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Insider Tips from 47 Top Management Leaders

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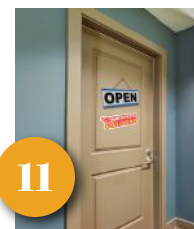
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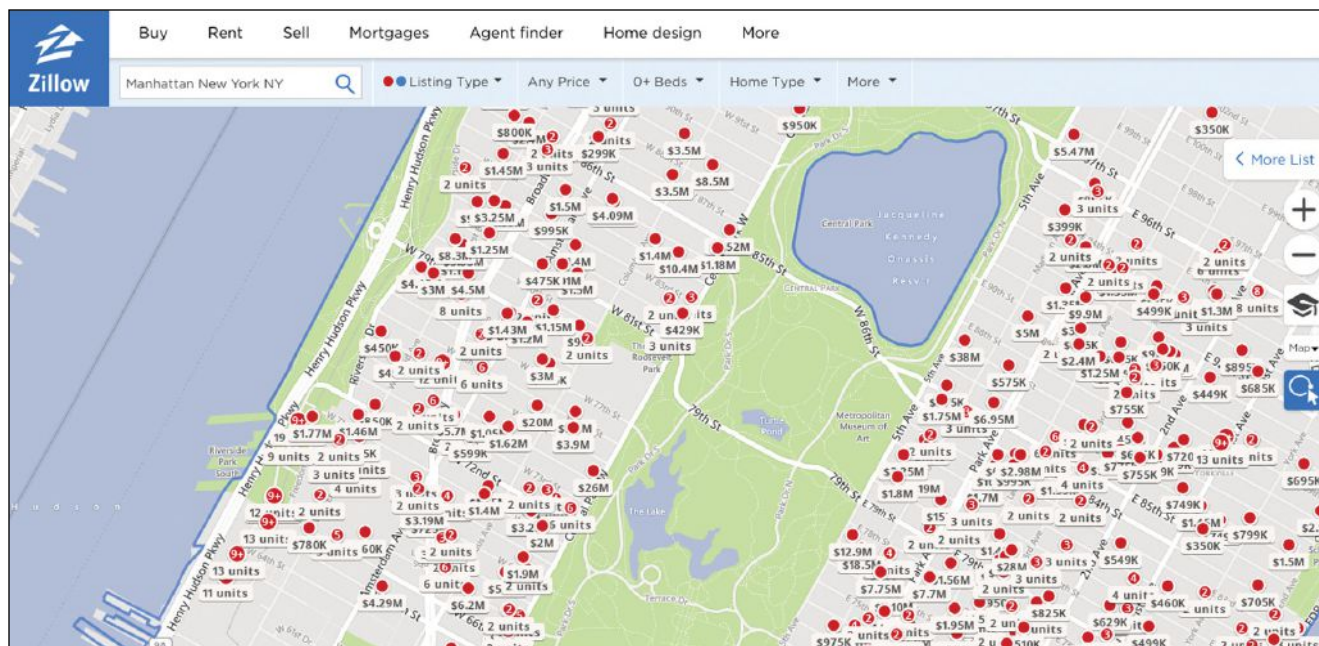
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# Toolkit



## REAL ESTATE

# Those Zany Zestimates

BY BILL MORRIS

**HOW MUCH IS** your co-op or condo apartment worth? The answer will depend on whether it comes from a professional appraiser, a real-estate broker, a city tax assessor, or a potential buyer. And then there's the online real-estate marketplace Zillow, which has collected data on more than 110 million American homes and offers its own estimates of market value, called "zestimates."

Barbara Andersen is not a fan of zestimates. Andersen, a real-estate lawyer in Illinois, is suing Zillow, claiming a townhouse she's trying to sell is worth \$626,000 and that Zillow's zestimate of \$562,000 misleads buyers and creates a "tremendous roadblock" to a sale. The suit argues that Zillow should be licensed to perform appraisals and should be required to obtain the seller's consent before postings zestimates online.

Jonathan Miller, of the appraisal firm Miller Samuel, argued in *Brick Underground* that a zestimate “implies a precision that it does not possess.” He added, “It could be really accurate, slightly off, or really off – and the consumer can’t tell.”

The Zillow website carries this disclaimer: “A zestimate home valuation is Zillow’s estimated market value. It is not an appraisal. Use it as a starting point to determine a home’s value. The zestimate is calculated from public and user-submitted data, taking into account special features, location, and market conditions.” Zillow also uses a proprietary formula to arrive at the final number. In New York it has a median error of

6.3 percent, meaning that half of the zestimates were within 6.3 percent of the final sale price, and half were off by more. Nationally, zestimates are within 20 percent of the final sale price 85.4 percent of the time.

Zillow says it has produced zesti-  
mates on five million homes in New  
York City, including an eight-bed-  
room Manhattan condo overlooking

the Hudson River that's listed for \$85 million but has a zestimate of just \$53.7 million. On the other hand, a Marine Park, Brooklyn, co-op that's on the market for \$165,000 has a zestimate of \$442,635.

Andersen's lawsuit against Zillow has delighted many appraisers. Pat Turner of Richmond, Virginia, told *The Miami Herald*: "They've

been playing appraiser without being licensed for years and doing a bad job. It's about time they got called on it."

And maybe it's about time to update an old adage. It's no longer just *buyer, beware*. Now it's *buyer and seller, beware*.

**It's no longer just *buyer*, beware. Now it's *buyer and seller*, beware.**

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## BUILDING OPERATIONS

# Leaks and Screams

BY TOM SOTER



➤ **IT MIGHT BE** the cheapest, all-purpose money-saver you'll ever find. Michael Wolfe, the president of Midboro Management, says it's a device that will bring you peace of mind through "early detection of any water incidents that will save not only the shareholder's apartment from damage, but also the neighbors."

Wolfe is talking about leak detectors. For an average price of about \$80, you can purchase a small device that will alert you through your smartphone when there are signs of leaks, freezes, or excessive humidity in your apartment. The products

— offered by Honeywell, Smarthome, ADT, and a number of other suppliers — often do more than detect leaks; some can alert you to low temperatures that can lead to frozen and/or breaking pipes.

When residents install air conditioners in their apartments, Wolfe notes, "typically the [air conditioner water-drip] pan is accessible but it's something that they never look at. With central air conditioning, there's usually a condensate pump, which is there to pull the condensate out so that it doesn't flood. But if that pump

fails, or that pan fills up, you're going to have a flood."

At his own apartment, Wolfe has a leak detector in every air-conditioner drip pan. "If there's a leak," he says, "the detector screams."

Wolfe has spoken to a few of his clients about this but offers a caveat. "Boards should inform residents about this, but the board should not be responsible for installing them," he says. "There may be liability questions." Still, the manager adds, "We want to give our clients a good idea, something we think they should do." ■



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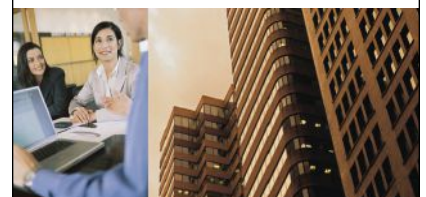


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LEGAL MATTERS

# All Together Now

BY KATHRYN FARRELL

**➤ IMAGINE A SMALL**, self-managed co-op. All of the shareholders pitch in, doing everything from mopping floors to dealing with brokers and lawyers. Then a shareholder dies. Two years later, the apartment is still empty. Financially, this is not a problem for the co-op, since the estate pays the maintenance.

But the shareholders are unhappy. They're part of a community, and they want someone *living* in that apartment – and also helping in the upkeep and management of the property. The estate is dragging its feet on either selling the unit or installing a

new resident. Can the co-op – which has a residency clause in its proprietary lease – force the estate to sell?

"The residency clause is the first thing that could create a potential lever for the co-op to take action," says attorney Ken Jacobs, a partner at Smith, Buss & Jacobs. "The real intent of a residency clause is to avoid somebody subleasing [the apartment] or using it as a pied-à-terre. Until somebody actually moved in, like the executor or a relative of the deceased, you couldn't claim that there was a violation of the residency clause. It's what you have to live with when you're winding up an estate."

