Books and Records: Inspection Rights in Co-ops & Condominiums

Co-op & Condo Webinar Series

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Next In Our Series

Access Agreements: RPAPL § 881 and Entry onto Neighboring Buildings

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What constitutes “Books and Records”

Books and records are the documents a co-op or condominium board creates or keeps while running the building. They are the official record of its money, its decisions and its legal obligations.

- **Governing documents:** For co-ops, this means the certificate of incorporation, bylaws, proprietary lease and house rules. For condos, it means the declaration, bylaws and rules and regulations, plus all amendments.
- **Financial records:** These include audited annual financial statements, budgets, general ledgers, bank statements, reserve fund records, and records of what the building took in and paid out, with supporting vouchers.
- **Governance records:** These include minutes of shareholder or unit owner meetings, board minutes, written consents, and the list of shareholders or unit owners.
- **Operational and contractual records:** These include management agreements, vendor and service contracts, insurance policies, loan documents, capital project records, and building violations and permits.
- **The board decides what is kept:** The governing documents and the law set what must be kept. Good records management also sets how long each type of record is kept and who is responsible for it.

What is Outside the Scope of Books & Records

- **Attorney-client privileged materials:** Legal advice to the board and counsel's work product generally do not have to be disclosed. Sharing them may waive privilege.
- **Personnel files:** Records about employees' compensation details, discipline, medical information and union grievances are generally confidential and carry privacy and employment-law risk.
- **Other residents' private information:** Purchase applications, financial statements, tax returns, Social Security numbers and bank details belong to individual residents. New York's Social Security number protection law (General Business Law § 399-ddd) and the SHIELD Act's data-security rules (§ 899-bb) apply to this data.
- **Admissions and board-approval files:** A co-op board generally does not have to explain or disclose why it turned down a purchase applicant.
- **Pending litigation and negotiations:** Strategy discussions, settlement positions, and bids still under evaluation can be withheld while the matter is ongoing. The final, approved outcome is often disclosable

Note that Board emails and texts, informal notes, executive session minutes, and records kept by the managing agent are frequent sources of disputes. Best practice is to treat these as possibly reachable and handle them consistently. Board members should use dedicated emails for any Board business, when possible.

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Record Retention

Certain files must be kept by a cooperative housing corporation or a condominium to:

- document its actions and legal relationships,
- pursue or protect itself in litigation,
- ensure compliance with federal and state laws and regulations, and
- resolve disputes.

A cooperative or condominium is not required to keep documents forever. Different types of documents should be kept for different periods of time depending upon:

- their topic,
- any legally required retention period, and
- the statute of limitations for litigation to which they may relate.

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Record Retention (cont.)

Associations should create a Document Retention Policy that identifies:

- the types of documents that should be maintained,
- the number of years documents should be maintained,
- where the documents will be maintained,
- who should be the custodian of the documents, and
- how documents should be disposed.

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Record Retention (cont.)

Records to Retain Permanently

- Corporate, Organizational Papers
- Minutes
- Alteration Agreements
- Stock records
- Property records
- Certain tax and financial records
- Certain employment records

Records to Retain at Least Seven years

- Certain shareholder/unit owner files
- Expired leases or satisfied loan documents
- Certain tax and financial records
- Certain employment records
- Expired contracts, warranties and insurance policies
- Accident reports and claims (settled cases)

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The Right to Inspect & Best Practices

Know the New York statutes that establish the right to inspect:

- **Co-ops (Business Corporation Law § 624):** Qualifying shareholders may inspect the shareholder list and the minutes of shareholder meetings on 5 days' written demand. Any shareholder may request the annual balance sheet and profit-and-loss statement.
- **Condos (Real Property Law § 339-w):** Records of receipts and expenditures, and the vouchers behind them, must be open to unit owners at convenient weekday hours. The board must also give each owner an annual report.

Note however that more sweeping rights to inspect exist under common law, which provides that these rights can extend to all books and records that are relevant to a dispute or investigation.

