

Maxwell-Kates, Inc.

Established 1986

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Hurricane Sandy Affects Insurance Rates And Coverage

Commercial insurance rates have remained steady for the past several years. During this period, many individual condominiums and cooperatives experienced reductions in premiums increasing coverage limits, often within the Maxwell-Kates insurance program. Unfortunately, Hurricane Sandy changed all of that in an instant. Insurance carriers are now suffering huge underwriting losses which they are unable to recoup through investment or interest rate returns. While these underwriting losses began prior to the hurricane, Sandy caused the losses to accelerate quickly.

Prior to Sandy, rates were trending up on the average of 5-6% on properties with favorable claims experience and underwriting criteria. On those properties with unfavorable claims experience and/or underwriting issues, rate increases were expected to be higher, often coupled with decreased coverage. Now, our insurance team believes that because of Sandy, rate increases for all properties, including those unaffected by the storm, will average around 10%.

Some of this increase is due to market correction, but the majority is due to Sandy and projected future losses.

Those properties located in flood zones are seeing carriers impose higher deductibles and greater limitations on coverage. Some examples of this include wind deductible increases, flood exclusions or reductions, water damage coverage reductions and deductible increases. These limitations have exposed condominiums and co-ops to greater financial liability to address issues that are no longer fully protected by their insurance policies.

Maxwell-Kates is working with each building's broker prior to their renewal policies to ensure that the premium increases and coverage reductions are minimized to the extent possible. If you have any questions, please email our property and casualty insurance broker Mr. Max Freedman at: mfreedman@maxwellkates.com.

Maxwell-Kates, Inc. Master Insurance Policy

The insurance industry has excluded insurance coverage for almost all environmental risks in almost all property and general liability insurance policies it issues due to increasing and unpredictable claim histories, unless the insured was willing to agree to limited coverage and high deductibles. The result was a high level of uninsured risk for property owners, including Cooperatives and Condominiums.

Maxwell-Kates, Inc. created a Master Environmental Insurance liability policy for the properties we manage that combines a lower deductible and dramatically reduced premiums. MKI's master policy provides coverage for a number of environmental risks, including: fuel leaks from storage tanks or piping, hydraulic oil leaks from elevator wells, carbon monoxide or bacterial air released from faulty HVAC systems, contaminants from historical usage or neighboring properties (which is a significant risk), doctor office release of potentially harmful laboratory chemicals and medical waste and asbestos. Coverage is provided for first party clean-up expenses, as well as third party litigation expenses at limits of \$2,000,000 per claim per property, subject to a \$10,000 deductible.

Please speak with your Account Executive if your building is interested in this important new program, especially if you are upgrading your existing heating system.



In January, Governor Andrew Cuomo signed into law a 3-year retroactive extension of the Real Estate Tax Abatement Program for the period July 1, 2012 through and including June 30, 2015. The abatement program continues to provide eligible co-op and condominium owners with a credit against their individual real estate taxes. The most significant change in the law is that it phases out the abatement for those whose apartment is not their primary residence, starting with the 2012/13 tax year and will be eliminated in the 2014/15 tax year. This change is effective retroactive to July 2012 and will result in adjustments for individuals who previously received the abatement. Management is now required to report changes or discrepancies in

ownership for Cooperatives between the data that the City provided in the Tax Benefit Letters so that ownership of the apartments is accurately reflected in the City's records. Owners of 4 or more units within the same building will no longer be eligible for the abatement. If an individual owns up to 3 units in a building, as long as they live in one of the units, they will be eligible for the abatement for the additional units in the same building.

The NYC Department of Finance has determined that units owned by trusts are not eligible for the abatement. While certain owners will no longer receive the abatement, the benefit percentages have increased for all residents if the average assessed value for all units in the building is less than \$60,000.

Cooperative and Condominium Abatement

New Regulation from the Department of Finance

If your building is receiving an increased amount for 2012/13, you or your Co-op board will receive a credit on your July 2013 Property Tax Bill for the increased retroactive 2012/13 Abatement. Maxwell-Kates, Inc. has notified all of our Boards about these changes as well as sending our Shareholders letters if the Department of Finance identified them as no longer being eligible for the Cooperative Abatement. Condominium Unit Owners have to check their individual tax bills to confirm that they received their abatement. The changes are confusing and continue to evolve as the City is making adjustments weekly. If you have questions about this program, please feel free to email your questions to: abatements@maxwellkates.com.

New Sub-Metering Regulations

Earlier this year, the New York State Public Service Commission (PSC) revised its regulations regarding residential electric sub-metering. These regulations impose new requirements for all buildings that sub-meter electricity and for the first time specifically include Condominiums and Cooperatives as being regulated by the PSC. Additional changes were made that may affect a building's decision to sub-meter electricity going forward.

The new regulations make it clear that Condominiums and Cooperatives that sub-meter electricity must comply with the Home Energy Fair Practices Act (HEFPA).

This may be done through the sub-metering company that each building uses including notifying residents of the consumer protections afforded by HEFPA; ability to enter into deferred payment agreements or budget

billing regardless of building policy with respect to the payment of charges. Buildings are required to establish procedures to identify elderly and disabled residents and those with special medical needs. The regulations prohibit binding arbitration as a method of dispute resolution which may conflict with building policy.