If the apartment is sold, the co-op must then face the possibility that the new shareholder is unwilling to contribute to the upkeep of the property. "Are any of these obligations in the bylaws or the proprietary lease?" asks Jacobs. If residents' responsibilities are not laid out in the governing



THINGLASS/SHUTTERSTOCK

documents, a shareholder's refusal to participate is not legal grounds for a complaint.

"It appears that the real issue is they want another body," Jacobs says. "I would be focusing on imposing additional obligations, either by amending their occupancy agreement or proprietary lease, or possibly imposing a house rule." An amendment to the lease is the best option. If the entire building votes on such an amendment, says the attorney, "essentially it's a community contract, as opposed to a regulation that appears to be directed against one shareholder." ■



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FINANCE

# The “Secret” Tax Refund

BY TOM SOTER

**IT’S THE REFUND** that many don’t know about. Attorney James Samson, a partner at Samson, Fink & Dubow, says it “a great program, but it’s a well-kept secret.”

Called “Claim for Additional Mortgage Recording Tax Credit,” it’s a tax refund boards can obtain from New York State when they are refinancing their buildings’ underlying mortgages.

“There’s a certain portion – not the whole mortgage recording tax but a certain portion of it, which is called the ‘additional mortgage recording tax’ – that you are allowed to take a credit for on your New York State tax

returns,” notes accountant Carl M. Cesarano, a principal at Cesarano & Khan. It applies to any tax year beginning on or after January 1, 2004. (Residential mortgages in some New York counties may be ineligible.)

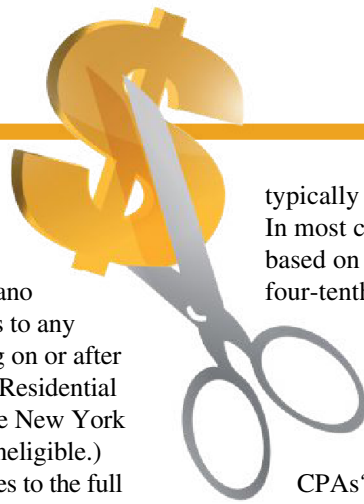
The credit applies to the full amount of the recording tax paid or 0.25 percent of the total new money loan amount. If the amount of the credit exceeds your tax for the tax year, you can carry over the amount of credit to the following year (or years). Or you may elect to treat the unused amount of tax credit as an overpayment of tax to be credited or refunded.

A board can apply for the refund if its property “got hit with an additional mortgage recording tax on the refi,” explains Cesarano. “I had a mortgage of a million, and I borrowed a million five. I would

typically [be taxed] on the extra five. In most cases, you’re paying the tax based on a computation of capital, four-tenths of a percent.”

So, why is the “Claim for Additional Mortgage Recording Tax Credit” relatively unheralded among boards and their CPAs? For one thing, Cesarano says that you apply for it only when you refinance, and he theorizes: “In co-ops, the question is, does this refund apply to residential mortgages? A lot of accountants are of the opinion that this only applies to commercial space.” But Cesarano disagrees, noting that he has gotten refunds under this program for co-ops that have refinanced their underlying mortgages, and “we’ve never been denied on one yet.”

To obtain an application form and more information, go to: <http://bit.ly/SAMRTC>



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# Glow-in-the-Dark Door Signs

BY BILL MORRIS

➤ **YOUR TO-DO LIST** just got longer. The Fire Department of New York (FDNY) has issued new regulations that will require co-op and condo boards to install glow-in-the-dark signs on all apartment and stairwell doors.

All apartment buildings must comply with the rule by March 30, 2018 – though buildings with duplex or triplex apartments were required to comply by March 30 of this year. A glow-in-the-dark or light-reflecting sign with the apartment number must be installed on the door jamb of every apartment in the building, no more than 12 inches from the floor. A similar sign with the word EXIT must be installed on the jamb of all stairwell

doors. The signs are intended to guide firefighters if smoke obscures eye-level apartment numbers.

“Such identification ensures firefighters can more quickly conduct search-and-rescue operations,” the FDNY rule states. “Additionally, the fire emergency marking for [duplex and triplex] units will make it possible for firefighters to ascertain whether they are entering the lower level of an apartment, rather than the upper level of an apartment, where temperatures may be unsafe. The fire emergency marking also assists in identifying apartments that are joined horizontally [such as adjoining apartments that have been combined into a single unit].”



Failure to comply with this new local law is not advised. As Evan Lipstein, president of Hyline Safety Co., wrote recently in the *New York Real Estate Journal*: “If building owners disregard this law, it opens them up to the potential for criminal negligence if a tragedy should occur as a result of non-compliance.” ■



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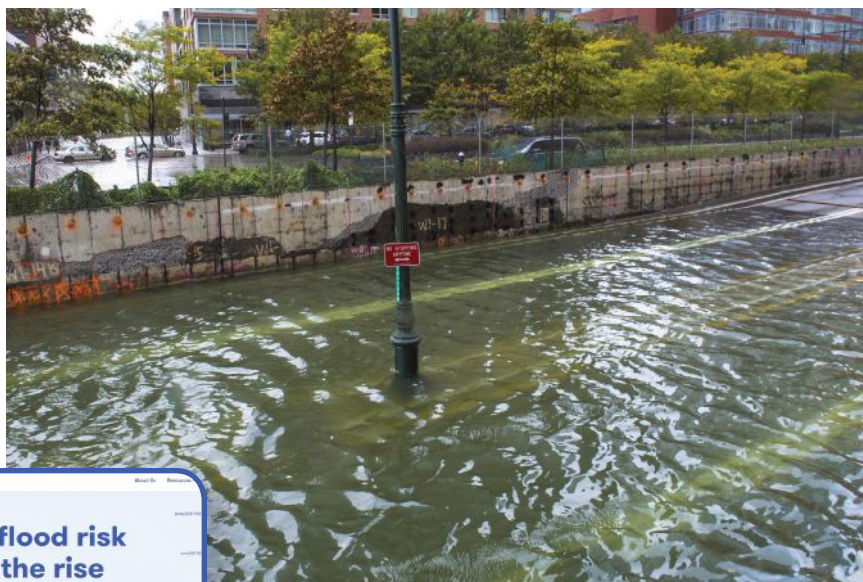
**BUILDING OPERATIONS**

# Flood Maps and Insurance

BY KATHRYN FARRELL

➤ **"BECAUSE OF CHANGES** in federal legislation, and because the flood maps are being rewritten in New York City, flood insurance costs for homeowners may increase significantly," says Joseph Sant, director of homeowner services at the Center for NYC Neighborhoods, a nonprofit that promotes home ownership. And those potential increases and changing maps have left many co-op and condo boards confused about flood insurance. That's where FloodHelpNY comes in.

FloodHelpNY, a program designed to educate residents in New York about what they can do to mitigate flood risks, brings together engineers to do a resiliency audit. "We work with FEMA [the Federal Emergency Management Agency] and with local government to actually get the algorithms down," Sant says, "so that we can calculate people's flood insurance now and [then calculate it] if they take mitigation measures. We've got this core of community-based counselors who can walk people through [the process]. We're trying to simplify and demystify it a little



To calculate your flood insurance, visit [www.floodhelpny.org](http://www.floodhelpny.org)

bit, and [not] have people avoid engaging with the issue because it's too complex. We want homeowners to know to

what extent it's going to affect their ability to stay in their homes."

FloodHelpNY provides an engineer to conduct a building assessment. He examines the flood risks and suggests the retrofits that could reduce those risks and/or insurance costs. After that, the board members meet with an experienced counselor

who walks them through the finances and the next steps.

"What's really been striking to me," says Sant, "is that people have simple questions. 'Can I afford to live in my home long-term?' 'Is my insurance going to increase?' 'How do I not suffer as much damage in the next storm?' They seem like typical questions, but in order to answer those, you need to bring in expertise from the engineering and building science guys. You need an insurance expert. A lot of times, you need to consult governmental sources. We're trying to make all of those resources available to an owner [at] a one-stop shop." ■

## GLOSSARY [Self-Funding]

A way for co-op and condo boards to raise money for a project without tapping into a line of credit or taking out a new bank loan. Residents are asked to voluntarily pre-pay a certain number of months' worth of maintenance or common charges. In return, they receive an interest payment or one or more months of free maintenance.



