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May 7, 2012

NY Hearth Cabinet Co., Inc.  
250 West 26 Street  
New York, NY 10001

Re: Hearth Cabinet decorative fireplaces  
in Co-ops and Condos

Dear Sirs:

You have asked me if co-op or condo board approval, or a Building Department filing, is required if a shareholder purchases a Hearth Cabinet. The short answer is "no."

Although each proprietary lease and related documents (or a similar agreement in a condo) should be examined individually, typically they only give the board power to approve or disapprove structural alterations. As the New York Court of Appeals stated, "authority to approve or disapprove structural alterations ...is commonly given to the governing board." Levandusky v. One Fifth Avenue Apartment Corp. 75 N.Y.2d 530, 536, 554 N.Y.S.2d 807, 810 (1990).

The board's power is limited by the proprietary lease and other related documents, and hence boards are typically not entitled to demand pre-approval of nonstructural work. See, e.g., Marren v. 215 E. 79<sup>th</sup> St., Inc., 204 A.D.2d 130, 614 N.Y.S.2d 104 (1<sup>st</sup> Dept. 1994). Structural alterations that require board approval or Buildings Department filings may include installing new plumbing fixtures, renovating a kitchen, removing a wall, etc., but buying a cabinet or other piece of furniture does not constitute such an apartment alteration.

You have advised me that the Hearth Cabinet is a piece of furniture, a freestanding cabinet that gives the *appearance* of a fireplace but does not require gas or electrical hook ups, a chimney, venting, or any type of construction whatsoever. It is not a fixture and no alteration of the apartment is required to use the product. It is entirely portable and can be moved in and out of an apartment like other pieces of furniture.

Because no construction is involved, no vents and no electrical or gas connections, and because it is a piece of furniture, the use of such a cabinet does not, in my view, constitute a structural alteration of the apartment. Hence, board approval or Buildings Department filings should not be required.

Sincerely,



Anton J. Mikofsky