



Moritt Hock
& Hamroff^{LLP}

ATTORNEYS AT LAW

STRENGTH IN PARTNERSHIP®



MHH Condo/Co-op Digest

Vol. XIII, November 2024

This newsletter explores the emerging legal topics and issues affecting the condominium and cooperative services industry. Thought-leading attorneys from Moritt Hock & Hamroff's Condominium and Cooperative Services Practice Group share their legal insight, experience and best practices on this rapidly evolving area of law.

As always, if you have any questions regarding the matters raised in this Digest, please feel free to contact Bill McCracken of our New York City office at wmccracken@moritthock.com, or your regular contact at the firm.

About The Group

Moritt Hock & Hamroff's Condominium and Cooperative Services Practice Group represents clients in all aspects of condominium and cooperative law.

[View Our Practice Group Page Here](#)



Update On The Corporate Transparency Act

We have [written extensively](#) on the Corporate Transparency Act and the need for co-op and condo board members to comply before the end of the year. Despite the best efforts of lobbyists and litigants across the country (most notably in [this recent failed effort](#) in Virginia to enjoin enforcement of the law), the CTA remains fully in effect. If you have not already made plans for the required submissions, you should reach out to counsel immediately.



Composting Rules In Effect In New York City

By [Jodi Zimmerman](#)

A new City-wide composting law went into effect last month. [Local Law 85](#) mandates that beginning on October 6, 2024, all residential buildings in New York City, including condos and co-ops, are required to participate in the mandatory curbside composting program, with fines for non-compliance commencing April 1, 2025. Note that Local Law 85 serves as a replacement for a number of composting projects that were the victim of [budget cuts in 2023](#).

Before going into the particulars of the program, it is important to note the legislative basis for the composting program. In essence, the problem with disposing of food scraps in landfills is that when waste matter breaks down without access to oxygen, it converts to methane, and methane is a major greenhouse gas when released into the atmosphere. Composting, on the other hand, allows the matter to break down in a climate-friendly fashion.

Local Law 85 takes a composting program originally started in Queens in 2022 (and expanded to Brooklyn a year later) and expands it to all five boroughs. The City's Department of Sanitation ("DSNY"), as part of its regular trash and recycling collection pickup days, collects leaf and yard waste, food scraps, and food-soiled paper to turn into compost or renewable energy.

Although any bin smaller than 55 gallons may be used for composting (as long as it has a secure locking lid and is clearly labeled for composting), DSNY offers a free 55-gallon brown locking bin to be used for the program. In addition, DSNY has installed over 400 24-hour drop-off sites for food scraps and other compostable materials throughout the City. These so-called "Smart Bins" are bright orange in color and catalogued in a dedicated NYC Compost app.

The new rules require that discarded items (that is, trash) be separated into three different categories and disposed of as follows:

- Leaf and yard waste (including small branches, leaves, and grass clippings) may be put into a clear plastic bag, paper lawn and leaf bag or any bin (55 gallons or less) with a label identifying such bin as compost;
- Food waste (a broad category that includes not only fruits, vegetables, meat, bones, dairy and prepared foods, but also food soiled paper products such as paper plates, dirty pizza boxes, napkins, paper towels, tea bags and coffee filters) must be deposited into a dedicated composting bin on site or in a Smart Bin; and
- Recyclable materials continue to be handled as before, with paper, plastics, metal and glass separated out from other discarded items

and placed in dedicated recycling bins.

More information from the City on the program is available [here](#). It remains to be seen whether residents will take to the new law, and also how stringent enforcement will be beginning next Spring.



Lack Of An Executed Proprietary Lease Is No Impediment To Summary Judgment

By [Nicole Malen](#).

Lawyers learn in their first year of law school that in order to sue someone for breach of contract, a plaintiff needs evidence that the parties actually entered into the contract at issue. When it comes to a contract like a residential lease, that ordinarily means producing a document signed by both the landlord and the tenant.

However, this can be a problem for cooperatives, where longtime residents and poor record-keeping can mean it is often practically impossible to produce a signed proprietary lease. However, proprietary leases are different than ordinary residential leases, because they are required to follow a set form originally included in the co-op's offering plan, and can only be amended by formal corporate action, similar to a shareholder agreement. In theory, if a board can produce the correct current form of lease, there should be no reason it should have to produce a signed copy of that lease.

This was the issue raised in [6 West 20th St. Tenants Corp. v. Dezer Properties LLC](#), 2022 N.Y. Slip Op. 50529 (N.Y. Sup. Ct. 2022). In this case, the motion court had awarded summary judgment in favor of the lessee in part because the co-op had not been able to produce evidence that the lessee ever signed a proprietary lease. However, the Appellate Division, First Department unanimously reversed, holding that because "the offering plan and form proprietary lease in the record provide the relevant terms governing the parties' rights and obligations," the claim that no proprietary lease was ever executed was "insufficient to create a question of fact."

While this decision may serve as valuable precedent for cooperatives seeking to enforce contract obligations without a signed proprietary lease, the fact that the board had to go all the way to the appellate court to get a reversal should act as a reminder of the importance of securing executed documents and maintaining consistent record keeping in order to avoid these future potential disputes.

FOLLOW US



moritthock.com

Attorney Advertising. Published as a source of information only. The material contained within should in no way be relied upon or construed as legal advice. ©2024 Moritt Hock & Hamroff LLP