



From the Editor's Desk

# Hanley's Highlights

by Jeff Hanley

Associate Director, Building and Realty Institute (BRI), *Impact* Editor

## A "Team Approach" Produces A Victory for the BRI

ARMONK

**Team members in the world of sports often produce a series of phrases to describe a victory and its corresponding achievements.**

One of those common expressions often used by members of the victorious team is "a total team effort." Those involved with the recent efforts of the Negotiating Committee of The Building and Realty Institute (BRI) during its recent Labor Contract Negotiations with Local 32-BJ Service Employees International Union (SEIU) most definitely would use that expression to describe the successful efforts of the committee.

Led by Matthew Persanis, Esq., labor counsel, BRI, David Amster, committee chair, and Carl Finger, Esq., associate counsel, BRI, the committee produced a new Labor Contract between the BRI and Local 32-BJ SEIU that is termed by building and realty industry officials as "a noteworthy victory for employers."

The agreement, which runs from Oct. 1, 2018 through Sep. 30, 2022, was reached at approximately 6 p.m. on Sep. 28 at the Crowne Plaza Hotel in White Plains. The settlement capped two months of intense negotiations between the two entities.

The BRI bargained on behalf of its Collective Bargaining Group (CBG). The group is composed of more than 430 buildings and complexes.

"The overall increases are below those from the last (2014-2018) contract," said Persanis, the BRI's Lead Negotiator during the process. "The Average Salary Increase of 2.27 percent is below the Consumer Price Index (CPI) for the last 12 months (2.9%). And, buildings should see significant savings with the new Work Assignment Language that was agreed upon between the two parties. The Negotiating Committee of the BRI achieved just what it wanted. It was a victory for our employer members."

Albert Annunziata, executive director of the BRI, agreed. He recently described the efforts of the committee as "outstanding."

The committee represented the three realty associations of the BRI: The Advisory Council of Managing Agents (ACMA), The Apartment Owners Advisory Council (AOAC) and The

Cooperative and Condominium Advisory Council (CCAC). The committee was composed of the following BRI members:

- ◆ ACMA: Amster (Committee Chair), John Holzinger, Brian Scally, Jeff Stillman.
- ◆ AOAC: Gene Conroy, Cindy Mauro, Lisa DeRosa, Brian McCarthy, Carmelo Milio.
- ◆ CCAC: Clementine Carbo, Peg Conover, Cesare Manfredi, Joseph Parone.

A full report on the process and the triumphant efforts of the BRI begins on Page One. The story is one of many important reports in this issue. Other articles include:

- ◆ A Page One report on the recent confidence levels of builders;
- ◆ A Page One story on the continuation of the positive remodeling market;
- ◆ An analysis on the efforts of the CCAC/BRI in working with representatives of The Westchester County Board of Legislators on a compromise regarding Westchester County's Co-op Admissions Proposal. The report begins on Page One;
- ◆ A review on New York State recently requiring mandatory Sexual Harassment Policy Adoption and Training for all employers. The report, authored by Persanis, begins on Page One;
- ◆ A summary in Counsels Corner on the effects of Westchester County's recently proposed Co-op Admissions Legislation. The report was written by representatives of Finger and Finger, A Professional Corporation. The firm serves as Chief Counsel to the BRI and all of its component associations;
- ◆ An update in Co-op and Condo Corner on the activities of the CCAC. The piece was written by Diana Virrill, CCAC chair;
- ◆ A review in Insurance Insights on New York's Sexual Harassment Prevention Law and the related insurance issues. The summary was produced by Levitt-Furst Associates, Ltd., insurance manager for the BRI and all of its components;
- ◆ An informative Question-and-Answer Interview written by Maggie Collins, director of membership of the BRI, with Peter F. Gaito, Jr., of Peter F. Gaito and Associates of White Plains, a leading architectural firm in our region;

**Enjoy the issue - and the upcoming Holiday Season!**

## Co-op and Condo Corner



By Diana Virrill, Chair

The Cooperative and Condominium Advisory Council (CCAC)

## Examining the Problems that Internet Usage Can Produce For Boards of Co-ops, Condos and their Managing Agents

WHITE PLAINS

**W**hile it is true that comments on issues affecting co-ops, condos, their respective Boards of Directors and Property Managers can be quickly issued between all involved parties through the use of the internet, that usage can produce negatives. And some of those negatives can be downright serious.

