

## Amended Co-op Governing Documents Challenged Decades Later

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When an almost 20 year-old amendment to their governing documents was challenged after a piece of the building façade crashed to the street, a four-unit co-op in Tribeca recently learned the hard way the “t’s” need to be crossed and “i’s” dotted.



In 1998, the shareholders of Ruckus 85 Corp. amended the co-op’s governing documents to vest the corporation’s four shareholders with the power of management and operation of the corporation. This seemed like a good idea at the time and worked fine for nearly 13 years until in 2011, after a piece of the building’s façade came crashing to the street, the shareholders could not agree on a repair plan. Litigation ensued and two of the shareholders sought to invalidate the 1998 amendment because the governance structure created by the amendment was not recorded on the shareholders’ stock certificates.

In a May 16, 2017 decision, the Appellate Division, First Department, affirmed a lower court ruling that the governance structure created by the 1998 agreement was invalid because it failed to comply with Sections §§ 616 (c) and 620 (b) of the New York State Business Corporation Law (“BCL”), which requires governance changes such as those enacted by the 1998 amendment to be documented on the stock certificates of the corporation.

Even though Ruckus’ “out of the box” governance structure operated without incident for over a decade, the omission of the required language on the stock certificates rendered the 1998 amendment void.

The take away here is that while the “one size fits-all” approach of the BCL may not work for your building, if you are considering straying from it, be sure that your changes are properly reflected in all appropriate documents. In the case of a co-op, this may include modifying the language of the amendment on the stock certificates and/or the corporation’s Certificate of Incorporation. Failure to strictly comply with the BCL, as seen in the Ruckus case, could result in the amendment being invalidated.

The full decision may be viewed via this link: <http://bit.ly/2qTwazH>