

# The Business Corporation Law

## Recent Changes Affecting Co-ops

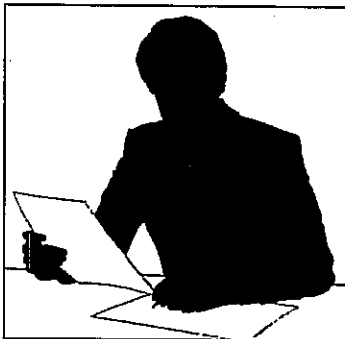
BY ANDREW P. BRUCKER

In the summer of 1997, Governor George Pataki signed into law sweeping changes to the New York Business Corporation Law (BCL) in an attempt to modernize the way New York corporations do business and provide a more business-friendly atmosphere. These changes became effective February 22. Since most co-op housing corporations were incorporated under the provisions of the BCL, it is important for every co-op building manager and board member to review these changes. Following is a summary of some of the most noteworthy amendments to the BCL.

### Procedures and Deadlines

Recognizing that there is often a discussion—or should I say debate—between shareholders as to how a meeting should be run, the New York State legislature wanted corporation by-laws to be amended to address certain issues. In the many years that I have spent representing co-ops, I have found that the most heated discussions arise when the issues of nominating and electing directors are dis-

conduct the meeting as well as the procedures and requirements for the nomination of directors, procedures for making shareholder proposals and procedures for



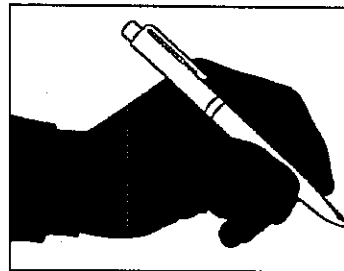
adjourning a meeting.

Two changes in deadlines have also been made. The "record date" established by the board before any shareholders' meeting is the one that shareholders would refer to in order to establish who is entitled to notice of the meeting and who may vote. The law previously stated that the record date could not be more

than 50 days before the meeting. It is even shorter than the old 50 day deadline. Every co-op board should consider taking advantage of the new 60 day deadline for notices, because there is often much work to be done by the board and its management firm before a meeting such as proxy solicitation, informational meetings, etc.

### Proxies and Voting

One of the most significant changes for co-ops involves Section 609 of the BCL. While the old law allowed the use of proxies, the new law allows a facsimile of a signed proxy as well as a telegraphed or e-mailed proxy, provided it is reasonably clear who sent the electronic transmission. Another change deals with how a majority is calculated. Under the prior law, whenever there was a vote of the shareholders (other than an election



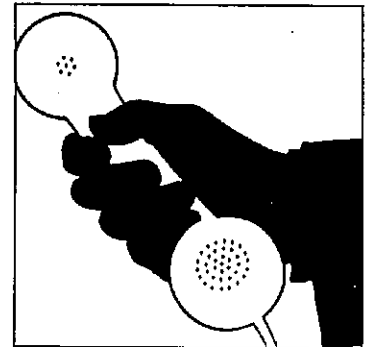
of directors), abstentions were counted as votes cast. In determining whether a majority voted to pass a resolution, you would compare those who voted for the resolution to all votes (yea, nays and abstentions). In the past, if the result of a vote was 48 for, 46 against and six abstentions, the resolution would not have passed. Now, in determining whether a majority voted for the resolution, you only need to determine whether there is a majority of the votes cast in favor of, or against, such action. However, keep in mind that not all votes require only a simple majority. The certificate of incorporation or a by-law adopted by the shareholders may require more than a majority.

### Action Without a Meeting

Section 615 of the BCL has always allowed action by shareholders without a meeting. However this was rarely used since written

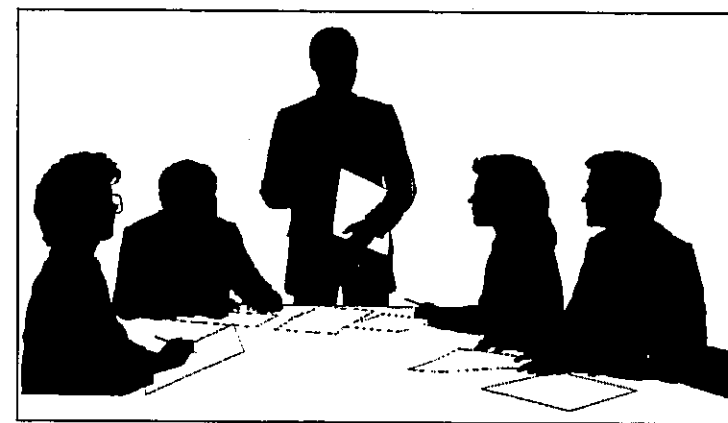
consent of all shareholders was needed. Under the new law, this section has now been liberalized so that more co-ops may take advantage of this provision. The law now states that if the certificate of incorporation permits it, the written consent need only be signed by the number of shareholders that would have been needed to pass the resolution at a meeting. The new law, however, does set up two requirements: The consents must be delivered to the corporation within 60 days of date of the earliest consent, and prompt notice of the taking of the corporate action without a meeting must be given to those shareholders who have not consented in writing. This provision may, in the long run, have significant impact on small- to medium-sized co-ops.