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## OVERHEARD

# Restaurant at Home ... Priceless

BY JIM GLATTHAAR, *Partner, Bleakley Platt & Schmidt*

**> DID YOU EVER** wonder why some attorneys represent co-ops and condos? After all these years, I have concluded that, despite the long hours and lower compensation from clients, we represent them for the stories we can later tell.

Take last night. I was home when my phone rang at around 9:45. It was one of my co-op board members calling from a meeting. A shareholder was the chef at a Japanese restaurant in White Plains, but the restaurant had closed because the mall housing it was being demolished and redeveloped for rental housing. This was mildly interesting, but, really, why was he calling me?

“Well,” he said. “The shareholder and his wife opened up a take-out/delivery restaurant in their apartment.”

He went on to explain that the pair had started cooking meals at home and had a bevy of delivery workers ferrying the meals all over the White Plains area. Neighbors noticed more people coming and going from the apartment for weeks but didn’t think anything of it. And since they always cooked Japanese food, the neighbors thought nothing of them cooking more frequently.

So, how were they caught?

It was elementary. A resident complained that his kitchen sink was backing up, so the super called a

plumber. The plumber asked: “Why is there so much cooking grease in the main line?” A good question. The super investigated and found that the chef and his wife were dumping used cooking grease down the drain.

Feeling a bit peckish, I offered to make an undercover “buy” from the pair, but the board would have none of it. Instead, rather prosaically, I was told to issue a “cease and desist” letter, to be followed by a notice to cure.

Stories like this don’t cover a co-op attorney’s overhead, obviously, but they do have their own rewards. I’ve heard of working from home, but a shareholder turning his apartment into a Japanese take-out? Priceless. ■

## Planner

### AUGUST 1

J-51 tax exemption and abatement program – first day to file applications with HPD’s J-51 office for the third filing period in 2017.

# The Inside Track

INSIDER TIPS  
FROM **47** TOP  
MANAGEMENT  
LEADERS

If you've been on your board for a while, it's not surprising to think that you can actually run your co-op or condo. You've got years of board service under your belt, and that experience – coupled with the skills you bring from your day job – makes you pretty expert about your building's affairs. So it's easy to understand how you might assume your board experience is genuine management know-how.

With all due respect, it's not.

This year's management leader survey proves that point. It contains 47 stories about typical issues and challenges that co-ops and condo confront. The real nugget, though, is what we're calling the "Inside Track." This is the part of the solution that can only come from someone whose day job is managing buildings.

For instance, Lori Buchbinder, a principal at Buchbinder & Warren, managed a small co-op in a less-than-prime neighborhood, with less-than-spectacular retail space. The co-op was facing the prospect of the retail lease expiring and being left

with a space that generated no income. On top of that, the co-op was still on the hook for real estate taxes based on the income from the retail space.

The solution? Turns out, not a simple one. Searching for another retail tenant was tough because the negatives were pretty big, so Buchbinder crafted a plan and tapped into her professional network to develop the solution. Without this inside track, the co-op would have faced huge financial challenges.

In story after story, management executives share the inside track they used to solve board and building challenges. Even though boards often have tremendous insight into framing a problem, it's clear from these stories that unless you have lots of experience managing real estate it's pretty tough to solve them. ■



**CAROL J. OTT**  
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## THE INSIDE TRACK

# Level the Project Bidding Field

### Setting the Stage

When we transition into new properties and go through how AKAM's sealed-bid process works for major capital projects, many clients are very appreciative of the step-by-step process we follow. After we go through the process with them, they see why it's needed.

### Following the Action

On a typical capital project, we have a professional draw up a comprehensive scope of work. For instance, if you're doing exterior facade restoration for Local Law 11, the engineer/architect draws up the detailed specifications, reviews them with management and the board, and sends the document out to bid to five or six qualified vendors.

Once the vendors receive the bid documents, the engineer will coordinate an onsite walk-through of the property. We generally give a vendor between three and four weeks to submit their sealed bids. The sealed bids come back to a board member as well as an industry professional working for the building, i.e., the building's attorney, or the building's architect or engineer. We generally consider any project over \$25,000 a major capital project.

Upon receipt of the sealed bids, a comprehensive analysis spreadsheet is prepared that compares pricing on the base bid with the pricing for all the alternate work and various options that the board would need to consider. These alternates/options may include everything from additional costs for working on weekends to the use of different types of materials.

Once that's completed, the board, management and the engineer/architect will meet with the three lowest


bidders and review their qualifications as well as go through each one of their bids line by line to ensure the bids are level.

### Doing It Right

The key to getting comprehensive and competitive pricing is an organized sealed-bid process. If an option comes back where they're painting the lintels of a building, for instance, and it's significantly higher than the other vendors' pricing, before disqualifying

them, we need to find out why. Once the bids are leveled, we ask all the vendors to come back with a best and final sealed bid. We give them additional time to submit their sealed bids, and they must follow the initial sealed-bid process.

We will then open up those bids and prepare a final review and comparison spreadsheet. This way, you know that you're getting the best pricing, as well as the most comprehensive and complete job. ■



*We employ an  
"analysis spreadsheet"  
that compares pricing  
on the base bid with  
the pricing for all the  
alternate work and various  
options to consider.*

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## THE INSIDE TRACK

# Avoid Faulty Filings

### Setting the Stage

There are many reasons for a board to be proactive. We currently manage a condo where the property had some issues with filings. They were doing annual boiler inspections and, although the details of the technical problems with the boilers were correct, the city had the wrong address. They also collected the fees and the funds every year that were required to register the boilers as safe and legal. Although the city did not have a record of this condo, it collected the money anyway.

### Following the Action

These errors came back to bite the property. When it was time to do some capital work and the board began looking for some alternate financing, it was stymied by violations. The board was surprised. They had always paid on time – or thought they had. When we picked up the building, we also had a full-time department that does what we call compliance. My department had already figured out that the address that the city had was wrong and that none of the fees paid had been credited to the condo.

We had to get expeditors and licensed plumbers to demonstrate the truth to the city. The board gave us a lot of the paperwork about what they

had been doing, and that helped. But we had to do a lot to correct it. The board was really helpful, because it had kept all its paperwork together. It was filed in an office. We needed to go back 12 years. It took us roughly six to eight months to fix the problem. But we got it done.

### Doing It Right

A board needs to be proactive in its filings, keeping all the property records (fire sprinklers, elevators, boilers, water pumps) in a safe location. This way, when the city decides to do some auditing, if there are typos or some miscommunication, the board has the ammunition for management to rectify the situation, without paying fines. ■



*The board must supply ammunition to management that will clear up confusion.*

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## THE INSIDE TRACK

# Change the Dynamic of Difficult Board Meetings

### Setting the Stage

If there's one thing I've learned working with boards, it's that board members sometimes find themselves dealing with more than they thought they had signed up for. It's a volunteer position. It's much more labor-intensive and challenging than most realize. Those who run for office are people compelled to take responsibility and to lead. We have a great deal of respect for board members and really work to partner with them to get done what they need to get done. Now, because a board is a democratically elected group, there are times where there are people in the board with different – and strongly held – opinions. At times, this can lead to difficult conversations.

### Following the Action

There was a board once – this was a large, 400-unit building – where difficult conversations were becoming the norm. In fact, the board was really split into factions and was having difficulty getting business done. Disagreements would sometimes end up becoming personal.

We needed to introduce some structure to these meetings. We suggested that the board follow *Robert's Rules of Order* to the letter. It's a disciplined protocol for having conversations and making decisions that's fairly easy to follow. It had an immediate impact and really changed the dynamic of these board meetings.

As a result of that, we staged an Argo U class – which is something we do for clients on a quarterly basis – on how to run effective

board meetings using *Robert's Rules of Order*. It was highly attended, because this is one place where boards really want to be effective.