Building and realty industry officials have stressed that message in recent months to members of the CCAC. Representatives of The Advisory Council of Managing Agents (ACMA), the CCAC's affiliate organization, have consistently issued that warning to the CCAC, as well as to members of The Building and Realty Institute (BRI), the parent association of the CCAC.

The dangers of internet usage were first addressed at the CCAC's Membership Meeting of June 7, 2017. Officials of the CCAC and the BRI, however, remain very concerned about the potential problems resulting from the use of the internet. Accordingly, those officials, based on requests from several members of ACMA, suggested the scheduling of another CCAC Membership Meeting on the topic.

The CCAC's Board of Directors, in turn, unanimously approved another Membership Meeting on the subject. The conference, entitled "The Dangers of Internet Usage for Board Members of Co-ops, Condos and Their Property Managers," is scheduled for Nov. 26. The meeting will start at 6 p.m. It will be at The Crowne Plaza Hotel in White Plains.

A panel of building and realty industry representatives will address this important issue to the memberships of the CCAC, ACMA and BRI. As of the writing of this column, two building and realty industry representatives have been confirmed as panel members - Daniel Finger, Esq., of Finger and Finger, A Professional Corporation (Finger and Finger is Chief Counsel to the CCAC and the BRI), as well as Jason Schiciano, co-president of Levitt Furst Associates, Ltd. Levitt-Furst is the Insurance Manager for the CCAC and the BRI. Additional panel members will be announced in the weeks ahead.

The CCAC's Board of Directors urges all of our members to attend this important conference. We have heard a series of troubling problems that have been produced for Boards of Directors of co-ops and condos as a result of internet usage. We cannot stress it enough - our members need to attend this meeting and become informed on the dangers of communicating on the internet. Reservations for the conference are being accepted at [jeff@buildersinstitute.org](mailto:jeff@buildersinstitute.org). Reservations may also be made by calling the CCAC/BRI offices at (914) 273-0730. We hope to see a great turnout at this event, which is being termed by CCAC and BRI officials as one of the CCAC's most important meetings of 2018.

### Other Points

- ◆ If the contact information for representatives of your building or complex has changed, please notify the CCAC/BRI staff at (914) 273-0730. The CCAC and BRI produces

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## Insurance Insights

by Ken Furst and Jason Schiciano

Levitt-Furst Associates



## Important Reviews of New York's New Sexual Harassment Prevention Law and Your Insurance

TARRYTOWN

**Most business members of The Builders Institute (BI)/Building and Realty Institute (BRI) are employers (as opposed to sole proprietorships).**

In case you haven't heard, in the wake of the #MeToo movement, on Oct. 9, New York enacted perhaps the most comprehensive law in the country aimed at preventing sexual harassment in the workplace.

The following information is taken from the NY.gov website [www.ny.gov/combatting-sexual-harassment-workplace/employers](http://www.ny.gov/combatting-sexual-harassment-workplace/employers), which provides extensive (yet, easy-to-understand) information on the new law:

The Sexual Harassment Prevention Law appears to apply to literally all New York employers, and requires that employers: a) have a Sexual Harassment Prevention Policy; b) provide notice of the policy to all employees; c) provide within the policy a complaint form for employees to report alleged incidents of Sexual Harassment; and d) provide Annual Sexual Harassment Prevention Training to all employees (the initial training deadline is 10/9/19).

"Employees" who are required to receive the policy and training are broadly defined to include "all workers, regardless of immigration status. Employees also include exempt or non-exempt employees, part-time workers, seasonal workers, and temporary workers."

