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MEMORANDUM

TO: Board Members

FROM: Caryn L. Meyer, Esq. and Evan M. Gitter, Esq.

DATE: December 14, 2017

SUBJECT: New Conflict of Interest Law for Condominiums and Cooperatives

New legislation was recently adopted and signed into law on September 12, 2017, which affects all Cooperatives and any incorporated Condominiums.

Effective, January 1, 2018, the new law establishes procedures for Boards of Cooperatives and incorporated Condominiums to handle certain conflicts of interest. The purpose of the law seeks to promote accountability and transparency on transactions between Board members and vendors for the community.

Under the new law, a Board of Directors of a Cooperative or an incorporated Condominium must comply with the new conflict of interest requirements and disclose specific information about community contracts whenever a contract is considered a "related party transaction" or a Board member is considered "an interested director".

Pursuant to Section 102(a)(24) of the Not-For-Profit Corporation Law, a related party transaction is defined as follows:

Any transaction, agreement or other arrangement in which a related party has a financial interest and in which the corporation or any affiliate or the

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corporation is a participant, except that a transaction shall not be a related party transaction if: (i) the transaction or the related party's financial interest in the transaction is de minimis, (ii) the transaction would not customarily be reviewed by the Board or Boards of similar organizations in the ordinary course of business and is available to others on the same or similar terms or, (iii) the transaction constitutes a benefit provided to a related party solely as a member of a class of the beneficiaries that the corporation intends to benefit as a part of the accomplishment of its mission which benefit is available to all similarly situated members of the same class on the same terms.

Pursuant to Section 713 of the Business Corporation Law, an "interested director" is defined as follows:

A director who has common directorship, officership with both the cooperative and the entity which is being contracted or a substantial financial interest in the contract or transaction which the Board is considering.

New Requirements:

1. At least once per year, each director must receive a copy of Section 715 of the Not-For-Profit Corporation Law (for incorporated Condominiums and Homeowners Associations) or Section 713 of the Business Corporation Law (for Cooperatives), respectively. These are the provisions of the law which already exist and prohibit entering into transactions where conflicts of interest exist.

2. The Board must provide an annual report to the shareholders/members signed by all directors stating all contracts or transactions that were voted upon by the Board that involved an interested director. The report must also include: (a) a list of all contracts voted on by the board; (b) information on the contract recipient; (c) contract amount; (d) the purpose of entering into the contract; (e) record of each

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meeting including director attendance, voting records for contracts and how each director voted on each contract; and (f) the date of each vote on each contract and the date the contract would be and remain valid.

Please note that even if a board votes against once of these contracts, it still must be disclosed. Even if the board is not taking any action that requires inclusion in the annual report, the new law requires the board to submit to the shareholders/members a document signed by each director stating "no actions taken by the board were subject to the annual report required pursuant to either Section 519(a) of the Not-For-Profit Corporation Law or Section 727 of the Business Corporation Law."

The language of the new law applies only to those condominiums and cooperatives formed pursuant to the Business Corporation Law or the Not-For-Profit Corporation Law, which appears to leave out most condominiums that are unincorporated associations formed pursuant to 9-B of the New York State Real Property Law ("The Condominium Act"). While homeowners associations are not mentioned in the new law, these associations are incorporated under the Not-For-Profit Corporation Law and, therefore, we strongly suggest homeowners associations comply with the new disclosure requirements. Moreover, the law is completely silent on enforcement and oversight, which leads one to believe that any violations of the law must be addressed by shareholders or members through litigation.

Please let us know if the Board has any questions or needs assistance in preparation of the new disclosure requirements.