

The New York Times

February 6, 2008

Square Feet

A Fee That Developers Would Like to See Rise

By Alison Gregor



It may seem befuddling that an industry group would favor having to pay higher fees to the government for more intense regulation, but that seems to be the case with developers of condominiums and co-ops in New York.

A bill being proposed in the state Legislature would increase the filing fee for developers of such properties, and the proceeds would be used by the state attorney general, Andrew M. Cuomo, in part to handle enforcement in cases of complaints by buyers in new projects.



The fee, which has remained the same since 1989, would be increased to a maximum \$30,000 per project, from \$20,000. That increase would help cover the cost of processing offering plans submitted to the attorney general's office; such filings grew to 929 in 2006 from 299 in 2002.

Photographs by Annie Tritt for The New York Times

Antonio Soddu, left, his wife, Elsa Ward, and their lawyer, Eric D. Sherman, are in a dispute with a property manager over what they say is a lack of heat in their Manhattan condo, top, where their daughter Isabella played recently.

Under the bill, sponsors would pay 0.4 percent of their total offering price, so the cap would be reached at any project with a price of \$7.5 million or more.

Under the bill, which is being sponsored by Assemblywoman Helene E. Weinstein, a Brooklyn Democrat, and Senator Owen H. Johnson, a Republican of Babylon, the additional money would go into a fund to hire employees for the Real Estate

Finance Bureau, an arm of the attorney general's office that had been defunct and was revived last year by Mr. Cuomo.

Real estate lawyers who represent both property developers and home buyers hail the bill, although its sponsors would not speculate on its prospects. Not only would it speed reviews of offering plans, but it would allow the attorney general's office to respond to complaints from buyers who have bought a condominium and then have found grave problems with their property. Lawyers say the office has not responded to such complaints since 2005.

"I don't think that an increased filing fee would dissuade developers from filing," said Luigi Rosabianca, a managing member of the law firm of Rosabianca & Associates, which specializes

in residential and commercial real estate. “However, the benefits are quite evident if the state does increase the filing fee, because the bureau would be staffed better and return your phone calls.”

Real estate offerings are in the jurisdiction of the attorney general’s office under the Martin Act, which allows it to monitor and prosecute companies that issue securities.

In 2005, the bureau that handled real estate matters was folded into the investor protection bureau, which focused heavily on cases against securities firms. That left little time for cases of real estate buyers who said they had been defrauded.

Antonio Soddu and his wife, Elsa Ward, are examples of such buyers. They say that they and their daughters — Francesca, 10, and Isabella, 4 — have spent the years since their 2005 purchase of their condominium at 1400 Fifth Avenue, at 115th Street, largely without heat. Their property manager, Maxwell Cates Inc., would not comment.

The impasse has gone to court. But the lawyer for Mr. Soddu and Ms. Ward, Eric D. Sherman, a partner at Pryor Cashman, said he thought the dispute could have gone a different route if the attorney general’s office had been able to mediate.

Mr. Cuomo revived the Real Estate Finance Bureau last year and has already hired two lawyers to specialize in cases that require mediation or prosecution.

“I believe we have to do more enforcement,” Mr. Cuomo said. “I believe we have to reduce the amount of time it takes to review a plan.”

The bill has been endorsed by the Real Estate Board of New York, the New York City Bar Association, the Council of New York Co-operatives and Condominiums, the Rent Stabilization Association and the Association of Community Organizations for Reform Now.

Sponsors of real estate developments support the bill in large part because it could speed the review time on offering plans.

“This has been an endemic problem forever, and we’re perfectly happy to see the fee raised, because otherwise it’s costing us so much more money,” said Douglas P. Heller, a partner in the real estate practice of the law firm of Herrick, Feinstein who frequently represents project sponsors.

Developers often make significant interest payments while their projects are under development. Thus, they say, they support any change in New York law that will expedite the approval of offering plans, which in recent years has typically taken three to nine months, said Shaun Osher, chief executive of the Core Marketing Group, a firm that markets new real estate developments.

Delays and uncertainty related to the approval process mean “you could miss a market,” Mr. Osher said. The danger is that the supply-and-demand equation could change significantly after a plan is submitted but before a project gets to market.

Oliver A. Rosengart, a former assistant attorney general who handled mediation for the bureau until early 2005 and is now retired, said the attorney general’s office needs to handle cases where complaints are filed by disgruntled buyers. Otherwise, consumers have little recourse.

Currently, Mr. Rosengart said, “these cases either go to court, or they go nowhere, because the buildings are small, and they can’t afford to litigate.”

“The bottom line is that either repairs don’t get done, or they get done at the expense of buyers, when they should have been paid for by sponsors.” The attorney general’s office could offer mediation in addition to litigation.

In recent years, recalcitrant condominium and co-op sponsors have found a potential way to postpone responsibility, according to Mr. Sherman, the lawyer for Mr. Soddu and Ms. Ward. They argue in court that under the Martin Law, the New York attorney general should be the one to pursue any infractions, but they know that the attorney general’s office has not been doing so, Mr. Sherman said.