
**REAL ESTATE FINANCE BUREAU
MEMORANDUM**

RE: "NY GBL Amendment on Self-Dealing Contracts" Date: October 2010

On August 30, 2010 the Governor signed into law a revision to Section 352-e of the New York General Business Law (GBL) requiring notification of a cooperative tenant shareholder's or condominium owner's right to terminate a self-dealing contract pursuant to the Federal Condominium and Cooperative Abuse Relief Act, 15 U.C.C. 3607 (the "Act"). A copy of the revision to the GBL is attached herein. The Act permits tenant-shareholders or unit owners in conversion projects which have five or more residential units to terminate self-dealing or so-called "sweetheart" contracts within two years after the date that the sponsor ceases to control the board or owns 25% or less of the units in the project, whichever occurs first. However, the Act does not contain a notice provision, and many shareholders and unit owners fail to exercise their rights timely. Section 352-e(d-2) of the GBL now requires sponsors of cooperative or condominium conversions to notify tenant-shareholders or unit owners entitled to terminate such contracts within thirty days of the date that right commences and at least six months prior to the date such right expires.

The new statute mandates that all sponsors include the notification provisions required under Section 352-e (2-d) of the GBL in all conversion plans accepted on or after September 30, 2010. Review attorneys should require sponsors to disclose the Act, the notification provisions and any existing or projected self-dealing contracts in the Special Risks section of Part 18 and Part 23 offering plans as well as the relevant section of the plan which discusses management agreement, contracts and leases. An example of appropriate model language is as follows:

"Pursuant to the Federal Condominium and Cooperative Abuse Relief Act of 1980, 15 U.C.C 3601 (the "Act"), [tenant-shareholders/unit owners] in conversion projects which have 5 or more residential units shall have the right to terminate self-dealing contracts that have been entered into by the sponsor or sponsor affiliate within two years after the date that the sponsor or sponsor affiliate ceases to control the board or owns 25% or less of the units in the project, whichever occurs first. A "self-dealing" contract shall be defined as any contract or portion thereof which is entered into after October 8, 1980, which: (i) provides for operation, maintenance, or management of a condominium or cooperative association in a conversion project; or of property serving the condominium or cooperative unit owners in such projects; (ii) is between such unit

owners or such association and the sponsor or an affiliate of the sponsor; (iii) was entered into while such association was controlled by the sponsor during the sponsor control period or because sponsor held a majority of the votes in such association; (iv) is for a period of more than three years, including any automatic renewal provisions which are exercisable at the sole option of the sponsor or an affiliate of the sponsor; and (v) may not be terminated without penalty by such unit owners or such association.

In the event that a self-dealing contract exists in a conversion project having five or more residential units, the sponsor shall notify [tenant-shareholders/unit owners] of the right to terminate such contract within thirty days of the date that the sponsor ceases to control the board or owns 25% or less of the units in the project, whichever occurs first, and at least six months prior to the date that the right to cancel expires. A termination under the Act shall be by vote of owners of not less than two-thirds of the units other than units owned by the sponsor or sponsor affiliate. Following the vote, the termination shall be effective ninety days after the notice of termination is either hand delivered or mailed to the parties to the contract.”

SUMMARY:

S4403 SQUADRON Same as A 620 Kavanagh (MS)
SQUADRON, SAVINO
Amd S352-e, Gen Bus L

Requires written notification to a cooperative tenant shareholder or a condominium owner of their right to terminate a self-dealing contract under federal law.

BILL TEXT:**STATE OF NEW YORK**

4403

2009-2010 Regular Sessions

IN SENATE

April 22, 2009

Introduced by Sen. SQUADRON -- read twice and ordered printed, and when printed to be committed to the Committee on Housing, Construction and Community Development

AN ACT to amend the general business law, in relation to notification of cooperative or condominium self-dealing contract termination

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

- 1 Section 1. Section 352-e of the general business law is amended by
2 adding a new subdivision 2-d to read as follows:
3 2-d. (a) For the purposes of this subdivision the term "self-dealing
4 contract" shall be defined as any contract or portion thereof which is
5 entered into after October eighth, nineteen hundred eighty, and which:
6 (i) provides for operation, maintenance, or management of a condomin-
7 ium or cooperative association in a conversion project, or of property
8 serving the condominium or cooperative unit owners in such projects;
9 (ii) is between such unit owners or such association and the developer
10 or an affiliate of the developer;
11 (iii) was entered into while such association was controlled by the
12 developer through special developer control or because the developer
13 held a majority of the votes in such association;
14 (iv) is for a period of more than three years, including any automatic
15 renewal provisions which are exercisable at the sole option of the
16 developer or an affiliate of the developer; and
17 (v) may not be terminated without penalty by such unit owners or such
18 association.
19 (b) In the case of offerings of cooperatives, condominiums or other
20 interests in realty covered by the provisions of section six hundred
21 eight of the Condominium and Cooperative Abuse Relief Act of 1980, 15
22 U.S.C. 3607, the attorney general shall refuse to issue a letter of
23 acceptance unless the offering statement, prospectus or plan provides
24 that the tenant shareholders or owners entitled to vote to terminate a

S. 4403

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1 self-dealing contract pursuant to such section twice be notified of such
2 right in writing (i) once within thirty days of the date that the right
3 to terminate pursuant to subsection (b) of such section commences and
4 (ii) secondly at least six months prior to the date that such right to
5 terminate will expire.

6 § 2. This act shall take effect on the thirtieth day after it shall
7 have become a law and shall apply to plans for which letters of accept-
8 ance are issued on or after such effective date.
