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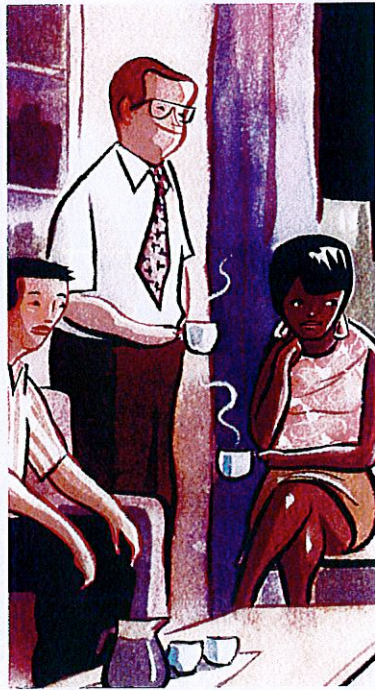
Full Disclosure Is Back

By BENDIX ANDERSON

THREE YEARS AGO, the co-op community was up in arms about a so-called "full disclosure" bill proposed by Councilman Hiram Monserrate. It would have required that boards give applicants a list of reasons for denial within five days of their rejection, identifying specifically how the applicant failed to meet standards. Failing to do so could result in fines ranging from \$1,000 to \$15,000 for a first offense. About two-thirds of the members on the City Council initially signed on to the bill, with proponents saying it would prevent boards from discriminating against prospective applicants because of such factors as race, family status, or disability. Critics contended that it would encourage unnecessary and costly litigation and scare off prospective members from serving on the board. At about the same time, a state bill was introduced that would have gone even further than the city legislation. In addition to demanding a list of reasons for rejection, this proposal would have required the board to either reject or approve an applicant within 45 days. The penalty for noncompliance? The applicant would automatically be granted acceptance.

Neither bill became law, but co-op boards should not sleep easily. What was defeated in New York City has come to pass with a new law in Suffolk County. And what happened in Suffolk could happen in the Big Apple. Please note: this county was the first in the area to ban smoking in restaurants and talking on cell phones while driving.

As of now, Suffolk requires cooperative apartment boards to reveal their reasons when turning down potential residents. In writing. Board members could be brought to account more easily in discrimination lawsuits, and be held personally liable – providing a powerful disincentive to serve. Suffolk County's new law, entitled "A Local Law Requiring Fairness in Cooperative Homeownership," doesn't just require the disclosure of "the reasons behind



MARCELLUS HALL

the denial of an applicant." The law also requires that co-op boards provide the same application to all applicants, along with information on the relevant Fair Housing and anti-discrimination laws. Once an applicant turns in an application, the board must acknowledge that it has received it within ten days and must inform the applicant whether the application is complete or not. The board must come to its decision to approve or deny the completed application within 45 days. If the application is denied, the board must inform the applicant in writing and clearly state a reason.

Several experts feel that the new Suffolk County law may just be the beginning. Groups such as the New York State Association of Realtors have supported similar statewide legislation for years. Other county legislatures and the New York State Assembly are now considering enacting such a law, according to local real estate experts, although the proposals in the past have always been defeated after lobbying by such groups as the Real Estate Board of New York (REBNY) and the Council of New York Cooperatives & Condominiums.

Even opponents of disclosure legislation, like REBNY, agree that co-op boards should be required to come to a decision about an application in a timely manner. But they remain adamantly opposed to the idea of forcing co-op boards to disclose their reasons for refusing applicants. "We've opposed any legislation that would require co-op boards to disclose their reason for refusal," says Marolyn Davenport, senior vice president of REBNY.

Opponents argue that the board's confidential process creates stable communities and strong real estate. For example, the current system, which tends to weed out financially risky prospective owners, has largely protected co-ops from the crash felt in other parts of the real estate market.

"We have very few defaults in the co-op area – nothing

Opponents of disclosure laws fear that forcing co-ops to reveal their reasons for refusing applicants will weaken the process. Co-op board members would be vulnerable to lawsuits that could make them personally liable – especially the co-op board president, who is the likely person to sign a refusal letter. "It's a bull's eye on his or her back," says Geoffrey Mazel, partner with the law firm of Hankin & Mazel.

Some opponents of disclosure legislation even defend the freedom of co-op boards to refuse financially sound applicants. For example, in the 1980s, the San Remo, home to such stars as Steven Spielberg and Demi Moore, famously refused an application from Madonna for unstated reasons, although probably not because of the superstar's finances.

"There's a lot to be said for the special atmosphere," says Matthew Leeds, partner with the law firm of Ganfer & Shore. "Part of the value of a building can be its exclusivity." Some exclusive Manhattan co-ops not only impose very severe financial requirements, they also may favor applicants with membership in visible organizations and a history of charitable work, he adds.

Supporters of disclosure legislation say that the secrecy of the co-op board's process makes it possible for boards to illegally discriminate. "As long as co-ops are not accountable and operate in secrecy, discrimination will continue in spite of New York City's Fair Housing Laws," writes Mitchell Hall, a broker for the Corcoran Group on his blog.

Counters Leeds: "There are tools in place to redress discrimination." Even though co-op boards throughout New York State use the New York State Business Corporation Law to keep their deliberations secret on the grounds that their decision to accept or reject potential residents is a confidential business decision, federal anti-discrimination laws have always

had protection. Applicants who feel they have been discriminated against can contact the city's Department of Human Rights, which will investigate the claim at no cost. Rejected applicants that want to move more quickly can also immediately hire a lawyer at their own expense, though the costs quickly add up – for at least ten hours of a lawyer's time at about \$100 an hour, the cost of filing suit starts at \$1,000 and rises from there.

Once a discrimination case has been opened, the secrecy of a co-op is immediately torn away. "The reason will come out," says Mazel. That's because to win a discrimination case, the burden of proof rests on the co-op board. To win its case, the board must show that it did not break fair housing law by discriminating and show that the reason they rejected the applicant was legitimate.

"If you go to court you're going to have to mount an affirmative defense, you have to have a good and supportable reason for rejecting the applicant," says George Karpodinis, president of 720-730 Fort Washington Avenue Owners Corp.

Even if a board does not discriminate, the secrecy of the process can leave a refused applicant – and the court – with doubts, says Alvin Wasserman, director of Fairfield Property Services. "If you don't give a reason, you leave it open to interpretation," he says. "It just creates an air of suspicion."