The above-noted website provides comprehensive information on the new law, and a variety of ways to implement its

policy and training requirements (including boilerplate policy language that meets the law's requirements, and cost-effective methods to train employees.) We strongly recommend that you carefully review this information, and speak with your attorney if you have questions.

Incidentally, Levitt-Furst has already conducted the Sexual Harassment Prevention Training for all 65 of its employees. The training was thought-provoking and educational, and we believe it will have a positive impact on both our staff and supervisors relative to avoiding Sexual Harassment Incidents.

### Specifics

The requirements of this new law will have significant implications regarding an employer's legal liability in case of an (alleged) Sexual Harassment Incident. If an incident occurs or is alleged by an employee, and the employer has not complied with the new law (i.e. adopted a policy; provided the policy to all employees; established a complaint procedure; and conducted the training), the employer will surely face far greater legal liability, as a result of its non-compliance with the law. Employers that are fully compliant with the new law will certainly have a stronger defense, in case of an (alleged) incident.

Where does insurance fit into this topic? Well, insurance will not apply at all, if you don't have the correct policy to address claims of Sexual Harassment. Employers typically have a General Liability Policy, a Workers Compensation/Employers Liability Policy, and possibly an Umbrella Liability Policy. Which one of these policies responds to claims of

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PUBLISHER: Albert A. Annunziata  
 EXECUTIVE EDITOR: Jeffrey R. Hanley  
 DIRECTOR OF ADVERTISING AND COMMUNICATIONS: Margaret A. Collins  
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 PHOTOGRAPHIC CONSULTANT: Barbara Hansen  
 CONTRIBUTORS: Carl Finger, Dan Finger, Ken Finger, Ken Furst, Carmelo Milio, Alex Roberts, Jason Schiciano, Andrea Wagner

**BRI** The Builders Institute/Building and Realty Institute  
80 Business Park Drive, Suite 309  
Armonk, NY 10504

914.273.0730 [www.BuildersInstitute.org](http://www.BuildersInstitute.org)

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## New York State Imposes Sexual Harassment Policy Adoption & Training for All Employers in New York, Continued from p. 1

◆ Include information concerning the federal and state statutory provisions concerning sexual harassment, remedies available to victims of sexual harassment, and a statement that there may be applicable local laws;

- ◆ Include a complaint form;
- ◆ Include a procedure for the timely and confidential investigation of complaints that ensures due process for all parties;
- ◆ Inform employees of their rights of redress and all available forums for adjudicating sexual harassment complaints administratively and judicially;
- ◆ Clearly state that sexual harassment is considered a form of employee misconduct and that sanctions will be enforced against individuals engaging in sexual harassment and against supervisory and managerial personnel who knowingly allow such behavior to continue;
- ◆ Clearly state that retaliation against individuals who complain of sexual harassment or who testify or assist in any investigation or proceeding involving sexual harassment is unlawful.

In addition, the state has created a Sexual Harassment Prevention Poster that is highly recommended to Employers to place in a visible place. That poster can be found on the New York State Department of Labor (DOL) website.

In addition to adopting a policy, every employer in New York State is required to provide employees with Sexual Harassment Prevention Training. An employer that does not use the model training developed by the Department of Labor (DOL) and Division of Human Rights must ensure that the training that they use meets or exceeds the following minimum standards. Model Training Materials are available to employers to download.

The training must:

- ◆ Be interactive;
- ◆ Include an explanation of sexual harassment consistent with guidance issued by the Department of Labor (DOL) in consultation with the Division of Human Rights;
- ◆ Include examples of conduct that would constitute unlawful sexual harassment;
- ◆ Include information concerning the federal and state statutory provisions concerning sexual harassment and remedies available to victims of sexual harassment;
- ◆ Include information concerning employees' rights of redress and all available forums for adjudicating complaints;
- ◆ Include information addressing conduct by supervisors and any additional responsibilities for such supervisors;
- ◆ Must occur every year.