### Doing It Right

If you're meeting once a month, that needs to be a really tight, rich, decision-making meeting. In this case, introducing that kind of discipline helped them get there. Being a board member is hard, and our job is to make it easier. Sometimes, that means bringing more structure into the board environment. ■

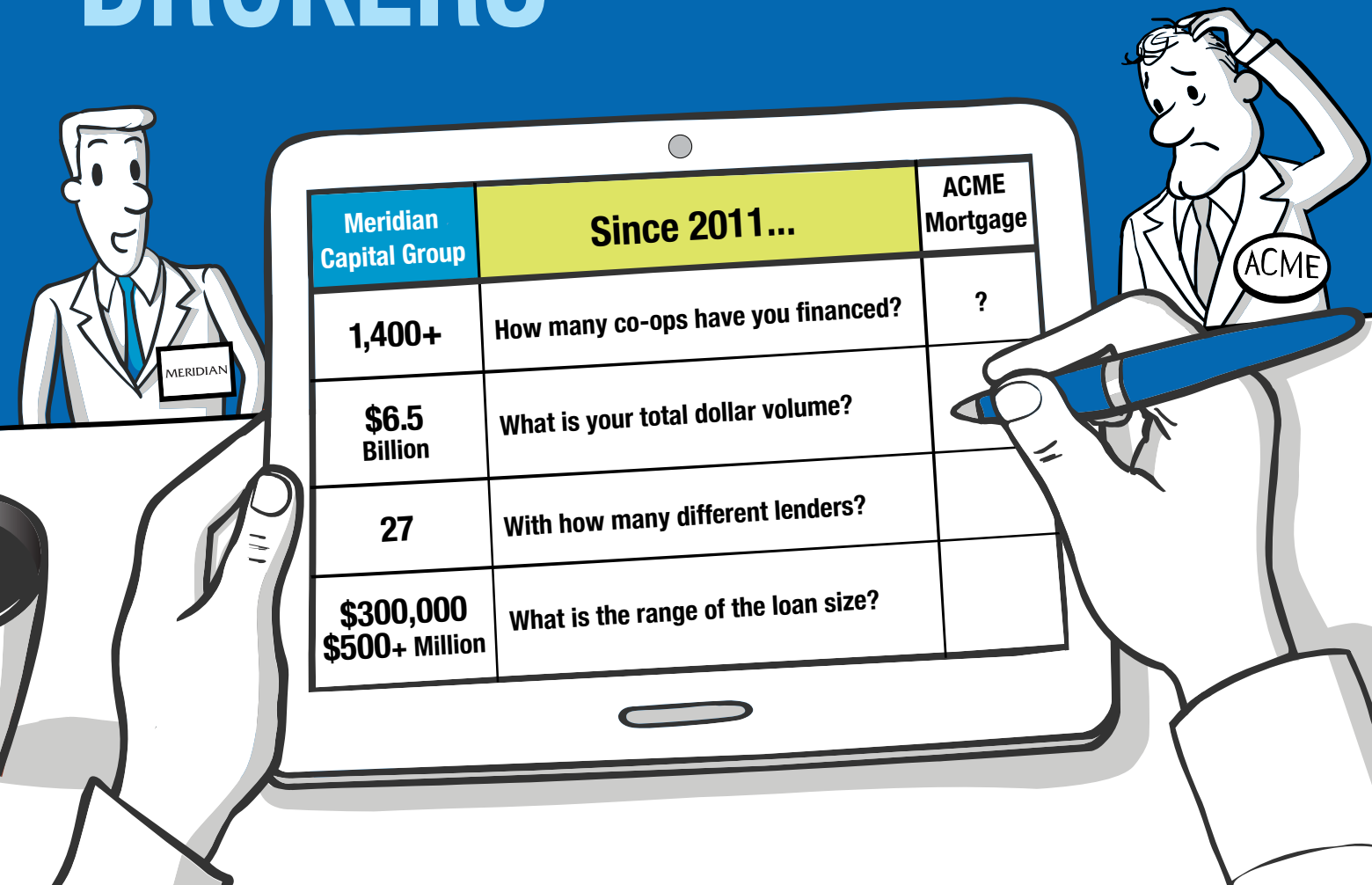
*Using Robert's  
Rules of Order  
brings discipline to  
board meetings.*

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**THE INSIDE TRACK**

# Seek Out the Most Cost- Effective Options

**Setting the Scene**

We took over a building in Brooklyn, a 106-unit cooperative that had some major issues. They were having significant roof leaks. Before our takeover, they had hired an engineer who gave them estimates to do a roof replacement for \$450,000 to \$550,000, based on the roof having asbestos and the need for an asbestos abatement. My firm decided, after talking to the board, that we should try to look at other options.



## Following the Action

How could we save money? It wasn't just the \$550,000. The board was hiring companies to repair leak damage and put patches on the roof. We brought in a contractor who we have been working with for over 25 years and tried to get another solution. He came up with a solution that we could go over the existing roof and encapsulate the asbestos – without having to remove it. This would mean a major cost savings. He said he could replace the roofs on both buildings for \$125,000. That will save the building over \$450,000.

## Doing It Right

When presented with problems, it's always best to think about them for a while and look at other solutions that might be out there. Ultimately, there might be more cost-effective ways to get around the problem. ■

*We could go over the existing roof and encapsulate the asbestos – without having to remove it.*

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## THE INSIDE TRACK

# Contemplate the Future – Both Near and Far

### Setting the Stage

There are two kinds of boards. There are boards that are reactive to a certain set of circumstances, and there are boards that are proactive when they realize that there are certain projects that need to take place. Boards have a great responsibility for the physical and fiscal fitness of their buildings. We find that every 10 to 20 years or so, a board administration is faced with aging equipment, and the decision comes up whether they should continue to repair the equipment or replace it.

I have a story to tell. It's a story about how two boards are facing the

same situation and handling it differently. Murphy's Law applies well in property management. Everything that can go wrong will go wrong. Quite often, it goes wrong with very old elevators. What happens? The elevator breaks down at six o'clock on a Friday. Somebody gets stuck in the elevator on a Sunday morning. The elevator is out of service for a week while we wait for the parts to come from Germany. When we have these situations, we wonder, what are we doing?

### Following the Action

Let's evaluate how we should move forward. We have a board on the

East Side and a board on the West Side with the same situation. The board on the east said, "I understand we fix the elevator every so often. However, we're not prepared to undertake a major elevator modernization." The board on the west said, "We're tired of this. We understand that especially now for 2020, there's a new software that has to be implemented, and I believe it has to do with door and gate monitoring, with the understanding that implementing that now won't serve or you can't reuse it in a modernization in the future." It decided to undertake the modernization project now.



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## Doing It Right

Which way should a board go? Should it continue to repair this big equipment or replace it? When you have a situation where you know in the near future you need to do some upgrades and it is costly, it might just be better to plan for a project, inform your unit-owners in a timely fashion, and anticipate that the repairs/refurbishment will last for the next 20 or 30 years, and you will have a modern piece of equipment at your disposal. Residents will be happy, no further interruptions, no inconveniences, less expense toward repair, and the comfort of knowing that when you step into the elevator you will go where you need to go. ■

*Boards have a great responsibility for the physical and fiscal fitness of their buildings.*

**GEORGIA LOMBARDO-BARTON**  
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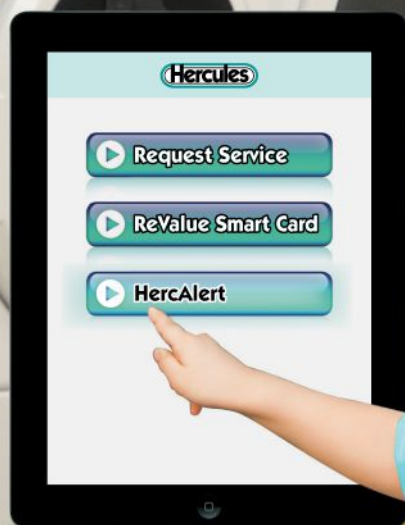
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## THE INSIDE TRACK

# Get Tomorrow's Technology Today

### Setting the Scene

We manage a 12-unit boutique residential building and recently had an experience where the property needed to change its intercom system. The building itself is about 100 years old, and the wiring is maybe 50 years old.

