

MEMORANDUM

TO: REF Attorneys, Paralegals & Law Students

DATE: 12/6/89

FROM: Mary Sabatini DiStephan *MSD*

RE: Local Law 8-1989

This memo should be read in conjunction with the January 11, 1988 memo dealing with Nassau County requirements to comply with RPL § 334(a)(1).

Local Law 8-1989 enacted September 25, 1989 which constitutes a revision to Section 1610 of the Nassau County Charter dealing with subdivisions is attached.

Your attention is directed to subdivisions 1, 1(c) and 7 which deal with coops and condos. Note that the exemption discussed in the prior memo with regard to cooperatives already in existence and legally occupied prior to August 5, 1987 is extended to condominiums.

MSD:kd
Attachment

LOCAL LAW NO. 8 - 1989

A LOCAL LAW to amend the County Government Law of Nassau County in relation to approval of plats and penalty for use of unapproved plat.

(Became a law on September 25, 1989 with the approval of the Deputy County Executive. Passed by the Board of Supervisors of the County of Nassau on September 25, 1989.)

BE IT ENACTED by the Board of Supervisors of the County of Nassau as follows:

Section 1. Section 1610 of the Nassau County Government Law is hereby amended to read as follows:

§ 1610. APPROVAL OF PLATS; PENALTY FOR USE OF UNAPPROVED PLAT.

1. It shall be the duty of every person or corporation, excepting cemetery corporations within the County of Nassau, who as owner or agent of the owner of real property situated in the County of Nassau, subdivides the same into lots, plots, blocks, sites, or units with or without streets, regardless of whether they are subdivided by lot, plot or block designations, units (including shares in a cooperative corporation), or by metes and bounds, to file or cause to be

as to form
Edward L. ... Deputy
Attorney

filed in the Office of the Clerk of Nassau County a map or maps of such real property. The foregoing provision is subject to the following exceptions:

(a) where real property is subdivided into not more than four lots, plots, blocks, sites or units that conform to the applicable planning and zoning regulations or ordinances of the city, town or village, as the case may be, and such subdivision does not involve the laying out of a street or the extension of a previously laid out street, the owner or agent may make written application to the Planning Commission or planning authorities having jurisdiction for a waiver of the filing requirements hereunder upon forms supplied by the appropriate Planning Commission or planning authority. Such a waiver may be granted by such Planning Commission or planning authorities after determining that such subdivision plat is in compliance with this Section and with the zoning and planning regulations of the city, town or village, as the case may be, in which the property is located. The request for a waiver shall be acted upon without a public hearing within fifteen days after the filing of the application unless such period shall have been extended by consent of the applicant. Where real property is capable of being subdivided into more than four (4) lots, plots, blocks, sites or units that conform to the applicable planning and zoning regulations or ordinances of the city, town or village, as the case may be, and such subdivision does not involve the laying out of a street or the extension of a previously laid out street, the Planning Commission or planning authorities having jurisdiction may, in

the sole discretion of such Planning Commission or planning authorities deny such waiver application and require the filing in the Office of the Clerk of Nassau County a map or maps of such real property, subject to appropriate conditions as in the judgment of such Planning Commission or planning authorities as may be required in the interest of the public health, safety and general welfare; or

(b) where a subdivision map has been filed prior to January twelfth, nineteen hundred forty-five, and alterations made thereon do not involve any change or extensions of previously laid out streets and where the only alterations are changes in lot boundaries which are made solely for the purpose of conforming to applicable zoning regulations, it shall not be necessary to file such altered map or obtain a waiver therefor; or

(c) where there is a conversion of an existing structure into units, which structure: (1) was in existence and legally occupied prior to August 5, 1987; and (2) where title to said units is to be held in a condominium, cooperative or mixed form of ownership; and (3) the use thereof is in compliance with this section and with the zoning and planning regulations of the city, town or village, as the case may be, in which the structure is located.

As used in this section, the terms "subdivide" and "subdivision" shall be defined as the partition or division of any lot, plot, block, site and/or unit into two or more lots, plots, blocks, sites and/or units or any combination thereof.

As used in this section, the term "units" shall include space used or to be used for either residential, commercial, mixed or other use whether title is held in fee simple, a condominium, cooperative, or mixed form of ownership. It shall be unlawful, after a map or maps of such property has been filed to subdivide said property in a manner other than as shown on said map unless said map has been amended and approved in accordance with the provisions of subdivision six of this section.

