

REAL PROPERTY LAW, SECTION 339-W

Examining Condo Books and Records

BY ROBERT BRAVERMAN

OVER THE PAST couple of years, the rights of condominium unit-owners to inspect and obtain condominium records has changed. Historically, those rights were governed by Section 339-w of the Condominium Act, which requires a condominium to keep records of receipts, expenditures, and vouchers, and also the authorization of their payments. Condominium unit-owners have long held the right to review these documents, which encompass just about any condominium book or record, including monthly financial reports, invoices, minutes of board meetings, contracts, and even redacted legal bills.

But reviewing the material was usually not easy. When a unit-owner wanted to examine books and records, he or she would have to make an appointment with the managing agent, indicating the material desired for review. That inspection would then take place in the managing agent's office, and although the unit-owner could review the documents, nothing could be photocopied or taken away from the office.

In 2016, the appellate court that governs Manhattan and the Bronx changed that with the case of *Pomerance vs. McGrath*, which said that so long as the unit-owner has a good-faith purpose for looking at the documents, he or she has both common-law and statutory rights of review. In addition, the court said that the unit-owner now has a right to create both paper and electronic copies of the documents. But the court also said that when the unit-owner makes a request to review the documents, he or she can be required to state the purpose of the request and sign a confidentiality agreement not to

disclose or disseminate the documents to anyone.

Why do boards need to be mindful of this? Often these types of requests are made during the election by unit-owners who want to take a deeper dive into what's been going on at the condo and use that information in connection with a campaign for the board. For that reason, once the request to inspect records is made, boards should not delay in responding. Ignoring the request is a mistake that can eventually hurt the board. This could include

the embarrassment of having a court find that a legitimate request was ignored, or even an election result being overturned because a candidate for the board wasn't afforded the common-law right to inspect and review records.

In the end, what should a board do when a request for documents is made? Consult with your managing agent and attorney. Discuss whether there's been a good-faith request and decide whether there ought to be a confidentiality agreement. Certain items – Social Security numbers and financial information – arguably do not fall into the orbit of the *Pomerance* decision. So be careful. A board doesn't want to be in the uncomfortable situation of having to explain why it granted access to documents that it didn't have to grant. ■

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When a unit-owner asks to review a condominium's records, the board needs to respond promptly – and make sure the request is being made in good faith.



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