### Following the Action

We looked at lots of different technologies before deciding to put in a wireless system, where the intercom of the building connects to the internet, and then residents could receive the feed on their phones. We achieved a much better result for the building, and it also enhanced our security. There was a ground-floor retail space

*Whatever is cutting-edge today will be the norm in five years.*

**NADAV WEG**

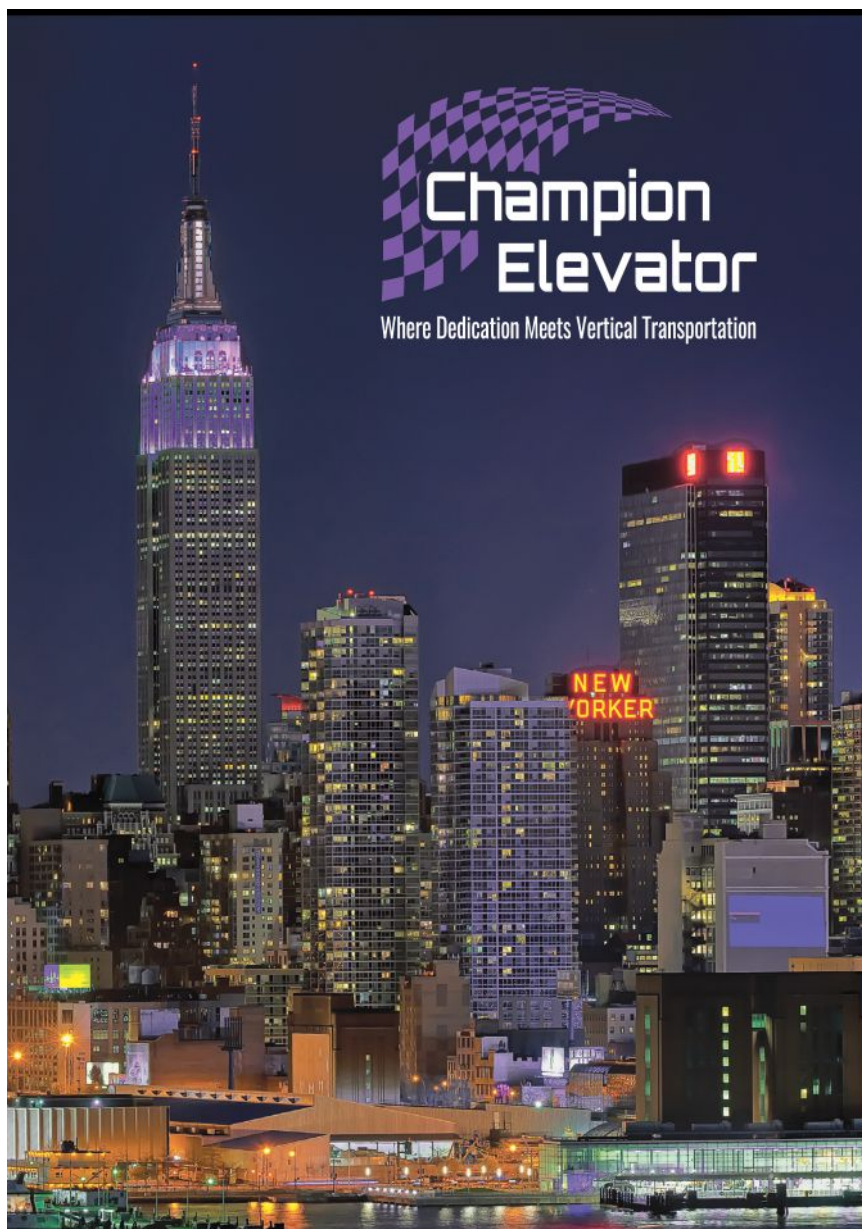
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rented to a restaurant, and the restaurant had been broken into a couple of times. In each of the break-ins, the restaurant had surveillance footage and an alarm, but the criminal was never caught.

Connecting the surveillance cameras to the internet allows someone in our office to monitor the property in real time, and that provides a much higher level of security. Residents love it because they can let in guests and receive packages when they're not home. We love it because we know when some of the service providers for the building – the sprinkler maintenance company, the elevator company, pest control – are coming, and we can control their access.

### Doing It Right

When we talk to boards about investing in capital improvements and new technology, we try to stay on top of the latest innovations, and we try to get buildings to adopt the latest technology. The reason for that is simple: whatever is cutting-edge today will be the norm in five years. This wireless intercom technology is a great example of that. It exists today in limited use, but in five years, you'll see it everywhere. ■



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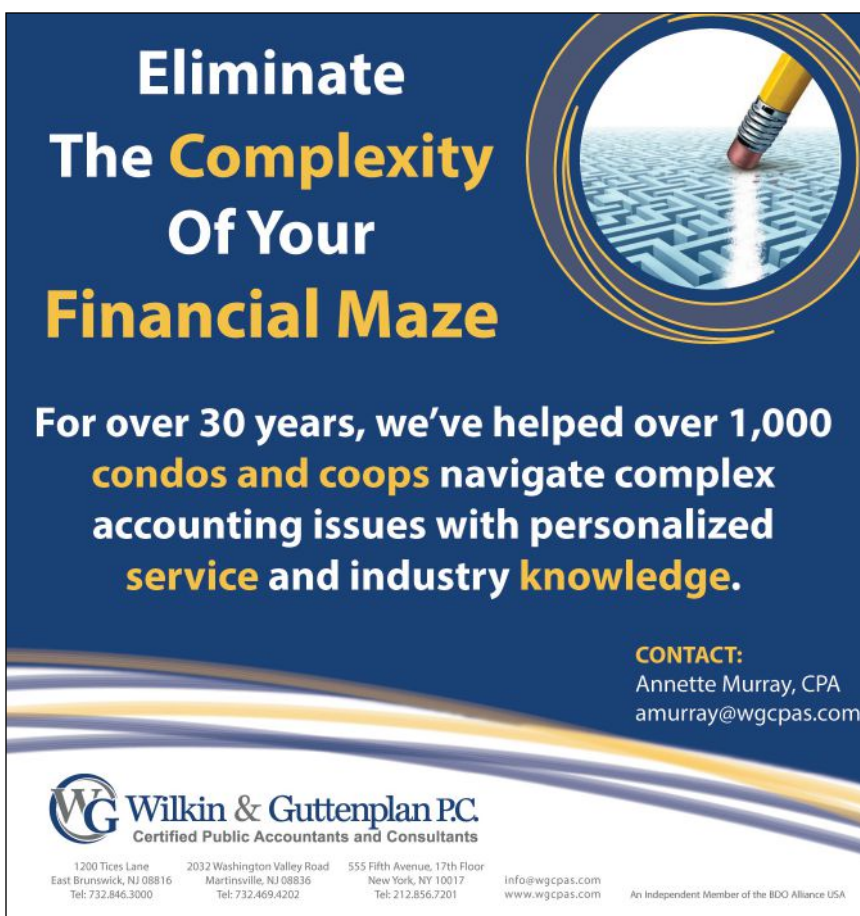
# Restructure to Solve Major Problems

### Setting the Stage

One of our boards was facing a conundrum. Like many others in Manhattan, it was facing rising real estate taxes and had a ground floor retail space which was causing the real estate taxes to skyrocket. This small co-op is located in a less-than-prime neighborhood, with less-than-spectacular retail space. Once the retail lease expired, the cooperative would be left with a space that generated no income. But it still had to pay real estate taxes on that space.

### Following the Action

We spoke to the board and identified two goals. First, how do we help

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the board members manage their real estate costs that increase from year-to-year? Second, how do we help them manage their retail situation? We suggested that they consider becoming a condop, which is a legal concept that would separate the property into two sections: one containing the residential units and the co-op shareholders; and the second containing a commercial condo unit for the ground-floor commercial/retail space.

Going condop would allow the board to do a number of things. It could more easily manage the real estate taxes and operating costs because a large majority of the real estate taxes were associated with the retail space, and these would now be segregated out. It could also sell that unit to an operator and with that money, replenish the building's funds. In addition, it would enable the co-op to pay off its mortgage.

### Doing It Right

In the end, the co-op agreed to do the condop conversion. Our brokerage division helped them identify a purchaser of the retail unit. As a result, we were able to help the board reduce its real estate taxes, pay off the mortgage, and replenish the reserves. ■

*We suggested that they become a condop, which would make it easier to separate retail and residential costs.*

**LORI BUCHBINDER**  
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## THE INSIDE TRACK

# Don't Be Afraid to Press "Reset"

### Setting the Stage

Sometimes, capital-improvement projects will stall, and it's important for boards to realize that it is OK to hit the reset button after they've exhausted all the possibilities.

