Comments on

Rule Relating to Surcharge on Certain Non-Primary Residences

From: Eric H. Berger, Esquire

I have three comments:

1. By rule, individual coop owners should have the right to show that their market value is less than $5 million for 2026 and 2027;

2. By rule, multiple coop owners in the same building should be permitted to join their appeals together for hearings;

3. Section 1354(c) should be clarified to automatically amend all proprietary coop leases so the Board can pass through the surcharge through the proprietary lease without amending the proprietary lease.

<u>First</u>, individual coop owners should have the right to show that their market value is less than $5 million for 2026 and 2027. The statute provides that for 2026 and 2027 for coop units there is a formula based upon the building assessed value divided by the number of building shares multiplied by the number of shares for each unit, with a value above $1 million potentially subject to the surcharge, and value below $1 million not subject to the surcharge. For 2028 and thereafter, coop units are valued at market value with the cutoff being $5 million rather than $1 million. The reason for the difference is because coop buildings are assessed at 20% of true value. The formula for 2026 and 2027 is a crude way to determine whether coop units really have a market value greater than $5 million, so individual coop owners should be able to file an appeal to show that in fact their value is less than $5 million. Otherwise, for 2026 and 2027 the surcharge will hit some coop owners in coop units with a market value less than $5 million.

<u>Second</u>, multiple coop owners in the same building should be permitted to join their appeals together for hearings. Joinder is permitted if there is a penalty proceeding brought by the City, but not if the challenge as to primary residence or market value brought by the property owners. Joining the appeals in a single building is more efficient for the litigants as well as the board hearing the appeals. Moreover, the statute requires that the board take into account the board's market value determination of other units in the same building in determining market value so it only makes sense to allow multiple owners in the same building to join their appeals.

<u>Third</u>, Section 1354(c) should be clarified to automatically amend all proprietary coop leases so the Board can pass through the surcharge through the proprietary lease without amending the proprietary lease. Amending proprietary leases is arduous and expensive, which expense is passed on to unit owners, including those whose primary residence is in the building. The statute as written requires coop boards to pass through the surcharge to the owner of the unit

subject to the surcharge. However, if the coop unit owner refuses to pay, a case would have to be brought in the Supreme Court. Also, since the failure to pay would not be a lease default, the corporation could not recover its attorneys' fees.

Thank you for considering my comments. I am available should further clarification assist in the rule-making process.