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Debunking Myths About the Fair Residential Cooperative Disclosure Law

Intro 407 is a straightforward "cards on the table" bill: if a coop Board denies a family the right to purchase a home that the owner has agreed to sell them (and for which a financial institution has agreed to lend money), the least the coop Board can do is to give the family a written statement of the reasons for rejection. But the coop industry and its various hired guns -- ignoring the views of ordinary shareholders -- are determined to protect privilege and unaccountability. They grossly mischaracterize the text, intent, and consequences of the bill. Here are 12 of the myths that opponents are using to try to mislead and to stir fear:

"But we already have laws against discrimination"

You can have all the fair housing laws in the world, but the secrecy of the admissions process profoundly undermines the enforcement of those laws in the coop context:

- Secrecy is the environment in which those who would discriminate feel emboldened.

- Secrecy means that people who have been turned down have no way to assess – or to get a lawyer to assess – whether discrimination has been at play.

- Secrecy means that those few people who file fair housing lawsuits find that they ultimately have to face reasons for rejection that were invented by a discrimination defense lawyer long after the fact.

And secrecy serves the interests of privilege and exclusion in two other ways as well:

- Secrecy discourages qualified people from applying in the first place to buildings where they fear they may be seen as not "fitting in." They know they could be rejected and never find out why.

- Secrecy spurs brokers not to "waste their time" being fair, and to steer people away from buildings instead. As one broker quoted by The New York Times said: "We try to take the temperature of the building to find out what kind of people the Board is looking for."

"But there will be a flood of litigation"

- False. The bill *explicitly* disclaims any interpretation that would restrict the current reasons by which a coop may legally turn someone down.

- The only litigation that can properly arise under this bill is a claim that disclosure has not been made timely or completely or both.

- *There is no cause of action that is given to someone who doesn't like the coop's reasons or who thinks that the coop is being foolish.*

"But won't there be more fair housing litigation?"

Now we start to understand what the defenders of privilege and unaccountability are afraid of: people actually having enough information to be able to make a reasoned judgment as to whether or not a coop's rationale is belied by the facts and is actually no more than a pretext for discrimination. The public interest demands that fair housing laws become more than window dressing in the coop context.

➢ Contrary to industry propaganda, though, making fair housing law effective does not mean that there will be a slew of lawsuits:

- The industry itself says that turndowns are rare as a percentage of all transactions.
- The percentage of turndowns where the "demographics" of the rejected purchaser are sufficiently different from the demographics of the building to plausibly even suggest the existence of discrimination is relatively small.
- The industry says most rejections are based on an applicant's clear-cut failure to meet a building's financial standards.
- As such, the rejections because an applicant was thought to be "obnoxious" – as illustration the industry repeats obsessively (as if all the obnoxious people were living in condos, and peace and harmony prevailed in all coops) – would be a small percentage of a small percentage of a small percentage.

➢ Indeed, the sunshine of disclosure will eliminate the suspicion and speculation that sometimes gives rise to litigation now.

➢ What the forces of exclusion don't say explicitly is that they recognize that, once the bill is passed, qualified applicants from all protected groups will feel more empowered to apply to any and all buildings in which they desire to live. And they don't like that.

"But the bill would be hard or expensive to comply with"

➢ False: it's easy to comply with. The coop industry itself says that turndowns are rare, so few statements will be required of any coop in any year.

➢ Where someone is turned down, the Board KNOWS WHY IT DID SO. All the bill requires is stating the reasons to the purchaser.

➢ The only coops who have anything to worry about are those who intend to keep their specific reasons hidden and only *appear to comply*. The bill is properly designed to foil those who act in bad faith, including those bad-apple coop boards that decide to spend lots of money to get lawyers to try to craft evasions.

"But the bill imposes burdensome record keeping requirements"

➢ False. All the bill requires in the turndown statement is the number of turndowns and total applications in the prior three-year period. These data are easy to track in a single Excel sheet – no detailed or individually identifiable data are required.

"But coop owners won't agree to serve on Boards anymore"

➢ This is perhaps the most shocking of the industry's claims: "We won't serve unless we are guaranteed that we will have no accountability for our actions."

➢ In fact, there was once a professional survey done of coop owners (board members were not included) and the coop owners supported disclosure by a margin of more than 2-to-1.

➢ The industry insisted that the sky would fall if coop sales prices were publicly available like sales data on other real estate transactions. Former Mayor Bloomberg got that law changed, and the sky didn't fall.