2. No plat of a subdivision of land partly or wholly within the county shall be filed until it shall have been approved by each Planning Commission and/or planning authority having jurisdiction over that area and the approval thereof entered on the plat by the Chairman, Director or such agent as may be authorized by the Planning Commission and/or planning authority thereof. For the purpose of this section the County Planning Commission shall be a planning authority with jurisdiction over all portions of the county outside of cities and villages or within a city or village and within three hundred feet of the boundary thereof and the planning board or Commission of any city or village or, if there be no planning board or Commission, the Board of Zoning Appeals of such city or village shall be the planning authority of such city or village, with jurisdiction over all portions of such city or village and over all territory outside of such city or village and within three hundred feet of the boundaries of such city or village. Approval of a plat shall not be deemed to constitute or effect

an acceptance by the public of any street or other open space shown upon the plat, however, the filing of an approved plat shall constitute an irrevocable offer of dedication by the owner of the land to the municipality having jurisdiction, of streets, roads or highways shown on said plat and of land thereon as widened areas of existing streets, roads or highways and provided further, that where such an approved plat so filed shall amend or supersede in whole or in part the layout of streets, roads or highways shown on a previously filed plat, such offer of dedication as to streets, roads or highways or widened areas thereof shown on such superseded plat and not shown on such amending plat shall be deemed withdrawn.

3. The Board of Supervisors shall by ordinance establish and amend regulations for the subdivision of land under the jurisdiction of the County Planning Commission. The Planning Commission shall by resolution recommend such regulations and amendments to the Board of Supervisors. Before adopting such a resolution the Planning Commission shall hold a public hearing on the proposed regulations and any amendments thereto upon at least seven days prior notice of the time and place of such hearing given by publication in the official newspapers of the county. The failure of the Board of Supervisors to enact such an ordinance shall not prevent the exercise by the Planning Commission of the powers conferred by this section. Such regulations may require that the land shown on a plat shall be of such a character that it can be used safely for building purposes without danger to health or peril

from fire, flood or other menace and may provide for the proper arrangement and width of streets in relation to other existing or planned streets and to any master plan adopted by a city, town or village, for adequate convenience and suitable open spaces for traffic, utilities, access of fire fighting apparatus, recreation, light, and air, and for the avoidance of congestion of population, including minimum width and area of lots.

4. As conditions precedent to the approval of a plat, such regulations may provide: (a) the extent to which streets, roads, highways and other public places shown upon the plat shall be graded and improved, (b) for the installation of sidewalks and curbs upon existing highways, roads, or streets which intersect or bound the plat, (c) the extent to which water, sewer and other utility mains, piping, fire alarms, or other facilities, sidewalks, curbs, gutters, street signs and lighting standards shall be installed in accordance with standards, specifications and procedure of county and town highway officials, (d) where lots or plots are to back on highways, roads or streets existing or shown on the plat, the extent and nature of planting or screening which shall be installed and (e) that suitable monuments be placed at such block corners and other points as may be required by the Planning Commission. No such improvements shall be commenced or utilities installed pending final approval of the plat by the Nassau County Planning Commission and/or the planning authority or authorities having jurisdiction thereof and filing in the

Office of the County Clerk. Prior to the final approval of the plat the Planning Commission may accept a bond with surety and/or cash security by certified check to secure to the county, city or village, as the case may be the actual construction and installation of such improvements or utilities and the reasonable cost of inspection on behalf of the Planning Commission during such construction, at a time and according to specifications fixed by the Planning Commission and in accordance with the regulations. If any public utility company whose facilities are proposed to be installed shall file with the Commission satisfactory assurance that such utility company will make the installations necessary for the furnishing of its services within the time satisfactory to the Planning Commission, the Commission in its discretion may waive the bond as to the utility to be furnished. The term of such bond may be extended by the Planning Commission with the consent of the parties thereto after a public hearing held upon notice as provided in subsection five of this section with respect to the approval of plats for the subdivision of land. Additional notice shall be given at the same time, and in the same manner, to the owners of all property shown on the plat. If the Planning Commission shall decide at any time during the term of the said bond and/or cash security that the extent of building development which has taken place in the subdivision is not sufficient to warrant all the improvements covered by such bond, and/or cash security or that required improvements have been installed as provided in this section and in sufficient amount

