

# HABITAT

## ATTORNEY

### SURVEY

#### 2002





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**P**ERRY MASON NEVER LOST A CASE. But lawyers for co-ops and condos are not always as lucky. Boards seem to get sued every day and, through lack of knowledge, preparation, or guidance, sometimes lose – big time. So, as shareholders become increasingly more litigious and as boards face increased liability concerns, solid legal advice is more important than ever.

These concerns were the basis of *Habitat's* seventh annual survey of 27 top law firms. The question this year:

With the *Jennifer Realty* [sponsor sale of apartment] decision and the Lincoln Towers smoking ban in the news, boards are being vividly reminded of their responsibilities, their limits, and their power. What advice can you offer board members about the precautions they must take so as not to face legal challenge? Drawing on your own experiences and interests, choose one area in which you can offer advice (pet policy, noise complaints, admissions, discrimination, security, alterations, etc.).

The answers were as varied as the lawyers who provided them. The results follow.

## Adam Leitman Bailey Law Firm

RESPONSE BY Adam Leitman Bailey

POSITION Partner

FIRM SIZE 1 Partners, 3 Associates

ASSOCIATIONS REPRESENTED 62

ASSOCIATIONS LOCATED

NYC 90% NJ 10%

### ADVICE ON PET POLICY

This has been an active and exciting year to be rendering cooperatives legal advice. The second highest court in the land gave incredible deference to cooperative boards by determining that the courts are prohibited from inquiring into actions of corporate directors taken in good faith and in the exercise of honest judgment in the lawful and legitimate furtherance of corporate purposes.

Paradoxically, recent landlord-tenant case law involving cooperatives attempting to enforce its building's regulations against tenant-shareholders has not only continued to treat renters the same as tenant-shareholders but has emphatically favored tenants. For example, the housing court in Manhattan provides a distinct courtroom for all cooperative cases in front of one of the housing court's most esteemed judges.

One recent issue facing many cooperatives concerns policing pets. On December 19, 2001, an appeals court in Manhattan made it even more difficult to evict tenant-shareholders who violate provisions in their proprietary leases barring pets. The law already articulated that a cooperative has 90 days to take action against a tenant who harbors a pet in violation of the proprietary lease.

Now, Manhattan cooperatives are deemed to be aware of the existence of an unauthorized animal if an employee or contracted building worker knows of the animal's existence. In other words, if a tenant-shareholder takes a picture of his dog with the doorman, and the doorman does not report the sighting of the dog which he sees entering the elevator, the dog becomes a permanent resident 90 days later.

Cooperatives must ensure that all workers, employees, and the co-op's agents report immediately the sighting of an animal entering the building. In addition, that sighting must be reported to the cooperative's attorney. He must immediately start legal action, including a notice to cure and a lawsuit (in some jurisdictions) before the 90-day period expires.