BEST PRACTICES:

- **Require written requests:** Ask owners to specify which documents they want and why. Co-op shareholders' common-law inspection right requires a proper purpose, such as checking finances or contacting other owners about building business.
- **Set response timelines:** Acknowledge requests promptly, follow the statutory timelines, and adopt a policy for everything else so all owners are treated the same way.
- **Use a redaction protocol:** Remove privileged content, personal identifiers and employee data before production. Keep a log of what was withheld and why.
- **Use designated review procedures:** Hold inspections at the management office during set hours with staff present. Charge reasonable copying fees and don't let original records leave the office.
- **Get counsel involved early:** Bring in counsel for unusual, broad or hostile requests, particularly when litigation is threatened or underway. Document every response.

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Election Materials: Proxies, Votes, and Election Results

- **Election results:** Owners are generally entitled to the certified results, including vote totals for each candidate. Results should be announced at the meeting and recorded in the minutes of the shareholder or unit owner meeting.
- **Co-ops (shareholder lists):** Under Business Corporation Law § 624, qualifying shareholders can obtain the shareholder list, which candidates often use to solicit proxies. The corporation may require an affidavit that the list won't be used for purposes unrelated to the corporation.
- **What owners usually can't see:** Other owners' ballots, proxies, and personal contact details.

  Note, in co-ops, a shareholder challenging an election can ask a court to review the election under § 619, and courts have broad discretion as to what materials must be produced. In condos there is no specific statute giving unit owners the right to see ballots. Access depends on the bylaws and on the common-law right to inspect for a proper purpose.
- **Best practice:** Use an independent inspector of election, keep all election materials for a set period (at least one year), and adopt written rules on inspection before elections are contested.

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Balancing Transparency with Fiduciary Duties

Board members owe a duty of loyalty and care to the corporation or association. Disclosure decisions should serve the whole community, not an individual requester.

- **Business judgment rule:** Courts defer to board decisions made in good faith, within the board's authority, and for a legitimate corporate purpose. A documented, policy-based disclosure process falls under this protection.
- **Confidentiality protects the building:** Releasing negotiation positions, litigation strategy or security information can hurt the building financially and legally. Withholding it (at least temporarily) is consistent with the board's fiduciary duties.
- **Transparency builds trust and reduces claims:** Proactively sharing budgets, audits, and reports on major projects and assessments discourages records lawsuits and suspicion of the board.
- **Avoid selective disclosure:** Giving information to allies and denying it to critics weakens business judgment protection and invites claims of bad faith.
- **Disclose after the fact:** Share outcomes such as approved contracts, settlements and financing terms once confidentiality is no longer needed.

Response Overview



Document the Response

Maintain a log of requests, records produced, records withheld, and the basis for each determination. For any requests that are contentious or suggest the possibility of litigation, involve counsel early to provide appropriate guidance.

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When a Records Request Becomes a Lawsuit

- **The Typical Path:** A shareholder demands records, and the board declines. The petition is often the first time the dispute reaches court
- **Expect a Scope Fight:** BCL § 624 reaches only minutes, the shareholder record, and financial statements; shareholders will press for more under the common law
- **Expect a Purpose Fight:** The board's main defense is usually bad faith or improper purpose, such as harassment

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Evaluating the Demand: Is It Valid?

First Line of Defense: A defective demand can defeat a petition; a valid demand for statutory records should be honored

Requirement	What the Board Should Check
Written demand	At least five days' written demand for minutes and the shareholder record (§ 624(b))
Affidavit	The co-op may require an affidavit of proper purpose and no sale of shareholder lists; refusal permits denial
Financial statements	§ 624(e) annual balance sheet and P&L must be provided; no proper-purpose showing required
Breadth and time period	An open-ended demand with no time limit invites narrowing

What to Expect: Timeline

Books-and-records cases move fast; the board's opposition papers may be its only chance to build a record

Demand Received

Board's Written Response

Petition & Order to Show Cause

Summary Hearing (CPLR 409)

Order or Scope Hearing

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How the Case Arrives

- **Special Proceeding:** Expect a petition brought on by order to show cause under CPLR Article 4, with a short return date
- **Decided on the Papers:** Under CPLR 409, the court rules on the pleadings and papers unless a triable issue of fact is raised
- **Common-Law Claims = Article 78:** A demand for records beyond § 624 is enforced by an Article 78 proceeding, subject to the four-month statute of limitations period

Two Tracks: What the Board Faces

- **Substance Controls:** A petition labeled "§ 624" that seeks more than minutes and the shareholder record is treated as an Article 78 proceeding