to warrant reduction in the face amount of said bond, the Planning Commission after public hearing upon the same notice as required for the consideration of a plat may modify its requirements for any or all such improvements and the face amount of such bond and/or such cash security and/or surety may thereupon be either reduced or increased as in its judgment of the special circumstances and conditions of the particular plat may be required in the interest of the public health, safety and general welfare by an appropriate amount so that the new face amount will cover the cost in full of the amended list of improvements required by the Planning Commission and any security deposited with the bond may be either reduced, increased or modified proportionately. Upon the completion of the improvements covered by said bond and/or cash security to the satisfaction of the Commission and, should the municipality having jurisdiction determine that it intends to accept dedication made pursuant to subdivision two of this section, upon the acceptance by the municipality thereof, the Commission may, after a public hearing held upon notice as provided in this section with respect to the reduction of the face amount of such bonds, recommend the release of said bond and/or cash security and/or surety to the Board of Supervisors. In the event that any required improvements have not been installed as provided in this section within the term of such performance bond and/or cash security, the county executive upon recommendation of the Commission may thereupon declare the said performance bond

and/or cash security to be in default. The county, city or village, as the case may be, is hereby granted the power to enforce such bond, and/or cash security by all appropriate legal and equitable remedies. Upon the receipt of any sums of money collected upon said bond and/or cash security the county shall install such improvements as were covered thereby and are commensurate with the extent of building development that has taken place in the subdivision but not exceeding in cost the amount of such monies so received. In the event that any improvements have been commenced or are being installed in violation of this section or the provisions of the resolution of the Planning Commission approving the plat and/or not in accordance with the specifications of the Planning Commission's regulations as established by ordinance of the Board of Supervisors, the county, city, or village, as the case may be, in addition to other remedies, may institute any appropriate action or proceeding to restrain, correct and/or abate such violation. Where under this section it is required that a plat shall be approved by both the county Planning Commission and the planning authority of any city or village or villages each such planning authority may require a bond and/or cash security covering the improvements as to the land within the jurisdiction of such authority under the law governing such planning authority, or the Planning Commission and such planning authority may agree to accept one bond and/or cash security as to their respective interests therein. Except as to the requirement for joint approval of a plat this section shall not

be deemed to supersede or change any provision of law relating to the approval of plats of subdivisions in any city or village as to the land within such city or village.

It is intended by this article to grant to the county Planning Commission the powers necessary for guiding and accomplishing a coordinated, adjusted and harmonious development of the county which will in accordance with present and future needs, best promote health, safety and the general welfare as well as efficiency and economy in the progress of development. The Planning Commission may vary, subject to appropriate conditions, such requirements of the regulations established as provided in this section as in its judgment of the special circumstances and conditions relating to a particular plat are not requisite in the interest of the public health, safety and general welfare. When making its determination as to the improvements to be required the Planning Commission shall take into consideration the prospective character of the development and the allowed density of population under the applicable zoning ordinance. The Planning Commission shall also hear and decide all matters upon which it is required to pass under such regulations.

5 (A) Definitions. When used in this sub-section the following terms shall have the respective meanings set forth herein except where the context shows otherwise:

(a) Preliminary plat -- a preliminary plat is a drawing prepared in a manner prescribed by regulation, showing the layout, building units, parking areas, common open space and

recreational facilities of a proposed subdivision including but not restricted to, road and lot layout and approximate dimensions, key plan, topography and drainage, all existing and proposed facilities including preliminary plans and profiles, at suitable scale and in such detail as regulation may require.

(b) Final plat -- a final plat is a drawing prepared in a manner prescribed by the regulations showing a proposed subdivision, containing in such additional detail as shall be provided by the regulations all information required to appear on a preliminary plat and the modifications if any, required by the Planning Commission at the time of approval of a preliminary plat of such proposed subdivision if such preliminary plat has been approved.

(c) Preliminary plat approval -- approval by the Nassau County Planning Commission of a preliminary plat is the approval of the layout of proposed subdivision as set forth in a preliminary plat, but subject to approval of the plat in final form in accordance with the provisions of subdivision 6(D) of this section.

