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Co-Ops Continue to Struggle With Ground Lease Resets

By Gary M. Rosenberg & Bradley S. Silverbush
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It has been two years since one of my colleagues wrote about the dilemma faced by many cooperative corporations and their shareholders, where the co-op leases the land upon which it rests. The article opined that "perhaps the greatest uncertainty associated with ownership in a residential ground lease cooperative corporation is the question of ground rent escalations."

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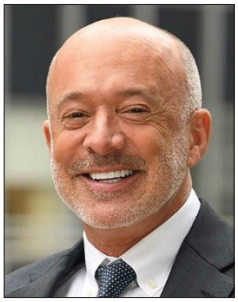

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Why a Ground Lease?

While most cooperatives in New York City traditionally own both the building and the land around it, there are also cooperative corporations that own the building, but not the land upon which it sits; that situation is where the co-op has a long-term lease, known as a "ground lease." Like any other lease, a ground lease contains the essential terms, such as the length of the lease (the term), the amount of rent to be paid, and the terms of any renewals.

According to an article appearing in Cooperator News New York, there are roughly 100 ground lease co-ops in the City, including some notable buildings such as Battery Park City, the Excelsior at 303 East 57th, the Trump Plaza at 167 East 61st Street, the Sovereign at 420 East 59th Street, One Carnegie Hill, to name a few.

The advent of the ground lease sprang into use in the 1950's primarily because (1) it permitted developers who otherwise could not afford to buy desirable land to lease and build on the land; and (2) permitted landowners to hand off the cost of building structures to developers while allowing themselves to retain ownership.

From the landlord's viewpoint, this was ideal. From the shareholders viewpoint, the cooperatives built on ground leased land were designed so that the sponsor owner was able to give an initial term with a very low rent (a bargain rent below value) and sell the coops at closer to full value because the ground rent typically did not increase for 15 or 20 years. As such the initial sale prices of the coops did not vary much from fee simple coops because the maintenance was very similar.

What's the Catch?

A ground lease significantly affects a cooperative's maintenance charges because the cooperative corporation must pay rent under the ground lease as part of its operating expenses, which are then passed through to shareholders via their monthly maintenance charges. The cooperative's maintenance encompasses not only building upkeep but also taxes and ground lease rent payments.

The ground lease expense is typically allocated among shareholders proportionally (based on their share ownership, following the same methodology used for other maintenance charges). New York law permits cooperatives to fix maintenance charges "on an equal per-share basis or on an equal per-room basis or as an equal percentage of the maintenance charges." See McKinney's Business Corporation Law Section 501.

The "catch," however, is that when the lease "reset" occurred (i.e., the period when a renewal term kicks in, and therefor, the ground lease rent is increased), not only had land values skyrocketed for new construction condo's but the existing rent was artificially low and hence there was a huge increase in ground rent. After all, vastly higher land values naturally and inevitably resulted in massive jumps in ground lease rent, resulting in equally massive increases in individual shareholders' maintenance.

What Does This Portend?

No one is more certain about the uncertainty of how ground lease rents impact upon shareholders than those who own coops on land that is leased. Just ask the shareholders of a certain co-op that live on "Billionaires Row," an area described by Erika Riley in the Aug. 9, 2021 edition of Street Easy Reads as "an enclave around 57th Street, [that] has become a symbol of the city's increasingly stupendous riches."

Specifically, "a building on 57th Street where residents could face a huge rise in maintenance costs because of an increase in the ground rent," as reported by James Barron, in a Jan. 8, 2026 column for the New York Times.

The headline of Mr. Barron's article was appropriately entitled "A Huge Increase in Ground Rent Stuns Co-op Residents." What was the cause for alarm? The article summed it up as the result of a decision by Justice Nicholas Moyne in State Supreme Court in Manhattan which "upheld a 450 percent increase in the rent that the co-op pays the group that owns the land beneath the building." The article referenced the fact that one shareholder of that building, for example, would see his monthly maintenance rise from $3,750 to more than $9,000 a month.

An article written by Aaron Elstein appearing in Crain's New York Business on January 7, 2026 described the co-op called Carnegie House, as "a 21-story building located at the corner of West 57th Street and Sixth Avenue that sits on land acquired in 2014 by real estate investors," where two years earlier, "the ground owners proposed raising the annual rent from $4 million to about $25 million, based on soaring property values along Billionaires Row." The article sounded the alarm about a case in which "hundreds of residents at [the co-op] could lose their homes after a New York state judge gave the green light to a massive increase in their ground rent."

That case is *57th & 6th Ground LLC v. Carnegie House Tenants Corporation and Georgetown 57, LLC,* Index No. 654326/2025 (Supreme Court, New York County). What happened in that case is of major significance for the shareholders of that co-op, and should swerve as a warning to any shareholder of a ground leased cooperative corporation.