A couple of years ago, we took over a building from another management company that was in the midst of a fairly complicated Local Law 11 project, which had dozens of change orders. When taking over a building, there are always challenges from the transition – getting to know the boards, getting to know the staff, and so forth. But doing that in the midst of a major capital-improvement

project adds a different layer of complexity. We were tasked with jumping right in the middle of it, trying to figure out what was going on.

### Following the Action

We had to meet everyone involved to try and figure out exactly where we were and how we were going to move forward. Getting all those players to trust us to do the right thing was a difficult task. We met with each individual entity. We met with the contractor. We met with the engineer. We met with the board separately to understand their frustrations and ways to move forward to complete the project and try to tie all those things together to make a seamless transition.

Completing the project as soon as possible was important because the board and residents had already endured years of a complications, with cost overruns. Strategizing with all

three entities was time-consuming, but we were able to wrap our heads around the project, get all parties to essentially forget about the problems of the past and look forward to completing the project together in the future.

We developed a plan that everybody could live with. We determined that we were going to have weekly and monthly check-ins. We established short-term timelines for goals versus long-term timelines. We couldn't just say, "Let's finish this." We wanted to set smaller milestones. Hitting that reset button allowed all parties to get together and come up with a plan to finish the project. It was finally completed over the next six months.

### Doing It Right

It's important for you, as a board member, to realize when something is not working. When you've exhausted all possibilities and things are not working, be confident that making a change in one of those entities is the right decision. ■



*It's important for boards to know that it's OK to hit the reset button when a capital project gets bogged down.*

**JACOB SIROTKIN**

VICE PRESIDENT,  
CENTURY MANAGEMENT  
SERVICES

## THE INSIDE TRACK

# Tailor House Rules to Your Building

### Setting the Stage

One of the first things we do after a transition to a new building is to review and generally update the house rules of that property. When you look at those rules, most of the time they're taken from a template that's been around for decades and is irrelevant to the building and probably outdated. We've put together a template, and we advise our clients to take that, make it relevant to their building, and regularly update it.

### Following the Action

When you put the rules in place, everybody needs to play by those same rules – board member, shareholder, unit-owner. Some boards say they don't want to get heavy-handed. But if you don't enforce those rules equally, you're going to run into a reactive versus a proactive situation.

For example, we've had experiences where a board that did not want to be

heavy-handed now has a shareholder who houses five dogs, three cats, and two birds. The board has started eviction proceedings. It is saying, "Get rid of your animals." But that isn't going to happen at this point.

It's the same thing with sublets. The board says, "We only have two people who sublet in our entire building. It's never been an issue before. We don't have to make it an issue now." Fast-forward five years. Fifty percent of that building is subletting, and now the board wants to put in restrictions. They're being reactive. They want to put in those restrictions because they didn't take the advice to put them in previously. Now you have shareholders who say, "I'm grandfathered in. It's too late. I already have my lease. You didn't have the rule before."

Ignoring the house rules can create a situation where a bank says, "We're not going to give you a loan because there are too many sublets. The owner-occupancy rate of that building is too low." It's going to be a year or two before this is rectified.

### Doing It Right

Our advice is to be proactive, put updated house rules in place, and tailor them to your building. Make sure you look forward. ■

*Your building's  
house rules may  
come from an  
outdated template.*

**MARK ELMAN**

SENIOR VICE PRESIDENT,  
CITADEL PROPERTY  
MANAGEMENT



## THE INSIDE TRACK

# Use Common Sense to Question Reports

### Setting the Stage

When we first started our management company, we took over a Lower East Side co-op that had an engineer who had done a Local Law 11 report that I questioned. He was saying that the report showed that there were a lot of things that needed to be fixed. When I did my own visual inspection, it just didn't add up to me. I'm not an engineer, but the excessive amount of work that he reported wasn't visible to me. After reviewing the report, I saw that most of it was done through binoculars. I questioned a lot of it. I asked the board if they would be willing to change engineering companies. We did.

That new engineer bore me out. "This is wrong," he said. "Half of this stuff doesn't need to be done. Why is he putting this down?" I replied, "Well, he's been fired. Let's get a new report." He hadn't even done drawings for the property yet. When the new engineer came in, he did a drop and a boom lift and noticed more things on the previous engineer's report that were incorrect.

### Following the Action

It's very important that a board reviews these reports. Be wary if you see that they're looking at your façade with binoculars only. Don't allow it. Sometimes you need to spend a little bit more money to determine that you don't need to do work that they're telling you to do.


Because of this, the original engineer was fired – and he filed a report saying that the building was "unsafe." It's taken us close to a year

to get our status changed. Our new engineer explained that the building is safe and doesn't require all the repairs that the previous engineer said. The Department of Buildings finally agreed and filed it as "safe, in need of repair."

### Doing It Right

I think that the first engineer listed us as unsafe as retaliation, probably because we're a new management company. I don't know why he did it, but he did. It's very disturbing that people do things like that. The lesson

here for boards is that you should review your reports. Don't leave it up to your management company or take your engineer's word for what he believes is going on in the building. Go line-by-line. Don't allow binocular inspections. You have to do Local Law 11 repairs if your building has more than six floors. There's no way that you can see all of this with just binoculars. Spend the extra money. Do a lift or do a drop. And have somebody do it on eye level, because in the long run you have to pay for it, one way or another. ■



*Don't rubberstamp  
a report – review it.*

**JACKELINE MONZON**

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## THE INSIDE TRACK

# Educate Shareholders on How Elections Work

### Setting the Stage

Boards need to know that there are ways to avoid adverse annual meetings. Shareholders may feel disenfranchised at annual meetings when they're unable to have their names placed on a ballot. Or they simply may not understand the process from beginning to end.

We have taken over buildings, and we have discovered that sometimes the boards themselves may, in fact, be disenfranchising individuals. We figured out that a simple way to avoid

an adversarial annual meeting is to inform – and in some cases, educate – the shareholders about the hows and whys of this important gathering.

### Following the Action

To that end, we put together an annual meeting handbook. We distributed it to all of the shareholders two to three months before we all assembled and discussed how the meeting and election process should run. The book describes what the agenda and a typical proxy form look like, the process of delivering a proxy, and an explanation of how the system works.

We've also been proactive in requesting that, if any shareholder is interested in serving, he or she should submit his or her name, and perhaps a

résumé some time before the meeting. That would allow us to actually place their name on the ballot and inform other shareholders of their interest.

### Doing It Right

We've had good results so far, minimizing any controversial annual meetings where people are yelling about why they weren't allowed on the ballots. We've eliminated the strenuous process of having nominations made from the floor that result in handwritten ballots and, finally, we've minimized confusion. We also created more transparency for shareholders who are not overly involved in the building. This handbook eliminates any of the gossip or rumors that occur throughout the year, and it informs the shareholders about the process. ■



*We must show everyone why they need to attend.*

**CODY MASINO**

VICE PRESIDENT,  
DAVID ASSOCIATES

## THE INSIDE TRACK

# Tame the Communication Deluge

### Setting the Stage

One of the problems I have as a property manager is the excess of emails, telephone calls, and text messages I receive from each board. A lot of times, we'll have an insane amount of information, and you have to bounce between devices. A lot of the things that you want to speak about, the important topics, could get lost in the shuffle, because you're everywhere but you're nowhere at the same time.

### Following the Action

That brings us to Slack. It's a free app available from slack.com or various mobile app stores, that you can use on your computer, smartphone, or tablet. Basically, you set up a "team" and you add all of the property managers/board members on different channels in the application. You can also set up a channel for heating, or for proposals, for board agendas, or for board meetings.


From my perspective, it's one place where we can talk about all the important things in the different or

closed channels. The closed channels are actually password-protected and only invited guests can use them (that could be an executive committee). It's also a tool for direct messaging. You can have one board member talking to another in a private conversation – or you can loop in others into a group setting.

As a manager, I can have channels dedicated to specific buildings. I could be talking to one property for 10 minutes but could also be bouncing between four different buildings in four different channels. It's a great way to keep track of the different projects and buildings that we're working on.