(d) Final plat approval -- final approval of a plat in final form is the signing of a final plat by a duly authorized agent of the Planning Commission after a resolution granting final approval to the plat, or after conditions specified in a resolution granting conditional approval of the plat are completed. Such final approval qualifies the plat for recording in the Office of County Clerk or register in the county in which such plat is located.

(e) Utilities -- Utilities servicing a plat, lot, plot, block, site or unit shall include water, sewer, lighting, fire alarms, electric power, cable television, gas, as well as mains, conduits, piping, or other facilities related thereto.

(B) All plats shall be submitted to the Nassau County Planning Commission and/or the planning authority or authorities having jurisdiction for approval. In the case of the Nassau County Planning Commission, the owner or applicant shall submit a preliminary plat for consideration. Such a preliminary plat shall be clearly marked "preliminary plat" and shall conform to the definition provided in this section. Within forty-nine days after receipt of a complete application for preliminary approval together with such preliminary plat, the Director of the Commission shall schedule and the Planning Commission shall hold a public hearing, which hearing shall be advertised at least once in a newspaper of general circulation in the county at least seven days before such hearing. The Planning Commission may provide that the hearing be further advertised in such manner as it deems most appropriate for full public consideration of such preliminary plat. Within forty-nine days after the date of such hearing, the Planning Commission shall approve with or without modification or disapprove such preliminary plat, and the ground of a modification if any, or the ground for disapproval shall be stated upon the records of the Planning Commission. Notwithstanding the foregoing provisions of this subdivision the time in which the Planning Commission must take action on such plat may be extended by mutual consent of the owner or applicant and the Planning

Commission. When so approving a preliminary plat the Planning Commission shall state in writing such modifications if any, as it deems necessary for submission of the plat in final form. Within seven days of the approval of such preliminary plat it shall be certified by an authorized agent of the Planning Commission as granted preliminary approval and a copy filed in the Commission's office and a certified copy mailed to the owner. In the event that the Planning Commission fails to take action on a preliminary plat within the forty-nine day period prescribed therefor, such plat shall be deemed granted preliminary approval. The certificate of the authorized agent of the Planning Commission as to the date of submission and the failure to take action within such prescribed time shall be issued on demand and shall be sufficient in lieu of written endorsement or other evidence of approval herein required. Within twelve months of the approval of the preliminary plat the owner must submit the plat or section of a plat in final form together with a complete application for final approval (including such approvals by the county Department of Health and Department of Public Works, as well as such other municipal or governmental agencies as may be required). If such plat is not so submitted, approval of the preliminary plat may be revoked by the Planning Commission.

(C) Within forty-nine days of the submission of a plat in final form for approval to the Planning Commission a hearing may be held by the Planning Commission, which hearing shall be advertised at least once in a newspaper of general circulation

in the county at least seven (7) days before such hearing. When the Planning Commission deems the final plat to be in substantial agreement with a preliminary plat approved under subdivision 5(A)(c) of this section and modified in accordance with requirements of such approval if such preliminary plat has been approved with modification, the Planning Commission may waive requirement for such public hearing. The Planning Commission shall by resolution conditionally approve, conditionally approve with modification, disapprove, or grant final approval and authorize the signing of such plat within forty-nine days of its receipt by the director of the Planning Commission if no such hearing is held, or in the event such hearing is held, within forty-nine days after the date of such hearing. Notwithstanding the foregoing provision of this subdivision, the time in which the Planning Commission must take action on such plat may be extended by mutual consent of the owner and the Planning Commission. In the event the Planning Commission fails to take action on a final plat within the time prescribed therefor, the plat shall be deemed approved.

Upon the adoption of a resolution of conditional approval of such final plat the Planning Commission shall empower a duly authorized agent to sign the plat subject to completion of such requirements as may be stated in the resolution. Within fourteen (14) days of such resolution the plat shall be certified by an authorized agent of the Planning Commission as conditionally approved and a copy filed in the Commission's office and a certified copy mailed to the owner

including a certified statement of such requirements which when completed will authorize the signing of the conditionally approved final plat. Upon completion of such requirements the plat shall be signed by the Chairman, Director or said duly authorized agent of the Planning Commission. Conditional approval of a final plat shall expire within one hundred eighty days after the date of the resolution granting conditional approval unless such requirements have been certified as completed.

