

Annual Cooperative and Condominium Disclosure Requirements

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Client Advisory

November 12, 2018 by Rocco M. Sainato, Christopher Rizzo and Macculloch M. Irving

Effective January 1, 2018, condominiums created pursuant to the New York State Real Property Law or a cooperative housing corporation created under the New York State Business Corporation Law ("BCL") must report transactions with interested directors under a new reporting requirement contained in BCL § 727.

This new section of the BCL requires a co-op or condominium to deliver a copy of BCL Section 713 to each director or manager serving on its board, every calendar year. BCL Section 727 also requires the board of a co-op corporation or condominium association to provide an annual report to its unit owners/shareholders, signed by each director, containing information on any contracts made, entered into or voted on by the board of directors, where one or more directors was an interested director pursuant to BCL Section 713.

Under BCL Section 713, a transaction with an "interested director" exists where a contract is made by a corporation (a) with one of its directors, (b) with a company on which a director also serves as a director or officer, or (c) with a company in which a director has a direct financial interest. Such contracts are void or voidable unless the material facts of such interest are disclosed to the board and the interested director does not cast a vote on the contract.

Cooperative apartment corporations and condominium associations must also distribute an annual report to unit owners or shareholders that includes:

1. A list of all contracts voted on by the board of directors/managers involving an interested director or manager. This list must detail (a) the parties to the contract, (b) the contract amount, and (c) the purpose of entering into the contract
2. A record of each meeting at which such contracts were discussed – this record must include the date of each vote, director/manager attendance, details of how each director/manager voted on such contracts, and the final result of each vote
3. The term of each such contract.

The co-op or condominium must still deliver the report to unit owners or shareholders annually, even if no contracts were entered into in which there was an interested director. In this case, the report must include required statutory language saying, "No actions taken by the board were subject to the annual report required pursuant to section 727 of the Business Corporation Law."

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