Issue	BCL § 624 Summary Proceeding	Article 78 (Mandamus) – Common Law
Records at risk	Minutes, shareholder record, financial statements	Broader: books of account, contracts, correspondence, tax returns
Shareholder's showing	Allege statutory compliance; good faith is assumed	Must plead and prove good faith and a proper purpose
Board's burden	Prove improper purpose or bad faith to justify refusal	Rebut a proper purpose once shown
Timeliness defense	No limitations period stated in § 624(d)	Four months under CPLR 217(1), running from the refusal of the demand

Defending on Bad Faith: What Courts Require

- **The Burden Is the Board's:** Once the shareholder shows statutory compliance, good faith is assumed and the co-op must prove an improper purpose or bad faith
- **Speculation Fails:** If the corporation only speculates about bad faith, the inspection will likely be allowed
- **Recognized Improper Purposes:** Aiding a competitor, soliciting personal business, hunting technical defects, or pursuing personal social or political goals
- **Harassment:** Where the underlying claim is gone, seeking records may be "merely harassing"
- **Liberal Construction:** The statute is construed liberally in favor of the shareholder

Purposes Courts Will Accept

- **Standard Purposes:** Ascertaining financial condition, investigating management conduct, and gathering information for legitimate litigation
- **Challenging Management Policy:** Lawfully influencing or challenging management policy is a proper purpose

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Recent Trends: Courts Expanding Access

- **McGraw-Hill (1st Dept 2014):** Investigating suspected mismanagement is a proper purpose even if no wrongdoing is found; the common law reaches beyond § 624(b) and (e)
- **Pokoik v. 575 Realties (1st Dept 2016):** A holding-company shareholder may inspect records of a wholly owned subsidiary
- **Novikov v. Oceana (Sup. Ct. Kings 2014):** Court ordered production of tax returns, contracts, and documents to validate K-1 figures
- **Jarmuth v. Leonard (Sup. Ct. N.Y. 2018):** Co-op board minutes available to all shareholders were not privileged, even though they reflected counsel's advice
- **Atlantis Mgmt. v. Nabe (Sup. Ct. N.Y. 2018):** Stonewalling an investor's inspection was "inconsistent with [the managers'] fiduciary duties"

If Inspection Is Ordered: Limiting Scope

- **Relevant and Necessary:** Inspection is limited to records relevant and necessary to the stated purpose
- **Time Limits:** Press for a defined time period; a demand with no time limitation is vulnerable to narrowing
- **Judicial Discretion:** The court orders only the documents it finds, in its reasonable discretion, the situation requires
- **Confidentiality Orders:** Competitive or privacy concerns can be addressed with a non-disclosure order

Takeaways for Co-op Boards

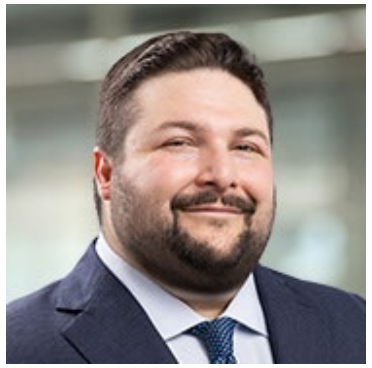
- **Produce the Statutory Minimum:** If demanded, provide what § 624 requires. Outright refusal invites litigation that the Co-op will lose
- **Build the Record Early:** A bad-faith defense needs evidence. Document the requester's stated purpose and conduct
- **Narrow before Litigation:** Try to negotiate scope rather than simply refuse to turn over anything
- **Check Every Technical Defense:** Demand defects and the CPLR 217 four-month period for common-law claims

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Defenses That Have Worked

- **Ciccone v. One West 64th St. (Sup. Ct. N.Y. 2018):** After Madonna's claims against her co-op were time-barred, seeking the records was "merely harassing"; the claim was later dismissed
- **Fee Recovery:** The co-op then pursued its attorney's fees as prevailing party under the proprietary lease's fee-shifting provision
- **Galasso v. Cobleskill Stone (Sup. Ct. Albany 2021):** Using inspection to obtain records for a pending valuation proceeding was not a proper purpose
- **Pending Litigation Helps the Board:** Contemplated litigation supports inspection, but pending litigation may weigh against it

Questions?



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