

Addressing Objectionable Conduct in a Condominium: Limitations, Pitfalls and Strategies

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Like any residential community, regardless of its legal structure (e.g. rental, condominium, or cooperative), there will be bad actors. Residents may repeatedly violate applicable rules and regulations such as those relating to excessive noise, odors, renovations, etc. Or worse, residents may engage in criminal activity.

The remedies available to address this type of objectionable conduct depends on the type of community. This article will explore available remedies within a condominium apartment community—where the remedies are far more limited than in either rental or cooperative communities.

First, it is important to frame the analysis by looking to the legal structure itself. An owner of a condominium unit, unlike ownership of a cooperative apartment (which is really ownership of shares of stock in the cooperative corporation), has a fee ownership interest in a piece of real property subject to the condominium’s governing documents—typically consisting of a declaration, by-laws, and house rules. The contents of the governing documents are governed by statute (namely, Article 9-B of the New York Real Property



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Law [“RPL”]), and are directly overseen and negotiated with the Office of the Attorney General of the State of New York.

As a fee owner of real property, the remedies of eviction and/or ejectment and largely unavailable. In contrast, a cooperative apartment owner has a landlord and tenant relationship with the entity operating the building, thus triggering the expedited eviction remedies provided for under the New York Real Property Law.

This article explores five principal strategies available to condominiums in New York: (i) imposing fines, (ii) seeking specific performance, (iii) obtaining preliminary injunctions, (iv) pursuing

contempt for violation of court orders, and (v) seeking ejectment of the offending owner.

While a recent Supreme Court decision, affirmed the board's ability to obtain appropriate injunctive relief, and even contempt, the practical realities of litigation require that a board fashion a multi-faceted approach with their litigation counsel including levying appropriate fines (if permitted by the by-laws).

Pursuant to RPL §339-j, owners are required to strictly comply with the by-laws and with rules, regulations, resolutions and decisions adopted pursuant thereto. The statutory provision further provides that "Failure to comply with any of the same shall be ground for an action to recover sums due, for damages or injunctive relief or both maintainable by the board of managers on behalf of the unit owners or, in a proper case, by an aggrieved unit owner.

In any case of flagrant or repeated violation by a unit owner, he may be required by the board of managers to give sufficient surety or sureties for his future compliance with the by-laws, rules, regulations, resolutions and decisions."

This rather broad set of remedies is further elucidated in the condominium's governing documents, as well as applicable case law.

Imposing Fines Against the Unit Owner

Many by-laws expressly permit the imposition of fines for violations of the rules and regulations for the condominium. This authority is typically found in the Article of the by-laws setting forth the board of managers' 'Powers and Duties.' For example, boards are often authorized to 'adopt and amend rules and regulations, and to levy and collect fines against unit owners for violations of the same.'

The provision may limit the amount of the fine, expressly state the amount of the fine, or other restrictions regarding the board's authority. When

authorized, boards must ensure strict compliance with procedural requirements in adopting a fine policy, including those relating to calling the board meeting at which the fines are adopted and any notice requirement to the Unit Owners upon adopting the protocols for imposing the fines.

Courts typically afford a board's adoption of fines protection under the business judgment rule, so long as the board acted within its authority, in good faith, and in furtherance of the Condominium's interests (see *Cave v. Riverbend Homeowners Ass'n, Inc.*, 99 AD3d 748 [2d Dep't 2012])[Upholding fines in the sum of \$50 per day where the board acted in good faith and the by-laws expressly authorized late fees for unpaid common charges]; *Yusin v. Saddle Lakes Home Owners Ass'n, Inc.*, 73 AD3d 1168 [2d Dep't 2010])[Annulling a board-imposed pet policy and associated fine which as not authorized by the by-laws.

Additionally, the fines must not be unreasonable or 'confiscatory' in nature (see *Penal Law § 190.4 Minkin v. Board of Directors of the Cortland Ride Homeowners Assn., Inc.* [2d Dep't 2017] [Upholding fines in the sum of \$100 for an initial violation and \$100 per week thereafter for as long as the violation remained for violations of procedures regarding unauthorized exterior alterations]; *Gabriel v. Board of Managers of Gallery House Condominium*, 130 AD3d 482 [1st Dept 2015])[Annulling fines of \$500 per day fines for violation of a rule limiting unit owners from leasing their apartment for more than 1 year]).

In one decision, the trial court annulled a board's imposition of \$1,000 per day violations being charged for a unit owner engaging in persistent short-term rentals (see *Vidov v. Morton Square Condominium*, 2018 NY Slip Op 053[U]).

The court did not accept the board's justification that the fines were imposed in an

amount sufficient to effectively disincentivize the unit owner's \$700 per night short-term rental business. Simply put, a board together with counsel must thread the needle—so to speak—balancing practicality and effectiveness, while not reaching so far as to be “confiscatory.”

The remedy for failing to pay a duly imposed fines depend on the condominium's governing documents. At a minimum, the board will be entitled to pursue a breach of contract claim. However, many by-laws will provide the failure to pay fines afford the condominium the same remedies for failing to pay common charges including filing a lien against the unit and foreclosing on the unit (see *Cave*).

