

## Protecting Boards from Liability: The Roommate Law

**Q** I live in a self-managed co-op and we are getting conflicting information about whether co-ops can disallow roommates or not. We've heard that the board of directors has absolute decision making power over whether or not to allow roommates to move into a co-op. Others say it should be voted on by the shareholders and become part of the house rules. Then again, we've heard that it's illegal to forbid or interview roommates. Please advise us as to the legality around the issue.



**A** “New York State has a law popularly called “The Roommate Law,” says **Leni Morrison**, as associate at New York-based law firm **Adam Leitman Bailey, P.C.** “This law allows tenants with leases to have roommates without interference from their landlords. While many tenant protection laws do not apply to cooperative apartments, the so-called Roommate Law does.

“The Roommate Law overrides proprietary lease provisions that limit occupancy because of a non-waiver provision written into the text of the Roommate Law. Therefore, no matter how the lease attempts to limit occupancy to cooperators and their immediate families, a cooperator may nevertheless have an unrelated roommate.

“In New York, the Business Judgment Rule gives cooperative boards an enormous amount of autonomy to make decisions and shields the majority of board decisions from judicial scrutiny. However, the Business Judgment Rule will not shield a board decision that breaks the law. Therefore, the Roommate Law controls and the cooperator can have not only a roommate, but can also house the dependent children of that roommate, without interference from the board and without regard to the orientation of the parties involved.

“It should be noted that the Roommate Law does not go so far as to allow cooperators to circumvent the cooperative’s subletting policies. The Roommate Law only applies to roommates by definition, and therefore, there is a strict concurrent occupancy standard. The cooperator and/or the cooperator’s spouse must also occupy the apartment as his or her primary residence in order to benefit from the protection of the Roommate Law.”