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Maxwell-Kates, Inc.

Management Vision

ADDRESSING THE NEEDS OF
MAXWELL-KATES
MANAGED CONDOMINIUMS
AND CO-OPS SINCE 1986

DOB Creates Alternative Local Law 11 Filing

*Program gives certain buildings
and their professionals
increased flexibility*

In response to numerous suggestions made by professionals in the residential real estate industry, NYC's Department of Buildings' (DOB) recently issued an important modification to Local Law 11 filings. Available to cooperatives and condominiums which meet specific qualifications, the new regulations create an alternative filing schedule to alleviate the chaotic and expensive atmosphere which develops as the February 21, 2007 deadline approaches.

With that deadline quickly approaching, buildings were beginning to experience problems finding competent and quality contractors at reasonable prices. Contractors had been forced to turn away business or turn to otherwise less skilled labor to complete some required work.

In light of these circumstances, Maxwell-Kates, through its membership on the Real Estate Board of New York's Residential Management Council, has been intimately involved in making recommendations to the DOB regarding this new program. We expect that this new program will alleviate the stress of your building's Local Law 11 work, without compromising public safety or disrupting building occupants.



After inspection by the DOB to determine that the façade is not a danger to public safety, buildings will qualify for the alternative program if they meet certain requirements. The program requires that the building's Cycle 4 filing must not have been filed "Precautionary" and Cycle 5 SWRMP repairs have not to date been completed. If the building qualifies, it must submit a Cycle 6 UNSAFE report by November 21, 2006 and provide an initial extension of time request to the DOB.

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Secondhand Smoke Could Cause Breach of Warranty of Habitability

Court requires condos and co-ops to be proactive

A recent decision issued by a Civil Court Judge has increased the incentive for Co-op and Condominium Boards to finally address the issue of secondhand tobacco smoke in their buildings.

In Poych v. Bryant, Judge Shlomo S. Hargler found “as a matter of law that secondhand smoke qualifies a condition that invokes the protection of Real Property Law §235-b under the proper circumstances” and therefore, “is axiomatic that secondhand smoke can be grounds for constructive eviction.”¹

This case involved residents who, after living in an condominium apartment for approximately three years, had new neighbors move next door. The new neighbors smoked in the common hallway and in their apartment and the secondhand smoke penetrated into the their apartment.

The residents complained to the superintendent, who spoke to the neighbors, but the situation continued. In addition, residents sealed their apartment door with weather stripping and ran two HEPA air filters at all times. When this

did not improve the situation, the residents sent a letter to the superintendent, landlord and landlord’s attorney, requesting help and advising them that if the situation did not improve, they would have to move out.

The Condominium could have stopped the neighbors from smoking in the hallway and elevator as well as take preventive care to properly ventilate the unit

No action was taken and thus the residents advised the Landlord they would be moving out of the apartment four months prior to the expiration of their lease.

When the landlord sued to collect unpaid rent due under the remainder of the lease, the residents counterclaimed alleging constructive eviction and violation of the implied warranty of habitability.

The Landlord argued that he cannot be held liable for the acts of third parties beyond his control, but the court found that under RPL §235-b, acts of third

parties may be within the scope of a landlord’s responsibility. Further, the Landlord failed to offer any evidence, that he took any action to eliminate or alleviate the condition.

Due to the fact that the apartment was located within a condominium, RPL §339-v(1)(i) (which requires condominium by-laws to restrain Unit Owners from interfering with the use and enjoyment of other Unit Owners) would apply and therefore the Board of Managers and/or the Landlord could have commenced an action against the neighbors for damages or injunctive relief for non compliance with the by-laws.

If you have any questions as to how this decision may impact your building, please contact our in-house counsel Michael Bogart at (212) 684-8282 ext. 6618.

¹ NYLJ, July 13, 2006



For Sale: Condo Garage Sale Not Nuisance

Earlier this summer, a Nassau County Supreme Court found that a garage sale did not create a nuisance or annoyance in violation of a provision of the condominium’s Declaration of Covenants, Restrictions, Easements, Charges and Liens stating that: “No nuisance shall be allowed upon the property nor shall any use or practice be allowed which is a source of annoyance to residents or which interferes with the peaceful possession and proper use of the property by its residents.”

The decision, Blumberg v. Albicocco, held that there was no evidence that a garage sale either substantially inconvenience other condominium residents or caused particular damage.¹ However, the Court stated that if Board of Managers had adopted a bylaw provision banning all garage sales or passed a resolution defining garage sales as a nuisance, either would have been sustained under the business judgment rule.

¹ NYLJ, July 13, 2006

LOCAL LAW 11

DOB changes filing requirements

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This alternative filing program gives buildings additional time to complete their Cycle 5 SWRMP repair, while installing a sidewalk shed only when necessary to protect the public’s safety or upon commencement of repairs.

Should you have any questions or concerns as to your building’s progress with complying with Local Law 11, please contact your Account Executive.