For those members of the Building and Realty Institute's (BRI's) Collective Bargaining Group (CBG) with Local 32-BJ Service Employees International Union (SEIU) employees, the BRI has arranged for free training for any Union members. This training will be offered through the Thomas Shortman Training School and any Employer may request training be performed on-site, provided employers can gather at least five employees and may offer a site to hold the training. If employers cannot hold a training on site or do not have five employees, the BRI is working on a site and open training for employers who do not have five employees or a site to hold the training.

This training must also be provided to your non-union employees. The BRI is also working on providing that service to its members.

For more information on what is required or how to arrange for training, contact Matthew Persanis, Esq., at (914) 961-4400. Persanis is a principal of Elefante and Persanis, LLP of Eastchester.

## Builder Confidence Rises One Point in October, Continued from p. 1

housing affordability stabilizes, the market risks losing additional momentum as we head into 2019."

Derived from a monthly survey that NAHB has been conducting for 30 years, the NAHB/Wells Fargo Housing Market Index (HMI) gauges builder perceptions of current single-family home sales and sales expectations for the next six months as "good," "fair," or "poor," the report said.

The survey also asks builders to rate the traffic of prospective buyers as "high to very high," "average" or "low to very low." Scores for each component are then used to calculate a Seasonally Adjusted Index where any number over 50 indicates that more builders view conditions as good than poor, the report said.

The HMI index measuring Current Sales Conditions, the study added, rose one point to 74. The component gauging Expectations in the Next Six Months increased a single point to 75. The component charting Buyer Traffic registered a four-point gain to 53.

***"Favorable economic conditions and demographic tailwinds should continue to support demand, but housing affordability has become a challenge due to ongoing price and interest rate increases. Unless housing affordability stabilizes, the market risks losing additional momentum as we head into 2019."***

— ROBERT DIETZ, NAHB CHIEF ECONOMIST

Looking at the Three-Month Moving Averages for regional HMI scores, the Northeast rose three points to 57. The South increased one point to 71. The West held steady at 74, while the Midwest fell two points to 57, the report said.

The NAHB/Wells Fargo Housing Market Index (HMI) is the product of NAHB Economics, NAHB officials said. The report is not seen or influenced by any outside party prior to being released to the public. HMI tables can be found at [nabh.org/hmi](http://nabh.org/hmi).

## The Local Look

Representatives of the local building, realty and construction industry said the assessments contained in the NAHB/Wells Fargo Housing Market Index (HMI) are mostly reflective of building, realty and construction industry conditions in the Westchester and Mid-Hudson Region.

"There is a level of confidence and there are reasons for some continued optimism among builders of single-family homes, since specific areas in our region have seen the building of single-family units," said Albert Annunziata, executive director of The Builders Institute (BI)/Building and Realty Institute (BRI) of Westchester and The Mid-Hudson Region, a building, realty and construction industry membership organization with more than 1,800 members in 14 counties of New York State.

"But, there are still noteworthy sections of our region that are not seeing strong levels of activity on a consistent basis," Annunziata added.

Annunziata stressed that the negatives of the lack of land, anti-industry regulations and labor shortages are among the factors that continue to prevent the development of much-needed single-family housing in the Westchester and Mid-Hudson Region.

## Important Reviews of New York's New Sexual Harassment Prevention Law and Your Insurance, Continued from p. 2

Sexual Harassment? None of them!

Legal Defense and Liability (judgements, settlements) for Sexual Harassment Claims is only covered (per policy terms) by an Employment Practices Liability Insurance (EPLI) Policy (sometimes, EPLI coverage is built-in to a Directors and Officers Liability Policy (D&O), this is usually the case with D&O policies for Condos/Co-ops/Home Owners' Associations).

Importantly: a) EPLI Policies also respond to other types of Employee-Related Claims, including Discrimination, Wrongful Termination, and Non-Sexual Harassment (all not covered by other insurance policies); b) EPLI policies often provide a free legal "hotline" to call for general advice on how to handle employment-related matters, in order to possibly avoid a claim; and c) the EPLI policy provides for paid legal services to investigate and defend allegations, many of which are fabricated by disgruntled employees, and which can be distracting and expensive for a business to address on its own. Given these benefits, it's clear why the EPLI policy is one of the most important insurance policies for a business.