### Doing It Right

You can do everything with Slack. You can upload and download documents. You can share calendar invites. You can even initiate a telephone call through the app, and it will message you real-time by audio. There are a lot of different uses, and hopefully, it will cut down on the deluge of emails, phone calls, and texts. ■



*The free app  
Slack is a great  
way to streamline  
communications.*

**MARK LEVINE**  
PRINCIPAL, EBMG

## THE INSIDE TRACK

# Know Your Long-Term Financing Needs

### Setting the Scene

Boards come in all sizes, shapes, and fiscal leanings. But all need to decide whether to refinance their mortgage and (a) take a significant sum of money from the proceeds for future capital work, or (b) just take what they need in the short-term.

### Following the Action

One of the factors in the decision is how much they have left on their current mortgage and whether they have an interest-only mortgage that they are going to be refinancing, or they've been amortizing the mortgage over the last 8, 9, or almost 10 years. Most loans are 10 years, and they're balloon mortgages. I've found that boards that have chosen to do long-term, self-liquidating mortgages always ended up refinancing those mortgages early because they needed more funds for future capital improvements.


Most of the 10-year loans carry some sort of prepayment penalty.

You should consider that, while also knowing what your financial long- and short-term needs might be. The way to do that is to go out and get some estimates on long-term capital improvements. Although it can't be predicted precisely, if you can go out and get actual bids and add a little bit for inflation each year, you'll have a rough idea of what you'll need when they come due.

There are always surprises that can come up. The choices the board made will affect the long-term financial status of the reserve fund. By taking a large sum initially, they know they have the money in reserve. They can get interest on that money until they need to use it. If they choose to budget the savings, they have to be very disciplined. If there are significant savings, you could put so much a year into the budget as a line item, and then put that money away each month.

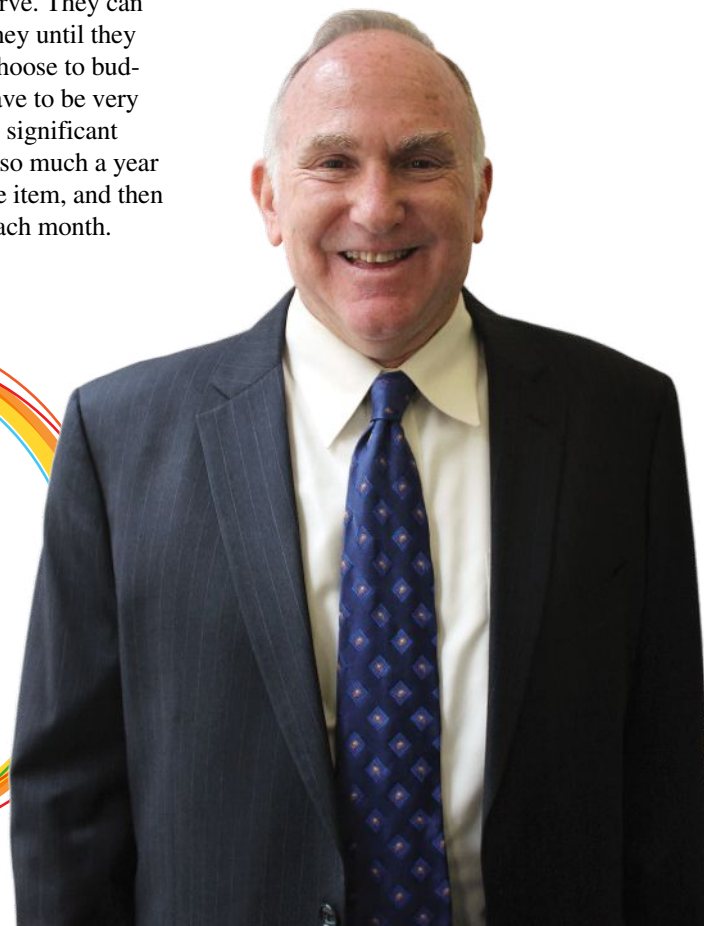
### Doing It Right

Planning is key. We set up a mortgage reduction fund based on the differential in rates that may happen between now and 10 years from now. If they amortize the loan, they're not stuck with looking to refinance the whole balance plus the closing costs. You should do your homework, know your financial needs, and stay on top of the situation. If used properly, refinancing can be the greatest tool for the long-term financial health of your property. ■



*Go out and get  
actual bids on  
long-term capital  
improvements.*

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## THE INSIDE TRACK

# Speed Up the Accounts Payable Process

### Setting the Scene

There was a TV show called *The Flintstones* in the 1960s. Set in pre-historic times, the animated series followed the adventures of Fred Flintstone, a Stone Age man. Every day, Fred would go to his job at the quarry where he would chisel away at rocks. When I think about accounts payable departments in many management companies, I am reminded of Fred. They're chiseling away every day – and although they are only dealing with paper, they might as well be working in a rock quarry. It takes that long.

Think about it: an order is placed for goods and services. The order is delivered. An invoice arrives. At

the management office, the papers are assembled for approval and then logged in. After approval, the invoice goes back to accounts payable for a paper check and a signature. The management office mails it to the contractor. If board members have questions about invoices, they may call or email the manager, or may send them back for review. Now, all of a sudden, a two- to three-week process takes a month.

### Following the Action

To eliminate these delays, Fairfield is implementing a new program with AvidXchange. All invoices will be mailed to and all the backup

documents will be logged in with AvidXchange. AX will then expedite payment by emailing the manager to review the documents online. If the property manager approves, it goes to the next stage. Board members or management signatories then receive an email saying that there are invoices to be approved. Questions and responses are submitted online. AvidXchange will mail a check to the vendor or contractor after the final approval. If the vendor or contractor would like ACH direct deposit of the payment, they can sign on with AvidXchange, and for a small fee, when the final approval is clicked, the money will be electronically

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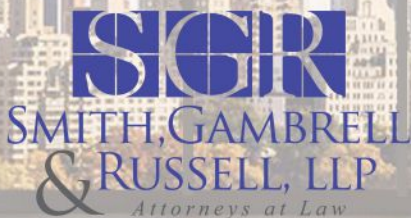
transmitted to the bank account of the vendor or contractor. There are board members who may not be comfortable with this process. If that's the case, when the property manager clicks approval, a paper check will be generated, and will then be delivered with backup to the board for signature.

### Doing It Right

This innovation streamlines the front end of the process. The back end can also be expedited using AvidXchange, or the old-fashioned way by delivering paper checks to the properties. Boards need to be comfortable with the process one way or the other. The post office can take up to five days to deliver a check a short distance. That lag is eliminated if there is a direct deposit into the vendor or contractor's bank account. Many contractors and vendors choose this option that is similar to accepting a credit card payment. ■

*Although they are only dealing with paper, they might as well be working in a rock quarry.*

**ALVIN WASSERMAN**  
DIRECTOR OF ASSET  
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## THE INSIDE TRACK

# Speak Frankly During the Board Interview

### Setting the Scene

When we are being interviewed by a board, we are also “interviewing” the board. An example of this is when we were being interviewed by a Brooklyn cooperative that had more than 400 violations. This high number worried us because it meant trouble in so many areas. For example, if they were not removed, the co-op’s mortgage refinancing agreement would automatically raise the mortgage’s interest rate from 3.75 to 12.5 percent, a dramatic and unsustainable increase.



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### Following the Action

During our interview, we spoke frankly. We told the board that, in order for us to manage their building, the board needed to trust our advice. The members then gave us a commitment that they would let us work to help them cure those violations and ensure that others did not occur in the future.

As soon as we were hired, one of our account executives got heavily involved in the problem and worked with the city to remove violations. We also turned to an amnesty program run by the New York City Department of Finance, which ultimately saved the co-op thousands of dollars in penalties and interest.

In addition, we ended up working with some of the residents. There were HPD violations on two of the sponsor's apartments, for instance. The account executive made contact with tenants, and he brought in the city's Department of Social Services to help with one of them, who was a hoarder.