(D) Notwithstanding the foregoing provisions of this section, the Planning Commission may extend the time in which a conditionally approved plat in final form must be submitted for signature, if in its opinion such intention is warranted by the particular circumstances thereof, but such extension(s) shall not exceed two additional periods of ninety days each.

(E) The signature of the duly authorized agent of the Planning Commission constituting final approval by the Planning Commission of a plat showing lots, blocks, sites, or units with or without streets or highways, or the approval by the Planning Commission of the development of a plat or plats already filed in the Office of the County Clerk or the approval by reason of the failure of the Planning Commission to take action thereon within the time prescribed, shall expire within ninety days from the date of such approval, unless within such ninety day period such plat shall have been duly filed or recorded by the owner in the Office of the County Clerk. The Planning Commission may, however, extend the time for the filing of a plat which was

approved by the Planning Commission for two additional periods, not exceeding ninety days each.

6(A). The subdividing owner, or his agent, shall present at the office of the Planning Commission, upon forms provided by the Commission and in duplicate, the application for the consideration of the preliminary layout, together with prints of the preliminary layout as may be required accompanied by the required fee. The Director of the Commission will notify the applicant of the date and time of the public hearing before the Commission at which the application will be considered. The applicant shall also send notice of such public hearing, on forms supplied by the Commission, to the adjoining property owners, (the addresses to be obtained from the last completed tax roll), and shall file with the Director of the Commission, at least seven (7) days prior to the public hearing, an affidavit executed by the applicant, or his agent, on a form supplied by the Commission, stating the name and address of each person to whom notice was sent and the date when such notice was sent. In addition, the applicant shall be required to post copies of such notice in such places and in such manner as may be prescribed by the Commission.

(B) The preliminary layout, street profiles, drainage plan, and plat and all procedures relating thereto shall, in all respects comply with the provisions of this section, the regulations of the Commission, the appropriate building, zone, ordinance, and all other applicable regulations, except where variations therefrom may be specifically authorized by the Commission.

(C) The applicant, or his duly authorized representative, should be prepared to attend any designated meeting to discuss the preliminary layout. Presentation of a preliminary layout shall be deemed a submission of the plat for approval.

(D) The applicant shall, within twelve months after approval of the preliminary layout, present at the office of the Commission, upon forms provided by the Commission and in duplicate the application for the consideration of the final plat, the estimate of the cost of public improvements and utilities, and the consent of the mortgagee(s) to the filing of the plat, together with a certificate of title of an approved title company and in form satisfactory to the Commission certifying record title in the name of the applicant, and also prints of the final plat as may be required accompanied by the required fee. Said application shall be filed with the Commission at least twenty-one (21) days before a regular meeting of the Commission. The Director of the Commission may then schedule a hearing at a regular meeting of the Commission, if required.

(E) The applicant shall be required to file with the Commission a surety company bond and/or cash security in an amount determined by the Commission and in accordance with a form supplied by the Commission to secure to the county the actual construction and installation of such improvements required by the Commission at the time of such final approval and at a time fixed by the Commission and in accordance with the requirements of the Commission under these regulations. As to utilities required by the Commission at the time of such final

approval, the Commission may, in its sole discretion, accept assurance in writing from each utility supplier whose facilities are proposed to be installed. When such a written assurance is acceptable, it shall be addressed to the Commission and state in substance or effect that such utility supplier will make the installations necessary for the furnishing of its services within the time therein specified satisfactory to the Commission. There shall also be included in determining the amount of such bond and/or cash security the reasonable cost of inspection of any such improvements by the Commission, the estimated cost for employing private security to guard any storm water drainage or storage basins required to be installed by the Commission, the cost of liability insurance, and the estimated cost of installation of necessary utilities.

(F) After completion of the foregoing procedure to the satisfaction of the Commission, and by the determination by the Commission to approve the plat, the approval of the Commission shall be endorsed thereon, together with the date thereof, over the signature of the Chairman, Director, or an authorized agent, designated by resolution of the Commission. Prior to such endorsement, the applicant shall file with the Commission the required number of prints of the street profiles and drainage plan, as approved by the Commissioner of Public Works.

