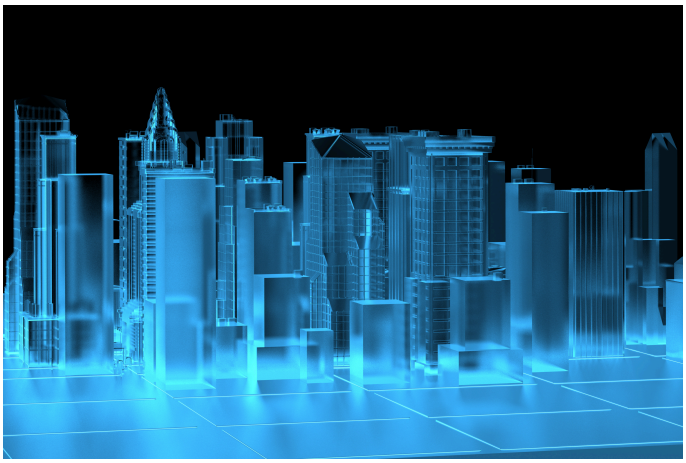

An Update On The Corporate Transparency Act

We have been keeping a close eye on the status of the Corporate Transparency Act, the landmark disclosure statute requiring most corporations, limited liability companies, limited partnerships, and other legal entities to file reports with FinCEN of the names, residential addresses and other information on and concerning certain large equity owners, senior officers and other so-called beneficial owners by December 31, 2024.

In our **February 2024 Digest**, we identified certain open questions relating to the CTA's prospective applicability to co-ops and condos. For example, we noted that because condominium associations in New York are not created by the filing of a document with the New York Secretary of State, they should be exempt from CTA reporting requirements, but that "[w]e are hopeful that FinCEN will provide guidance on New York condominiums."

On April 18, 2024, FinCEN issued **additional guidance**, albeit without resolving the specific New York condominium issue. In answering whether "homeowners associations" are required to file, FinCEN stated in part as follows:

It depends. Homeowners associations (HOAs) can take different corporate forms. As with any entity, if an HOA was not created by the filing of a

document with a secretary of state or similar office, then it is not a domestic reporting company.

Although this guidance is consistent with our previous analysis, it does not definitively settle the question as it relates to New York condominiums.

We also previously discussed the possibility of legislative action to exclude co-ops and condos from the reach of the CTA. Our understanding at this point, however, is that there has not been any breakthrough in discussions.

Finally, in our **March 2024 Digest**, we discussed *National Small Business United, et al v. U.S. Department of the Treasury, et al*, the decision from the Northern District of Alabama purporting to invalidate the CTA. Although at the moment the CTA remains effective and enforced against everyone else pending the appeal to the Eleventh Circuit, briefing on the appeal is due to be completed in the first week of June and oral argument is scheduled during the week of September 16, 2024. Given the time sensitivity and nationwide importance of the issues, it is expected that a decision on the appeal will be issued shortly thereafter.

We will continue to monitor developments as we approach the December 31, 2024 filing deadline.

Mayor Adams Introduces "City Of Yes For Housing Opportunity"

The administration of Mayor Eric Adams has introduced sweeping plans to reform New York City's zoning rules to spur housing and economic growth. These "City of Yes" proposals have been broken out into **three broad categories**: "City of Yes for Carbon Neutrality" (which, among other things, removed zoning impediments to rooftop solar installations and electric vehicle charging and which passed the City Council late last year), "City of Yes for Economic Opportunity" (which includes 18 separate proposals to liberalize zoning rules relating to small businesses

and which is expected to be approved by the City Council this month), and finally, "City of Yes for Housing Opportunity."

"City of Yes for Housing Opportunity," which is arguably the highest profile and most sweeping of the "City of Yes" proposals, **entered formal public review on April 29, 2024**. The "**Housing Opportunity" proposals** aim to facilitate the creation of 100,000 new homes over a 15-year period through a wide-ranging suite of policy reforms, including: loosening restrictions on office-to-residential conversions; ending parking mandates for new housing; changing rules to allow affordable housing to be about 20% larger than other types of housing; allowing more "shared living" arrangements (*i.e.*, housing with shared kitchen and/or bathroom facilities); legalizing backyard "accessory dwelling units;" and broadening the ability of landmarked sites to sell air rights. Suffice it to say, if these proposals are passed in anything like their current form, it will mark a significant change to the zoning and land use law in New York City.

Under the current schedule, these proposals are scheduled to be presented to the full City Council for a vote sometime in the fall of 2024.

Condominium May Not Require The Replacement Of Windows That Are Not Part Of The Building's Common Elements

What happens when a condominium needs to perform work to the entire building envelope but lacks the authority to do so? Specifically, when a Board of Managers of a condominium determines that all of the building's exterior windows need to be replaced, can it compel the unit owners to replace their respective unit's windows, even if the condominium's declaration clearly states that the windows are part of the units and not part of the building's common elements?

These questions were raised in ***Mangold v. Board of Managers of Meadow Court Condominium***, Index No. 451463/2021 (Sup. Ct. N.Y. Co. April 29, 2024). In *Mangold*, the Board of Managers of a six-story condominium building in Bronxville determined that the building's 100-

year-old windows needed to be replaced and arranged for a contractor to do so at bulk rates, with each unit owner responsible for the share expenses to their window replacements. Unit owners could "opt out" of this program, but were given an outside date by which to replace their windows at their own expense.

The decision to implement a building-wide window replacement project was supported by each and every one of the condominium's unit owners – except for the plaintiffs, who filed suit to invalid the policy.

Despite the apparent long odds, the court sided with the plaintiffs. It was undisputed that under the condominium's declaration, the windows at issue were part of the individual apartment units, and not part of the common elements. Therefore, the Board of Managers – even with the backing of all of the other unit owners – had no more authority to force the plaintiffs to replace their windows than it would to decide what curtains and blinds the plaintiffs could install inside their apartment: "Since windows in individual units are not common elements, the Board does not have the authority to require their replacement."

In finding for plaintiffs and invalidating the Board's window replacement policy, the court did not linger on the resulting paradox, identified by the defendants as follows: "The plaintiffs maintain that they are the sole entity authorized to replace windows. If such were the case, then any unit owner could refuse to replace defective, old, or leaky windows. The effect would be that water would penetrate into the structure of the building and cause mold, and damage to the infrastructure," which would adversely affect all unit owners. Thus, the court's decision in favor of plaintiffs is "illogical and improper."

There is no question that for reasons of regulatory compliance, structural integrity, prudent planning, administrative convenience, economies of scale, and aesthetics, there are compelling reasons to treat building envelope problems as a collective whole. Exterior windows are an integral part of any building's envelope – indeed, probably the most vulnerable component.

It should be noted that that in this case, there was nothing in the record indicating an immediate or material issue with the windows. There was no order from the local building department requiring an upgrade. These were prophylactic replacements being undertaken by the Board to avoid future problems. One could easily imagine a different result if the building were faced with an actual mold outbreak or chronic leaks. It should also be noted that the Board has filed an appeal.

Nevertheless, if a condominium's governing documents do not give the Board of Managers the express right to regulate the entire building facade, including the windows, then the *Mangold* decision stands for the proposition that the unit owner is the sole arbiter of how and when to repair or replace their own windows.

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