

# Condominium and Cooperative Opinions Regarding a Unit Owner's Right to Examine Books and Records

## COUNSEL'S CORNER

By: Kenneth J. Finger,  
Carl L. Finger and  
Daniel S. Finger,  
Finger & Finger, Chief Counsel,  
Building & Realty Institute (BRI)



WHITE PLAINS—Recently, the question arose as to what rights shareholders have regarding the inspection of corporate records of a cooperative corporation (and, similarly, a condominium).

This is an important topic as shareholders and unit owners often request permission to examine the books and records of the cooperative or condominium. The members of the board should be aware of the rights and responsibilities of the cooperative or condominium and the rights and responsibilities of the shareholders or unit owners in this regard.

As to condominiums, Section 339-w of the Real Property Law provides that "The manager or board of managers, as the case may be, shall keep detailed, accurate records, in chronological order, of the receipts and expenditures arising from the operation of the property. Such records and the vouchers authorizing the payments shall be available for examination by the unit owners at convenient hours of weekdays. A written report summarizing such receipt and expenditures shall be rendered by the board of managers to all unit owners at least once annually."

The statutory authority for unit owner review of condominium records ends with the right to review receipts, expenditures and vouchers authoriz-

ing such payments at convenient hours of the weekdays. However, Courts have applied corporate law to condominiums on occasion with reference to the inspection of various records of the condominium. Courts have both upheld the rights of unit owners to view unit owner lists and denied that unit owners have a right to view unit owner lists.

In contrast, board members have been held to have unequivocal rights to view all corporate records.

### The Co-op Story

Cooperatives are similarly governed first by statute. The Business Corporations Law Section 642(b) (and similarly in the Not-For-Profit Corporation Law Section 621) sets forth that shareholders have the right to examine the minutes of the shareholders' meetings and the record of shareholders and to make extracts of same.

However, the BCL Section 642(c) establishes that the shareholder may not examine the records above referenced if the shareholder refuses to sign an affidavit that the inspection of the records is not desired for a purpose other than the business or interest of the corporation.

This is supported, and in fact detailed further, in the case of *In re Schapira*

12 Misc.3d 1195(A), 824 N.Y.S.2d 770 (Table), 2006 WL

2353194 (N.Y.Sup.), which held as follows:

"As corporate shareholders, respondents have a right not only to inspect the records specified under BCL § 624, Estate of Purnell v. LH Radiologists, 90 N.Y.2d 524, 531-32 (1997), but, simply by virtue of

**"...Any board of managers or board of directors would be well-served to develop a policy pertaining to the inspection of its books and records. Any requests to review books and records could then be responded to in a uniform and consistent manner."**

that status, also to inspect other corporate records. *Crane Co. v. Anaconda Co.*, 39 N.Y.2d 14, 18 (1976); *Dyer v. Indium Corp. of Am.*, 2 AD3d 1195, 1196 (3d Dep't 2003); *Troccoli v. L & B Contract Indus.*, 259 A.D.2d 754 (2d Dep't 1999); *Berkowitz v. Astro Moving & Stor. Co.*, 240 A.D.2d 450, 451 (2d Dep't 1997)."

This right has also been upheld in *Spinale v. 10 West 66th Street Corp.*, 210 A.D.2d 85, 621 N.Y.S.2d 840 (1st Dept. 1994).

### Still In Effect

In addition to the statutory rights above, the common law, which precedes the statutes, remains in effect. The common law right of inspection of the books and records of the corporation is not diminished by the statutes, but rather expands those rights.

However, the enforcement of the common law right, by court action, allows the court to permit greater or lesser right of

To the extent that a court may apply the various corporate rationale under the common law, to the context of a condominium unit owner seeking to inspect records, presumably the requirement of a bona fide reason for the inspection would similarly apply. The purpose may be generalized or specific depending upon the records sought.

### A Possible Requirement

A party seeking to inspect the books and records of the corporation may be required to state with precision the books and records sought for the inspection and reason that same are sought for inspection. The Board may review the information and determine whether the reason is a good faith basis and act accordingly.

Based on the within, any board of managers or board of directors would be well-served to develop a policy pertaining to the inspection of its books and records consistent with the above. Any requests to review books and records could then be responded to in a uniform and consistent manner.

**Editor's Note: The authors are attorneys with Finger and Finger, A Professional Corporation. The firm is based in White Plains. Kenneth J. Finger is chief counsel to the Building and Realty Institute of Westchester and the Mid-Hudson Region (BRI).**

## Houlihan-Parnes/iCap Realty Advisors Reports Recent Activity

WHITE PLAINS—Houlihan-Parnes/iCap Realty Advisors, LLC, recently announced that it has arranged acquisition financing for a portfolio consisting of 25 office and industrial properties in 10 states.

The properties total more than 2,400,000 square feet of space.

The facilities in the New York metropolitan area are two office properties, 400 Westchester Avenue and 500 Westchester Avenue, in Harrison, which total 65,000 and 120,000 square feet, respectively.

Houlihan-Parnes/iCap Realty Advisors said that it has arranged \$153,000,000 of acquisition financing. Company officials said that "the deal is highly structured and features maximum flexibility to allow for the re-development and/or disposition of the assets on an individual basis."

The loan was placed with Dillon Read Capital Management (a division of UBS AG) at a floating interest rate for two years, with a one-year exten-

sion option. The purchaser, GHP Office Purchasing, LLC, an entity controlled by GHP Office Realty, LLC and Benerofe Properties, LLC, was represented by Thomas Leslie and Greg Murphy of Thacher Proffitt & Wood.

James J. Houlihan and Andrew M. Greenspan of GHP Office Realty handled the transaction. GHP Office Property owns and manages more than 5,000,000 square feet of space in the tri-state area.

Houlihan-Parnes/iCap Realty Advisors is a nationally affiliated, multi-faceted real estate investment company headquartered in White Plains. Its companies and affiliates are engaged in the acquisition and ownership of all types of commercial real estate investment property in the continental United States. Its various companies and affiliates specialize in commercial mortgage finance, investment sales, property management and leasing and mortgage servicing, company officials said.

## Got Flat Roof Leaks?

**70 Percent of all Flat Roofs Do Not Have to Be Re-Done!**

**Add Years of Trouble-Free Service to Your Existing Roof at Budget Prices!!**

**Expert Repairs to Areas Such As:**

**Ponding Water • Flashing • Seams • Masonry Walls  
Sheet Metal Work • Pointing • Blisters • Water Pockets  
Installation of New Roof Drains,  
With Complete Drainage Lines!**

**Free Estimates — Fully Insured  
Fast Service!**

**(845) 354-6565**

**Servicing the Entire Tri-State Area!!**

**Avanti Contracting & Restoration Corp.  
Spring Valley, N.Y.  
Flat Roofing Specialists for 60 Years!**