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Editor

# Maxwell-Kates, Inc.

## *Management Vision*

ADDRESSING THE NEEDS OF  
MAXWELL-KATES  
MANAGED CONDOMINIUMS  
AND CO-OPS SINCE 1986

## Budgeting and Financial Issues In a Changing Economic Environment

Boards of Directors and Managers are being forced to face particularly difficult and challenging decisions due to a number of issues including rising costs and expenses in this difficult economic time.

Our Account Executives and accounting personnel are working with our Boards to address a number of issues with respect to both current and projected costs for fiscal 2009 taking into consideration:

- Water & Sewer rates which increased 14.5% in July 2008, and over 40% during the past 3 years;
- Electricity rates which increased by more than 40% this year with Con Edison filing for additional rate increases next year;
- Fuel Oil prices, while declining recently, are projected to average more than \$2.50/gallon for #6 oil in 2008 compared to \$1.70/gallon in 2007;
- Real Estate Tax rates which increased 1.8% for the 2008/09 year with a proposed additional 7% increase in January as the City's fiscal situation worsens and the Mayor and City Council look to close the deficit;
- Increased wages and union benefits in the 3<sup>rd</sup> year of the current 4 year contract;
- Inflationary and energy increase driven operating increases;
- The current credit crisis which places additional burdens and restrictions on investments to ensure both safety of principal and liquidity as funds are needed for capital and operating expenses;
- Decline on investment rates of returns; and
- Increased risk of shareholder/unit owner arrears and possible defaults.

\*\*\*\*\* IN MEMORIAM \*\*\*\*\*



We are deeply saddened to report on the sudden passing of our colleague and dear friend, **Kelly Tirado Hoffman**. Kelly had been with our firm for over 20 years and will be greatly missed by everyone who knew her. As you can imagine, we are deeply saddened by her loss. Kelly was a valued member of our team and we are so very proud of her contribution to our firm.

Kelly's kind and giving nature was a gift to the MKI community. She will be a part of Maxwell-Kates forever.

Working together, Boards and management, with detailed supporting information provided by MKI's accounting department, will be able to make informed decisions with respect to finances; both operating and capital.

## DOB Modifies Alteration Forms; Shareholders, Unit Owners and Boards Must Adjust Immediately

Effective August 4, 2008, the Department of Buildings ("DOB") issued a new Form PW3 which is to be used in connection with alterations in individual apartments that require Permits to be issued by the DOB. The new Form requires a cost estimate for the job that is used to calculate the Permit Fees initially when the Permit is applied for and at the end of the job in connection with the sign-off and issuance of the Certificate of Completion.

In addition, the new Form PW1 requires the "Owner" to certify that an amendment of the Certificate of Occupancy is not required. The Owner must also submit a Final Inspection Report closing out the job, accompanied by a statement from a qualified professional that the work is complete. The qualified professional must issue a Certificate of Completion and final certification as to the costs of the job. Filing a false statement can result in both civil and criminal penalties.

Historically, Boards filed the forms as the "Owner" after review by their qualified professionals (architect and legal counsel in some instances) and management to insure proper review and approval of the project and to

maintain control over alterations that affect the building.

The new forms create responsibility and establish legal liability if the Board continues to sign as Owner in areas over which it has no knowledge and control (costs) including the requirement to close out the job by obtaining a Certificate of Completion. If the job is not completed for any reason, the Board, as "Owner" would be responsible to "complete the job" which could be difficult and costly.

DOB Operational Policy and Procedure Notice 17/87 permits Cooperatives and Condominiums to delegate to the individual Shareholder or Unit Owner the right to file the Permit Application as the "Owner," making them the responsible party to comply with the new requirements.

MKI has developed sample Addendum to the Alteration Agreement that is designed to relieve the Board of responsibility and liability in connection with DOB Filings and ensure continued control over the alteration process to protect the building. However, MKI strongly recommends that each Board discusses this with their own licensed professionals as to its applicability, use, changes, or other options to consider.

## ARCONLINE creating websites for residents

MKI affiliate Arc Online ([www.arconlineusa.com](http://www.arconlineusa.com)) constructs and maintains property websites. Whether you want a simple webpage or a complex property tracking system, Arc Online will provide your building reliable web hosting, register your domain name, set up your email accounts, message boards, utilize quality graphic tools, up-to-date features and functionality, everything you need to develop a full featured online property website.

Arc Online will assist you in developing and customizing a website for your property as you desire. Arc's experienced team of experts will work with your Boards or Committee to design a website right for your community, utilizing secure user-password log in. CONTINUED ON PAGE 3.

## NEW PW3 REQUIREMENTS



### When must the PW3 be submitted?

The revised PW3 is required at the following phases: Initial Filing (Document 01), for all changes affecting costs and to obtain Sign-off.

### What level of detail am I responsible for on the PW3?

Except for at Sign-off, you are simply providing a reasonable estimate for the value of work being done. However, at Sign-off the owner is required to provide the actual cost of the work done.

### Will this apply to jobs already in progress?

Effective August 4th, only the new PW3 will be accepted; however, you need not retroactively submit the application for past phases if you have already paid fees and had your application processed.

Nevertheless, if the plan examiner finds inaccurate cost details submitted on previous PW3s and raises an objection, a submission of cost using the new PW3 form will be required.

### If I file an amendment, what needs to be included on the PW3?

For PAAs and Prior to Approval Actions, it is necessary to list on the PW3 any changes that affect the total job cost (indicating only those Categories of Work). Do not include unchanged items from previous submissions.