Dismissed! Court fails to find mold-illness connection

Mold is found everywhere – both indoors and outdoors. Significantly, a number of building materials, such as ceiling tiles, drywall, sheetrock, wood, carpet, wallpaper and upholstery, are ideal places where mold can grow. While the number of lawsuits against condominiums and cooperatives has increased in recent years, the tide may be changing.

In an eagerly anticipated decision, Judge Shirley W. Kornreich of the New York County Supreme Court recently summarily dismissed a cooperative shareholder's claim for personal injury allegedly caused by mold in a water damaged apartment.

In Frasier v. 301-52 Townhouse Corp., cooperative shareholders commenced an action to recover for personal injuries (specifically respiratory problems, rash and fatigue) allegedly arising from their water-damaged cooperative apartment.¹ In response, the cooperative corporation moved for hearing to address causation of respiratory problems by water-damaged buildings and determine whether the

"mold in their apartment caused them respiratory problems - is generally accepted in the relevant scientific community and whether the methodology used by plaintiffs to measure the mold, was within generally accepted scientific methods."

After a ten day hearing was held which included introduction of more than seventy scientific articles and books, the Court determined that the plaintiffs "failed to demonstrate that the community of allergists, immunologists, occupational and environmental health physicians and scientists accept their theory - that mold and/or damp indoor environments cause illness."

Additionally, even if the Court had found causation, the action would have been dismissed because testimony revealed that "there are no standards for what amount of mold was excessive in terms of human health and the indoor environment; there are no generally accepted standards for measuring indoor airborne mold; [and] there are no generally accepted standards

for the acceptable amount of mold in indoor air".

While it is important to recognize that this trial court decision is likely to be appealed and fails to address property damage caused by mold, it does however signal a growing uncertainty of courts to attribute mold as the root cause of illness.

Maxwell-Kates Account Executives will continue to work with condominium and cooperative boards to ensure that their conscientious maintenances programs continue. This is the best protection against mold infestation which sometimes may occur inside bathrooms and kitchens, particularly those without windows. MKI believes that such a program will greatly improve air quality in your building and resident comfort regarding the threat of mold.

¹ 2006 NY Slip Op 51855(U)



ARC Online: Your Apartment Resource Center

As the use of the internet is growing at a phenomenal rate, board members of cooperative and condominiums are recognizing the effect of the internet as a tool to effectively communicate with their residents and visitors.

Maxwell-Kate affiliate Arc Online (www.arconlineusa.com) will construct and maintain your property website, whether you want a simple webpage or an intricate property tracking system. Arc Online will provide your building reliable web hosting, register your domain name, set up your email accounts, message boards, utilize quality graphic tools, up-to-date features and functionality, everything you need to develop a full featured online property website.

Arc Online will assist you in developing and customizing a website for your property as you desire. Our experienced team of experts will work with your Boards or Committee to design a website right for your community, utilizing secure user-password log in. Whether your property website is a free standing webpage or a intricate website building tracking system (visit Arc's Building Tracking System), Arc Online will give your website the personal attention it deserves.

A website for your building not only benefits your residents, it will provide information to your website visitors. A website for your property will promote your community image and further

contribute to the prosperity of your investment. Boards are now recognizing the full potential of a property website. Property websites present a perception of value, a customized website for your property will undoubtedly build value for your community.

If you are interested in this new service which will benefit your building and its residents, please contact your Account Executive.



FALL AND WINTER CALENDAR OF EVENTS

October 24, 2006	Last day to file tax petition for review of 2005-2006 assessment
November 1, 2006	First day to file for J-51 tax exemption & abatement program, fourth period 2005
November 7, 2006	Election Day—Local 32B-32J contract holiday
November 11, 2006	Veterans Day
November 23, 2006	Thanksgiving Day—Local 32B-32J contract holiday
December 15, 2006	Last day to file for J-51 tax exemption & abatement program, fourth period 2005
December 25, 2006	Christmas Day—Local 32B-32J contract holiday
December 31, 2006	Last day to perform and file boiler statement and inspection report Last day to perform annual lead paint inspection



Maxwell-Kates is proud to announce eight new management relationships: 263 Ninth Avenue (pictured left), 382 Central Park West, 270 Broadway (pictured right), 225 Lafayette Street (shown on page 1), 878 West End Avenue, 44 East 67th Street, 216 East 47th Street and 97-99 Reade Street.



Did You Know?

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Maxwell-Kates, Inc. has expanded in its real estate services to include its new division, MKI Insurance Brokerage, Inc.

Equipped with long standing relationships with leaders in the insurance industry, be assured you will receive the most desirable and comprehensive coverage at the most competitive rates. Through aggressive marketing and negotiating techniques, MKI Insurance Brokerage Inc. will interview brokers as well as carriers to obtain the best possible package that suits the needs and expectations of our clients.

If you would like more information regarding our insurance affiliate, please contact Max Freedman at (212) 684-8282, extension 6656.