EPLI Policy Premiums are based on the number of employees, with minimum premiums starting around \$2,500. EPLI Premiums may be less, if the coverage is built-into a Business Owners Policy (BOP), or Package Policy.

## Additional Scenarios

Sexual Harassment Claims can extend outside of the employee/employer relationship.

For instance, a client, subcontractor employee, or visitor to your workplace, may claim to have been sexually harassed. Your company's EPLI policy must have "Third Party" liability coverage in order to respond to claims brought by someone other than an employee (client, subcontractor employee, or visitor.)

For more information on New York's new Sexual Harassment Prevention Law, consult the website referenced herein, or contact your attorney. For more information on training options, and EPLI insurance for claims relating to the new law, contact your insurance broker, or Levitt-Fuirst at (914) 457-4200.

**Editor's Note:** Levitt-Fuirst Associates is the Insurance Manager for The Builders Institute (BI)/Building and Realty Institute (BRI) of Westchester and The Mid-Hudson Region. Ken Fuirst and Jason Schiciano are Co-Presidents of the company. The firm is based in Tarrytown.

## COMMERCIAL REALTY REPORT:

# Multi-Family and Industrial Properties Continue to Perform Well, While Retail and Office Properties Face Challenges

RYE BROOK

Multi-family apartments and industrial properties continue to perform well in Westchester County, while other sectors of the county's commercial real estate market, especially retail and office properties, are facing strong headwinds.

Those evaluations were contained in a new third-quarter report from Houlihan Lawrence's Commercial Group.

Tenants in Multi-Family Apartments that are near train lines seem happy to shrug off the noise of a passing railroad in their desire to have convenient access to New York City. According to industry data, net absorption during Quarter 3 2018 was 3.8 times higher than Quarter 3 2017 and the year-to-date trend is similar. There were fewer deliveries of newly built rental units in the third quarter, but the pipeline of new construction has increased, the study said.

Industrial Properties are also enjoying firm fundamentals, as they have become a critical link in evolving consumer fulfillment networks supporting digital retail platforms. Pressure to increase the productivity of these supply chains will inevitably bring multi-story warehouses, similar to ones in Japan, to areas where land is scarce and proximity to the consumer is critical to business survival, according to the report.

Vacancy Rates for Industrial and Flex Properties are lower and Rental Rates are slowly increasing. Overall Industrial Property Demand is strong, with a low inventory of State-of-the-Art Facilities in southern Westchester.

## Challenges

Retail and office properties, on the other hand, face challenges as many of their traditional users are being forced to drastically change their business models, the report said. Smaller Retail Formats offering basic consumer services are finding that they need to provide an updated appearance, convenient parking, and even a food retailer or bank branch to bring in traffic, the study added.

In the Retail Sector, industry data shows an overall vacancy of 3.6 percent and an availability of 6.5 percent. New vacancies/availability, not included in this data, may impact the market imminently as retailers such as Mattress Firm and Sears restructure or shutter operations, the report added.

The study stresses that, at a time when Manhattan office leasing volume is hitting a multi-year high, leasing trends in Westchester remain weak.

"On the ground our observation is that established companies are going forward with deals in the locations that best fit their business strategy," said Thomas LaPerch, director of Houlihan Lawrence's Commercial Group. "Smaller tenants and newly formed businesses, on the other hand, continue to be hesitant to commit to longer lease terms."

"As headwinds emerge in the CRE markets and the risk appetite of buyers and sellers changes, a real knowledge of local market dynamics is crucial to help buyers/sellers (landlord/tenants) achieve their transaction goals," said Houlihan Lawrence Commercial Group Agent Teresa Marzano. "Assets benefit from being priced and positioned properly from the start and clients profit from a clear definition of their objectives. In this environment, more than ever, time is of the essence."

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