### What happens if the actual cost is lower than estimated?

The Buildings Department will return any overpayments. To obtain a refund, submit a refund form with any supporting documents (contracts, invoices, etc.) to the Borough Manager. If the form is approved by the borough, it is then sent to the Central Budget Office for review and refund.

Source: NYC DOB

## *Court Holds Co-op Must Strictly Comply With Governing Documents in Enacting “Flip Tax”*

Earlier this year, the Supreme Court voided a 2.5 percent flip tax of a 7-unit cooperative on East 50th Street in Manhattan. In Pello v. 425 E. 50 Owners Corp., the Court found that the cooperative, in enacting the flip tax, failed to obtain approval of the owners of two-thirds of the shares in the cooperative corporation, which was the only method specified for amending the proprietary lease issued by the cooperative.

Despite the case’s holding, the most important lesson to be learned from Pello is the principle that no matter how large or how small a co-op or condominium, it still must follow its governing documents. For a cooperative, this means looking at the offering plan, proprietary lease, by-laws and certificate of incorporation. Condominium Board of Managers similarly must review their offering plans, condominium declaration and by-laws.

As the amount of litigation in this area has increased over the past few years,

courts have increasingly stressed the importance of proper record keeping by boards of co-ops and condominiums.

425 E. 50 Owners Corp.’s defense of the action was that the Board acted to modify its corporate by-laws. However, when Pello asserted that a flip tax was not permitted under the original proprietary lease and by-laws, the co-op could not offer into evidence any documentation of the initial enactment of that flip tax in the fashion mandated by the proprietary lease and by-laws.

For instance, co-ops and condominiums have a specific procedure as to how shareholders (or unit owners) must be notified of a special meeting of shareholders. Many times, this involves notice to be mailed or hand delivered to shareholders a certain number of days in advance of the meeting. The co-op in Pello, being only 7 units, did not deliver notice, but instead the Board’s secretary had “conversations” with all shareholders regarding the meeting. While mindful small buildings often find it easier to run the building on an

informal basis and forgo adherence to the governing documents. However, the Pello found that while this temptation was understandable, it certainly is not acceptable under New York law.

Since the board’s secretary was required by the by-laws to give notice of the meeting and keep all minutes of board and shareholder meetings, when the co-op could not offer these documents into evidence, the Court was left to conclude that “the by-laws were never amended” or that the officers of the cooperative were “so derelict in their duties and dismissive of their obligations under the by-laws that any action taken by them is meaningless.”

MKI strongly recommends that all boards strictly comply with their governing documents, especially when financial issues are concerned.



### **ARC ONLINE**

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A website for your building not only benefits your residents, it will provide information to your website visitors. It will also promote your community image and further contribute to the prosperity of your investment. Boards are now recognizing the full potential of a property website. Property websites present a perception of value, a customized website for your property will undoubtedly build value for your community.

If you are interested in this valuable service which will benefit your building and its residents, please contact your Account Executive.

### **E-TRAN**

**Continued from page 4**

billing information. Following the online instructions on our website is fast and simple. Once your registration is approved, you will receive an email confirming your registration. You will then be required to log back onto E-TRAN and enter your bank information.

The E-TRAN system allows flexibility as to when payment will be made, provides the ability to initiate payment using the internet wherever you are, and results in funds deposited directly into your building’s account and credits against your charges. Please note that if you choose to enroll in this online payment option, you will continue to receive your monthly billing statement. We believe that you will find this additional alternative payment method a useful tool.

Should you have any questions regarding this payment option, please contact the Robert Maina ([rmaina@maxwellkatesinc.com](mailto:rmaina@maxwellkatesinc.com)) or Angela Karabaic ([akarabaic@maxwellkatesinc.com](mailto:akarabaic@maxwellkatesinc.com)) at (212) 684-8282.



## CALENDAR OF EVENTS

|                   |  |
|-------------------|--|
| October 1, 2008   | Heating season begins  |
| October 11, 2008  | Last day to distribute fire safety plans   |
| October 13, 2008  | Columbus Day—Local 32B-32J contract holiday  |
| October 24, 2008  | Last day to file petition to review Tax Commission's determination of 2008-09 assessment |
| November 1, 2008  | First day to file for J-51 tax exemption & abatement program, fourth period 2008         |
| November 4, 2008  | Election Day—Local 32B-32J contract holiday  |
| November 11, 2008 | Veterans Day   |
| November 27, 2008 | Thanksgiving Day—Local 32B-32J contract holiday  |
| December 15, 2008 | Last day to file for J-51 tax exemption & abatement program, fourth period 2008          |
| December 25, 2008 | Christmas Day—Local 32B-32J contract holiday   |
| December 31, 2008 | Last day to file boiler inspection report with Department of Buildings                   |



Maxwell-Kates, Inc. is proud to announce three new management relationships: the Greenwich Condominium (pictured left), 40 East Sixty First Street Condominium, and 14 East 75th Street, Inc. (pictured right).

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## ONLINE PAYMENT OPTION REINSTATED

Maxwell-Kates, Inc. is pleased to reinstate its online payment program: Electronic Lock Box (E-TRAN), which will provide residents with a convenient method to pay their monthly charges. This payment option allows owners an additional way to manage and pay their monthly charges and other related fees.

MKI has made arrangements through Capital One Bank for the secure on-line payment of your monthly charges through the MKI website [www.maxwellkatesinc.com](http://www.maxwellkatesinc.com). E-TRAN is a safe, reliable, and confidential way to have your monthly payment processed and electronically debited from your checking / savings account.

All you will need to register is a copy of your monthly statement so that you can enter your  
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