The co-op is a 324-unit cooperative unlike most residential cooperatives, because the building

sits on leased land which the co-op rents under a long-term lease. The initial term of the lease ran through 2004, followed by three optional 21-year extension terms. At the beginning of each term, the rent resets.

On March 1, 2024, the co-op exercised the second extension option, for a term beginning on March 15, 2025. When the co-op extended the lease in 2024, the annual ground rent was $4,360,587, but once the extension option was exercised, the lease required the parties to attempt to negotiate a new ground rent, and to arbitrate if negotiations failed (as is typical of ground lease co-ops).

The ensuing negotiations made evident that the owner was intent on raising the rent to a market rate, which from the shareholder's perspective, was "unsustainable."

The owner (referred to as the "developer" in the co-op's submissions) "indicated that if Tenant could not pay the new ground rent, the developer planned to terminate the lease and evict the co-op's residents from their homes, allowing developer to demolish the building and erect a condominium Tower."

While the parties had differing interpretations as to how the Property was to be valued under the lease, all questions over interpretation were left to be resolved in arbitration. Again, as is typical in these matters, each side selected an arbitrator of their choosing, and then the parties agreed on a third "neutral" arbitrator (the "Umpire"). Ultimately, the arbitration award agreed upon by the three arbitrators increased the ground rent by 450%.

At first blush, the case may seem to involve simple questions typically raised in the context of a petition for or opposition to confirmation of an arbitration award. But there was a major difference in this case; court papers filed by the co-op alleged that during the course of the arbitration, the developer offered the Umpire another paying job.

What happened thereafter is, of course, a point of contention, raising legal and factual questions to be resolved by Judge Moyne; specifically, whether there was cause to vacate the ensuing arbitration award based upon purported impropriety (or the appearance of impropriety). In an 18-page decision, Judge Moyne denied the co-op's request, rejected any basis to set aside the award, and granted the developer's motion to confirm the award.

In his decision on the competing arguments, Judge Moyne summarized as follows:

[The] Court finds that the tenant has failed to meet the very heavy burden of proof required under CPLR Article 75 to demonstrate that its rights were prejudiced by the alleged partiality and misconduct of the neutral umpire. While the conduct surrounding the neutral umpire's acceptance and later refusal of an unrelated engagement offered by landlord's counsel created an appearance of impropriety, this conduct, when assessed against the stringent standards of CPLR Article 75, does not constitute the corruption, fraud, misconduct, or partiality necessary to justify the extreme remedy of vacating a final arbitral award.

The co-op has filed an appeal of Judge Moyne's determination. In so doing, the co-op has raised five arguments all of which relate in some way to allegations of bias, misconduct, conflict of interest, or an attack on the integrity of the arbitration process.

The appeal has not yet been fully briefed, but in an order issued March 10, the Appellate Division enjoined and restrained the developer from issuing a notice to cure or notice of nonpayment or attempt to enforce the rent based on the arbitration award, and enjoined the developer from terminating the lease, and also tolled any period

to cure any alleged default, pending hearing and determination of the appeal.

So, what now? As referenced by Mr. Barron's article, according to Richard Hirsch, the president of the Carnegie House co-op board, prices of apartments in the building have plunged 90 percent since the dispute began and banks will no longer write mortgages for prospective buyers.

Given the timing of the appeal, it is likely that there will no final determination of the case until much later this year, or early next year. But even if the co-op wins the appeal, isn't the co-op essentially "just kicking the can down the road?"

If victorious, the result, in all probability, is a short-term reprieve that would simply require another arbitration, de novo, while the inevitable end result is nevertheless "a huge increase in ground rent" that will leave all of the affected shareholders "stunned."

What Is a Ground Lease Cooperative To Do?

As we can see from the Carnegie House case, if the parties cannot negotiate a mutually acceptable ground lease rent reset, then the potential nightmare for any shareholder of a ground lease co-op is readily apparent. If left to arbitration and a market reset is set by the arbitrator, then the cooperative may very well be unable to afford to pay the new ground lease rent. And if that happens, that means that when there is a rent reset, they risk losing the building to the landowner.

While not a great alternative, there is a nuclear option for such a co-op if the building was built before 1974. All apartments in buildings built prior to 1974 would be subject to either Rent Stabilization or more likely the Emergency Tenant Protection Act of 1974 ("ETPA," also rent stabilization). While there is a specific exemption from rent stabilization for cooperatives and condominiums, that exemption exists only so long as a building maintains its status as a coop or condominium.

So, if a cooperative were to default on the ground rent, presumably the landowner would serve a default notice and terminate the ground lease, as they are threatening to do in Carnegie House.

However, when the ground lessee terminates the ground lease, the cooperative collapses and all of the proprietary lessees (shareholders) become direct tenants of the ground lessee and are subject to rent stabilization. This leads to a number of issues which should give the ground lessor pause before refusing to negotiate how high the ground rent should be. After all, the last thing most ground lessors want to be is a rent stabilized landlord who has to answer to residential tenants.

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