(G) Within ninety (90) days following the endorsement of final approval by the Commission, the plat, together with one (1) duplicate tracing shall be filed with the County Clerk. A required number of duplicate tracings of the plat

shall be presented at the office of the Commission. Notwithstanding the foregoing, the Planning Commission may extend the time for filing and recording such plat, if in its opinion such intention is warranted by the particular circumstances thereof for not more than two additional periods of ninety days each.

(H) The County Clerk shall notify the county Planning Commission in writing of the filing of any plat approved by such Planning Commission identifying such plat by its title, date of filing and official file number.

7. Except as hereinbelow provided, whoever, being the owner or agent of the owner of any real property, structure or unit advertises for sale or transfers, sells, agrees to sell or negotiates to sell or offers for sale any lot, block, site, unit (inclusive of shares in a cooperative corporation) or interest in land shown upon a plat by reference to or exhibition of, or by other use of a plat of a subdivision, before such plat has been approved by the Nassau County Planning Commission as provided in this section and filed in the Office of the Nassau County Clerk, or whoever, being the owner or agent of the owner of any real property, structure or unit located within a subdivision, commences construction of any improvements without the approval of the Nassau County Planning Commission, shall forfeit and pay a penalty as fixed by county ordinance, which penalty shall not be less than one thousand (\$1,000.00) dollars for each and every lot, block, site or unit shown upon the map

of said subdivision heretofore submitted to the Nassau County Planning Commission for approval as required by the provisions of this section. The description of such lot, parcel or unit by metes or bounds in the instrument of transfer or document used in the process of selling or transferring shall not exempt the transaction from such penalties or from the remedies herein provided. The county, city, town or village concerned may enjoin such construction, advertising, offering, transfer or sale or agreement by action for injunction and/or may recover by a civil action.

Notwithstanding the foregoing provisions of this section, the owner or agent of the owner of any land, structure or unit which is the subject of a plan of cooperative or/and condominium development, which plan has been accepted for filing by the Office of the Attorney General of the State of New York and approved for purposes of offering and/or advertising to the public, may offer or advertise such land, structure or unit for sale, provided that:

(1) an application for final subdivision approval has been filed with the Planning Commission and/or planning authority having jurisdiction thereof; and

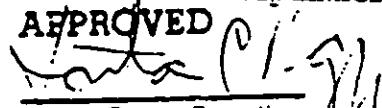
(2) that any payments received by the owner or agent of the owner of such land, structure or unit shall be deposited in an escrow account in accordance with the terms and provisions of such plan as accepted by the Attorney General of the State of New York, together with such other safeguards as

the Planning Commission and/or planning authority having jurisdiction may impose in the interests of protecting the general welfare; and

(d) all contracts or subscription agreements by which said lots, plots, blocks, sites or units are offered or are advertised shall contain a boldly printed notice, in plain English, to the effect that said contracts and/or subscription agreements are expressly subject to the final approval of the subdivision by the planning authority having jurisdiction thereof, which approval may result in the changing, alteration or modification of the proposed subdivision.

8. Except as provided in subsection 1 (b) or (c) hereof, the County Clerk shall not file a plat of subdivision or accept a deed for recording which deed describes less than any plot, block, site or unit and the Department of Assessment shall not create a tax lot which describes less than any plot, block, site or unit without the approval of the Planning Commission and/or the planning authority having jurisdiction thereof as heretofore provided. If the County Clerk files a plat of subdivision without the approval of the Planning Commission and/or the planning authority having jurisdiction thereof as heretofore provided, he shall be deemed guilty of a misdemeanor and shall be fined not less than \$100.00 nor more than \$500.00.

Section 2. This Local Law shall take effect immediately.

September 25, 1989
APPROVED

Deputy County Executive

STATE OF NEW YORK
COUNTY OF NASSAU

ss.:

No P 44800

I, JOHN A. DeGRACE, Clerk of the Board, Nassau County Board of Supervisors, do hereby certify that the foregoing is a true and correct copy of the original LOCAL LAW NO. - 8 duly passed by the Board of Supervisors of Nassau County, New York, on September 25, 1989 and approved by the County Executive on September 25, 1989 and on file in my office and recorded in the record of the proceedings of the Board of Supervisors of the County of Nassau and is the whole of said original.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the official seal of said Board of Supervisors, this 26th day of September in the year one thousand nine hundred and Eighty-nine

John A. DeGrace

JOHN A. DeGRACE
Clerk of the Board
Nassau County Board of Supervisors