There are also clearer guidelines for who may inspect the corporation's books. Under the prior law, a person who was a shareholder for at least six months, or any person owning at least five percent of the stock, could inspect the corporation's books and records. But it was unclear whether the corporation needed to comply if the shareholder's reasons for such request were not made clear to the corporation. Section 624 now eliminates the six-month, five percent rule and any shareholder may make this request. In addition, the shareholder need only have "any



purpose reasonably related to such person's interest as a shareholder." While this certainly suggests that the legislature does not want to

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cussed. To have a written and approved policy dealing with these issues would be an extremely healthy alternative in many co-ops where there now exists friction and dissension due to differences of opinion as to how these procedures should take place. The law now states that "by-laws may designate reasonable procedures for the calling and conduct of a meeting of shareholders," including who may

than 50 days before the meeting. It has been changed to 60 days.

The other deadline change relates to how far in advance of a shareholders' meeting notice must be given. The notice of meeting—which was previously not less than ten nor more than 50 days—has been changed to not less than ten and not more than 60 days. This deadline is usually included in the by-laws of the co-op, and typically

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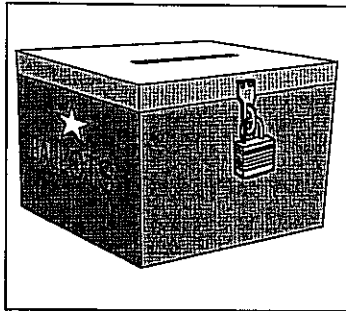
## BCL CHANGES

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block a shareholder in such a request—and that a co-op will now be hard pressed to deny access—this change should really have little effect as most co-ops are open and communicative with shareholders.

### Absentee Directors

Perhaps no change in the law will affect co-ops more than the change in Section 708. Previously, there was a presumption that a director could not "attend" a meeting by phone, because the certificate of incorporation had to specifically authorize this arrangement and very few did. Now the presumption is that, unless restricted by the certificate of incorporation, a director may participate in a board meeting by phone, provided all persons participating in the



meeting can hear each other at the same time. Presumably this means that a normal telephone will not do, but that having a speaker phone in the board room would ensure compliance with the law.

### Quorums and Voting

A certificate of incorporation may contain provisions requiring a greater proportion of directors for constituting a quorum or for passing a resolution. Section 709 previously required that such provisions must be referred to conspicuously on each and every certificate issued by the co-op. This requirement has now been deleted from the law. The fact that such requirements are included in the certificate of incorporation, a public document available from the Secretary of State, is now seen as sufficient notice. In addition, the prior law required a two-thirds vote

of the shareholders to change the certificate of incorporation affecting the board's quorum or director's voting requirements. The law has changed, requiring new corporations to obtain a majority. Existing corporations may choose to adopt the new rule, but this would require approval of two-thirds of the shareholders.

Two other changes in the BCL will simplify the management and operation of smaller co-ops. Committees of the board may now include as few as one member provided the certificate of incorporation or the by-laws so provide. Previously, the minimum number was three members. And the provision that required that the president and secretary be two different people has been changed so that any two or more offices may be held by the same person. Too often, in small co-ops, attorneys and managers have had difficulty finding two different people to sign the stock certificate of a newly purchasing shareholder. Now the frustration of the missing or vacationing officer may be a thing of the past.

Last, but not least, under prior law, any shareholder or creditor of the co-op could demand a list of the officers and directors and their residence addresses. Section 718 of the BCL has been changed so that creditors can't demand this information, and shareholders can't demand the address of an officer or director. In a typical co-op, every shareholder probably knows where each officer or director lives anyway. But, if this change can somehow prevent a disgruntled shareholder from awakening a director in the middle of the night, the legislature should be congratulated.

While the changes in the BCL law are extensive, they are not earth shattering for co-ops. However, the above amendments will certainly help to simplify the operation of the typical co-op. Boards should review the newly-amended BCL with counsel in order to determine the extent to which they may take advantage of these changes. ■

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