Seeking Specific Performance and/or a Declaration

When fines prove insufficient, or—ideally, in conjunction with imposition of fines, boards should pursue their other available remedies. One of which includes specific performance seeking to compel compliance with the governing documents and/or a declaration confirming the unit owners contractual obligations.

Regarding specific performance, courts have held that such relief is appropriate when money damages would be inadequate to protect the “expectation interest of the injured party” and when performance will not impose a disproportionate or inequitable burden on the breaching party (see *Sokoloff v. Harriman Estates Development Corp*, 96 NY2d 409 [2001]; *Van Wagner Advertising v. S&M Enterprises*, 67 NY2d 187 [1986]).

With regard to a declaration, this is typically sought in addition to relief seeking affirmative relief such as specific performance, or an injunction—as discussed next. The relief is sought pursuant to CPLR 3001, where there is a justiciable controversy as to the rights and other relations between parties.

In *Board of Managers of Fishkill Woods Condominium v. Gottlieb*, 184 AD3d 785 (2d

Dept. 2020), the Second Department issued a declaration affirming the board's authority to compel removal of a unit owner's dog that had attacked other residents. The court emphasized that the board acted within its authority, supported by near-unanimous petitions of other unit owners, and that the residents had notice and an opportunity to respond.

Injunctive Relief

Preliminary injunctions are sought to prevent ongoing harm while litigation proceeds, often in connection with a cause of action seeking a permanent injunction. A board must show: (1) likelihood of success on the merits, (2) irreparable harm absent relief, and (3) a balance of equities in its favor. Upon issuance of the Order, non-compliance is punishable by civil and/or criminal contempt of court as well as issuance of fines, money damages and requiring reimbursement for attorneys' fees to the damaged party.

While this is arguably the strongest and more forceful approach to such situations. It is important to note that it is not without its own limitations. One of which is a Court's hesitancy to hold a party in criminal contempt—even after repeated violations.

In a recent decision issued in favor of a board of managers represented by this author's law firm, a board of managers sought civil and criminal contempt against a unit owner who (among other violations) continued to allow a guest/occupant to engage in disruptive conduct in the unit and building (*The board of Managers of the 7 MetroTech Condominium v. Deruytter*, 2025 N.Y. Slip Op. 31651[U][Sup. Ct. New York County, J., Waterman-Marshall]).

The court granted nearly all relief sought in the motion, including an award of attorneys fees, but declined to hold the defendant in criminal conduct on the grounds that it had not established “beyond a reasonable doubt that [defendant]'s disobedience

was “willful”—notwithstanding that the board was compelled to file two contempt motions.

Importantly, the court’s reasoning suggests that had the disruptive behavior been coming directly from the defendant instead of his guest, the element of willfulness may have been far easier to establish.

In another decision, the Supreme Court in Erie County awarded a home owners association, represented by Schneider Buchel, a preliminary injunction enjoining a unit owner from returning to his condo unit due to repeated and documented criminal behavior therein (*Saddlebrook Pointe Association, Inc. v. Heisler, et. al.* Supreme Court, County of Erie (Index No. 807199/25, J., Pace).

Notably, the decision was rendered on default and without opposition from the unit owner. Further, such relief—however justifiable under the circumstances, is unlikely to be granted in Courts located within the City of New York given the more ample legal authority and protections against removal of residents from their home.

Seeking Ejectment

While the availability of ejectment of a unit owner by a board is questionable, the Court in *Heisler*—in addition to issuing an preliminary injunction—issued an order eject the unit owner from possession of the unit. This relief is not expressly set forth in Real Property Law §339-j. Further, the probability of obtaining this relief within a New York City Court is low.

Indeed, in one decision, the First Department overturned an order of ejectment against a unit owner who had been violating certain pet/dog rules—noting that there was no indication that the dog in question posed a physical danger to residents.

Though not directly tied to objectionable conduct, ejectment of a unit owner by a board is possible in the context of a common charge foreclosure action, even before a judgment of foreclosure has been rendered.

More specifically, in the event the unit owner violates an order requiring that he/she pay reasonable rent during the pendency of the action, the Courts have authority to remove the unit owner from possession (*Heywood Condominium v. Wozencraft*, 148 AD3d 38 [1st Dept. 2017]).

This would allow the subject unit to then be rented and/or otherwise utilized by the board until a formal foreclosure can be effectuated. Of course, tenants engaging in objectionable conduct may be otherwise complying with their financial obligations to the Condominium, in which case this remedy would be unavailable.

Conclusion

Boards of managers in New York City condominiums have a wide arsenal to address objectionable conduct by unit owners. Beginning with internal measures such as fines, escalating to judicial remedies including specific performance, preliminary injunctions, and contempt, and—potentially—ejectment, the law provides tools to maintain order and protect the community.

The key to successful enforcement lies in careful adherence to governing documents, reliance on the business judgment rule, and a well-documented evidentiary record. Where boards act within their authority, in good faith, and to further the condominium’s legitimate interests, New York courts consistently uphold their actions.

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