➢ Whenever there has been consumer, labor, civil rights, or environmental change proposed, those committed to the status quo use apocalyptic rhetoric, and, after the legislation passes, life goes on. Here, too, coop owners will adapt, and will continue to serve.

"But the bill won't be effective – coops will get around it"

➢ False. The industry knows that the bill as written is strong. Its only hope is that its propaganda will be adopted by politicians prepared to spout the company line or will be the excuse for those politicians to emerge with a watered-down "disclosure-lite" piece of legislation.

➢ In fact, in each way that secrecy hampers enforcement of fair housing law and inhibits people from seeking housing wherever they are qualified, the sunshine of the bill will improve enforcement, open the marketplace, and encourage a qualified person to apply to (and brokers to show) all of the buildings in which that person is interested.

➢ The need to set out reasons will deter coops from discriminating in the first place.

➢ The need to set out reasons will let people compare the reasons with turndowns with what they know about their own qualifications, and better understand whether or not the reasons given are a pretext for discrimination.

➢ The bill gives co-ops a full and fair opportunity to present (and even supplement) their reasons – but it doesn't allow co-ops to pull new reasons out of the hat during a fair housing lawsuit because a discrimination defense lawyer thinks his after-the-fact invention is useful for the case.

➢ It is cynical in the extreme to suggest that all coops will try to evade the law. We think that most coops will seek to obey the law. For those coops that do try to evade their task is much more difficult than the cynics suggest:

- Should there be *fair housing litigation* down the line, the coop can't rely on reasons that had not been set forth in a proper statement, so "hiding the bacon" doesn't work.

- Should a coop think that it can evade the law's requirement of specificity by merely sending out a long, "standard" list of reasons to the family that has been rejected, that coop will be in for an unpleasant surprise. Should there be *fair housing litigation* down the line, the plaintiff will be able to look at each of the reasons on the coop's laundry list and compare how whether others with the same alleged problems were treated the same way. What may have seemed like a great (albeit dishonorable) idea to a clever lawyer now turns into excellent evidence of illegal pretext.

➢ A beneficial side effect of the bill's transparency will be a more efficiently functioning market.

"But coops are not supposed to be restricted in any way"

➢ False. In fact, New York's highest court holds that, when coops discriminate, or when they single someone out for harmful treatment, vendetta, arbitrary decision-making or favoritism, such conduct is improper and "incompatible with good faith and the exercise of honest judgment." The Court expressed its concern that the broad power of coops "carry the potential for abuse," and that the "business judgment" rule should not "serve as a rubber stamp" for coop board actions.

➢ To repeat: if a coop can legally do it now, it can legally do it once the Fair and Prompt Coop Disclosure bill is law.

"But really: won't coops will have to accept people they properly want to reject?"

➢ False. And saying it a thousand times doesn't make it true. The bill *explicitly* disclaims any interpretation that would restrict the current reasons by which a coop may legally turn someone down.

"But the bill is uncomfortable to comply with"

➢ Actually, the statement is in writing and requires no in-person contact between any member of the Board and the rejected applicant. More important, though, the "uncomfortable" part is being rejected without ever finding out why.

➢ This is all a matter of deciding what set of values is more important: basic disclosure and effective civil rights enforcement, or maintaining a privileged, secretive status more akin to a 1950s country club than a 21st century provider of housing accommodations? We think it's the former.

➢ Does anyone actually think that those turned down want to be shielded from the reasons why?

- People turned down for a department store credit card get information as to why -- so should people rejected by a coop.

- If coop boards are *embarrassed* by the flimsiness of a reason that they are disclosing…now that might be a reason for them to consider the appropriateness of their conduct. It is not a reason to deny disclosure. Protecting the boards from themselves is not a proper consideration for the City Council.

"But the City doesn't have the authority to pass this law"

- False. The Court of Appeals allows the City to go beyond the State in protecting civil rights.

- The operative principle is that the City has concurrent jurisdiction with the state in the realm of its human rights law. The state has *not* preempted the field.

"But the bill would overturn long-standing law"

- No, it wouldn't. State law is not designed to promote a "no disclosure" policy, nor to prohibit locally mandated transparency. As such, the City can require disclosure and not become "inconsistent" with state law.

- The bill is scrupulous in not making any changes – substantive or procedural – in terms of how a coop decides (on its own) how to set standards and otherwise conduct its admissions process.