The new regulations continue the State's efforts to incentivize residents to reduce their energy consumption by adding a provision that all sub-meters must be capable of terminating service to a resident who has not paid their electric charges.

All new equipment installed after January 1, 2014 must comply with these regulations, including the ability of the actual user to view and read the meter.

The regulations require annual random testing of sub-meters by the sub-metering company to Make certain that they are

functioning properly and replacing defective meters as needed.

Residents will have the right to have their individual meter tested once a year for free if they believe that it is not functioning properly. The cost of additional testing can be charged to the individual owner.

If you have any questions as to how these new regulations affect your property, please contact your Account Executive.

Bulk Energy Solutions

Utility costs represent a major portion of each building's operating expenses and expose buildings to the greatest swings in expenses over which they have little control. Maxwell-Kates has partnered with Resolution Energy Group to combine our bulk purchasing power with their expertise to provide natural gas and electric pricing as a hedge against spikes in energy costs and to provide a degree of budget certainty.

If your building purchases natural gas or electricity through this program, you will have the ability to lock-in the supply portion of your building's monthly utility bill for a specified period of time or use alternate suppliers to provide savings over Con Edison's rates without committing to a rate lock.

Available only to properties managed by Maxwell-Kates, this program provides REG's expertise to extend current energy supply contracts by blending in future cost savings. MKI is committed to helping our clients conserve energy; reduce your building's carbon footprint and manage the cost of the energy used in the best way possible. If you would like additional information or an analysis of your utility expenses, please advise your MKI Account Executive.

MKI Email System Upgrade

Maxwell-Kates has completed a company-wide upgrade of its messaging platform. Email communication with MKI staff is no longer vulnerable to local power or connectivity disruptions as our systems are now located in geographically diverse data centers. Internal communication has been bolstered by cutting-edge collaboration services that will help your management team draw from the deep knowledge resources within

our firm. Finally, replication of our critical business systems has been put in place, ensuring uninterrupted access to your building's accounting and administrative data.





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Additional Disclosure in Audited Financial Reports for Union Buildings

There have been a number of changes with respect to the Union Defined Benefit Pension Plans found in a number of buildings as a result of new financial disclosure requirements. As a result, new and more complete information is now required in the Annual Audited Financial Reports.

If your building employs building staff who are Union employees, they are usually covered by a Pension Plan into which the building, as the employer, contributes a fixed weekly amount negotiated under the Collective Bargaining Agreement. The contribution is designed to pay for each employee's pension and is part of their compensation. The building's contribution for each employee is part of what is referred to as a Multi-Employer Pension Plan.

Unfortunately, the contributions and earnings in the Local 32 B/J Plan have been insufficient to adequately fund the benefits promised to the employees under the Collective Bargaining Agreement. The Plan is in the Red Zone, which means that it is less than 65% funded and benefits have been frozen for staff members even as employer contributions have increased annually.

Going forward, when the new labor contract is negotiated in 2014, the Plan will need to include methods to increase the funding to offset the funding deficiency that has existed for a number of years. It is likely that the Union will seek increased building contributions to help fund the deficit making the next contract negotiation a potentially difficult one.

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Strict Liability for Personal Injury Claims Update

New York State's Labor Law has been extremely helpful in allowing construction workers to recover damages for personal injuries sustained while performing construction and renovation work. The relevant sections of the law had always been interpreted broadly, so as to place the obligation to protect workers on the owner of the property. It is important to remember that in a Cooperative, the shareholder is not the Owner who is responsible under the law.

Last December, the New York State Court of Appeals upheld the dismissal of a personal injury claim against a Condominium, the Condominium's Board of Managers and the Board's managing agent, and set a noteworthy precedent in the labor law as it relates to condominium associations. In *Guryev v. Tomchinsky*, the court held that the New York Labor Law, which generally imposes strict liability on property owners, contractors and their agents for failing to provide safe working conditions, did not apply to condominiums when the work was contracted for and done in an individual Condominium unit.

This case involved an accident sustained by a worker during an alteration to an individual residential condominium unit. Since the injury occurred in an individual unit owned outright by the occupant and not by the condominium, and because the work was not for the benefit of the Condominium Association, the Court ruled that the Condominium defendants could not be held liable under the Labor Law. Further, because the applicable provision of the labor law exempts single-family dwellings, the unit owner was also shielded from strict liability under the statute.

This decision was made even more interesting when considering how the result would have differed had the property been a Cooperative instead. While a Condominium owns the land under the building, the Court of Appeals noted that the Condominium was not an owner for the purpose of the interpreting and enforcing the provisions of the Labor Law. The individual unit owner is the owner of the real property where the accident occurred.

However, a Cooperative not only owns the land beneath the apartment building, but

retains ownership of the actual apartments. Therefore, had the injury occurred in a Cooperative apartment leased to a shareholder, the Cooperative would have been deemed the owner for the purposes of the Labor Law and held strictly liable for the injury sustained even if the Cooperative had a claim against the shareholder. This point was stressed in the court's dissenting opinion. Given this inconsistency, it is possible that the legislature may look to amend the law so that Condominiums and Cooperatives are on equal footing. More importantly, this decision points out the need for all Cooperatives and Condominiums to have Alteration Agreements in place that require contractors to have liability insurance in effect, naming the shareholder or unit owner; the Cooperative or Condominium and Managing Agent before any work is done to protect all parties if someone is injured.