### Doing It Right

The lesson is that when a board interviews us, we're also assessing the board and the property. If its members are not willing to run their building professionally, it will create a greater hardship. And they'll have trouble getting dedicated professional managers to help guide their property. ■

*The board  
needed to trust  
our advice.*

**ROBERT FERRARA**  
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## THE INSIDE TRACK

# Reshape Building Culture Carefully

### Setting the Scene

We were retained by a co-op board to solve ongoing staff performance issues at the property. We informed the board that to ensure a successful outcome, we would have to undertake a thorough process to get a full grasp of what was going on behind the scenes. The first thing we did was conduct a thorough analysis of each staff member, their job description and work schedule. We met with the staff as a group, as well as individually, and conducted 'time and motion' studies to see, for example, how long it takes a porter to vacuum the

hallways. From that point, we began to pinpoint issues and weak spots that were causing inefficiencies in the building's workflow.

### Following the Action

Our diagnosis revealed that the staff was not receiving proper supervision or support. The chain of command was broken, and the resident manager and another staff member were found to be the weak links. We provided the board with our recommendations, which included modifying job descriptions, adjusting work schedules, implementing a formal staff training program, introducing a staff recognition plan, and initiating progressive disciplinary procedures for the identified individuals.

It's never too late to reshape the culture of a building. Recognizing that negative behavior is contagious, the board had to face the ramifications of replacing a long-term,

generally well-liked resident manager – a decision which, initially, was not popular with many shareholders.

### Doing It Right

Within 60 to 90 days, residents were vocal about noticing significant improvements in overall building operations and staff morale, which directly impacted their quality of life. Brokers also acknowledged improvements to the building's atmosphere and reputation. The key to solving this issue was going through a step-by-step process, regularly communicating with the board, and managing their expectations concerning why staff changes may be necessary. Common concerns included "What's going to happen when you make the switch?" and "What should be expected in terms of turnaround time?" Experience in facilitating such significant and necessary changes has taught us that boards are more amenable to change if you include them throughout the process. ■



*The key is going through a step-by-step process, regularly communicating with the board and managing their expectations.*

**DAN WURTZEL**

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### THE INSIDE TRACK

## Craft a Long- Term Plan

### Setting the Scene

I manage a 70-year old cooperative in New Rochelle. It was facing a major facade project in 2013 that was going to diminish its reserve fund severely. On top of that, the co-op had a large list of projects looming on the horizon. The property is unusual because it was originally built as a co-op and didn't have an underlying mortgage. The board discussed taking out a mortgage, but before they did that, the directors wanted to plan ahead so they could use the money to tackle the full list of projects.



### Following the Action

We worked closely with the board and with such professionals as engineers and contractors, and we put together a budget plan for all the projects that we needed to do, which included natural gas conversion, electrical upgrades, sidewalk replacement, and lobby and hallway renovations.

After the plan was approved, the co-op took out a mortgage to tackle the work strategically over the next few years. The board also bought the ground lease on the building, and even had money left for the reserve fund. Our successful strategy was to reach each project before it became a major issue. The shareholders are very happy; they've seen the improvements at the building.

### Doing It Right

The lesson for boards and managers is to put together a long-term plan and look at all available options. It relieves a lot of stress, saves you time, and removes a lot of burden from the shareholders. In the end, you're able to get projects done proactively instead of reactively, which saves you time, money, and countless headaches. ■

*Use professionals to make a list of needs – and their costs – and then borrow accordingly.*

#### CHRIS CHIAPPA

DIRECTOR OF  
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## THE INSIDE TRACK

# Prepare for Project Glitches

### Setting the Scene

One of the most important things in undertaking capital projects is to plan as much as possible – and also to do it correctly. When your project hits road bumps – as it invariably will – it's important to be able to adjust.

### Following the Action

Two properties we manage were doing Local 11 work. The board in each case had planned the expenditure for future years. One board allowed the shareholders to pay their assessment over a period of time, giving them flexibility in their payment plans. In the other, the board simply split the cost between payment from the reserve fund and payment via an assessment, which was passed along to the shareholders.

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## Doing It Right

When the projects did finally kick off, it was important for us to keep the residents informed about what was going on: what was happening, any slowdowns, and the end result. The board and management had to communicate with the residents and be sure we had the proper information going out to the shareholders to let them know exactly what was happening with the projects. In planning, it is important to know what sort of finances you need. In some cases, however, you can't plan for everything, and you have to be able to move along with the occasional speed bumps these projects can give you. ■



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## THE INSIDE TRACK

# Turn a Staff Problem Into an Opportunity

### Setting the Scene

I took over management of a very high-end luxury co-op on West End Avenue several years ago. At the start of my engagement, the resident manager resigned his position. Shortly thereafter, the handyman resigned. At that point, the board was very concerned about losing two key employees just as a new management company was starting. I told them not to panic, to relax and take a deep breath. Let's figure a way that we can take this problem and turn it into an opportunity.

### Following the Action

I looked at the building's operations and came up with a plan that would replace the resident manager with a working superintendent who could roll up his sleeves and actually handle all the functions of the handyman. We could do a reduction of services with the 32BJ union, eliminating the handyman position. At first, the board was a little skeptical. I assured them that if done in an orderly and smart way, we could actually get the building to operate more efficiently.

We went through the interview process and found a terrific top-notch working superintendent who turned out to be a leader. He was able to handle all of the functions of the handyman in addition to the requirements of the

superintendent. He also trained the porters to assist in small handyman tasks, which the contract permits, so long as no more than 19 hours per week is dedicated to such work.

### Doing It Right

It was a win-win situation. Not only were we able to save money – the cost of the handyman is probably \$95,000 – we actually got more work done in the building and even eliminated the outside painting contractor and vendor. My takeaway: never panic. When there's a problem, turn it into an opportunity. Explain to the board that change is hard but, also, that change can be very positive. If done properly and thoughtfully, you can actually improve the building's operations. ■



*Change is hard, but  
it can improve a  
building's operations.*

**MARK HOFFMAN**  
PRINCIPAL, HOFFMAN  
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## THE INSIDE TRACK

# Switch Direction When Things Stall

### Setting the Stage

When it comes to certain situations in this business, property managers bring to the table years of experience, intuition, and gut feeling. Co-op and condo boards should take advantage of that.

### Following the Action

I had a situation where one of my co-ops hired an attorney to get them a major tax refund, and this attorney just wasn't getting it done. I pushed and I pushed. We went down every avenue we could possibly explore. After questioning this attorney many times, I didn't like the answers that I was getting. In my experience, getting this refund shouldn't have been



so difficult. My gut feeling told me that something wasn't right – he wasn't approaching it correctly – and my intuition told me he had to go. Following a discussion with the board, we fired him. And then the board hired a new attorney who I felt had a better grasp on the tax situation.

### Doing It Right

Within six months, the building had a windfall of millions of dollars in refunds, and roughly \$20 million for the next 20 years, which basically saved this co-op. The lessons: sometimes, the board needs to do a pivot and switch what they're doing and who they're using. And they should utilize the experience of their manager. ■

*My gut feeling told me that something wasn't right, and my intuition told me he had to go.*

**JOSH KOPPEL**  
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## THE INSIDE TRACK

# Communicate During Emergencies – the Faster, the Better

### Setting the Scene

All boards experience emergency situations, such as Hurricane Sandy or possibly a sudden building-wide gas shutdown. During those times, communication is paramount, and fast communication is even better.

### Following the Action

To deal with communications issues, we use One Call Now. Costing five dollars a resident per year, this service allows me to place robocalls to shareholders and residents and will

also send an email and/or a text. It provides me with a report of the total number of calls made, broken down into received and attempted calls. I get this data almost instantaneously, which helps me to see if people aren't getting the communication. In those cases, I may need to send out extra notices to be sure that everyone is getting the proper information.

I used One Call Now during Hurricane Sandy – before, during, and after the storm. I was able to

contact the residents and evacuate the property as the storm was hitting. Shortly thereafter, I used the system to advise the shareholders on the progress of removing the water, repairing the damage, and when they could return to their units.

### Doing It Right

If people know what's happening, and what's going to happen, they're comfortable and satisfied. Bottom line: quick and efficient communication is essential. ■

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## THE INSIDE TRACK

# Beware the Impact of a Land Lease

### Setting the Scene

About a year ago, the loan for one of our large properties – a 160-unit cooperative in Queens that was formed in 1956, under Section 213 of the Federal Housing Law – was coming due with the National Cooperative Bank (NCB). It was a 10-year note for \$2.5 million, with a 30-year amortization. The interesting thing about this property is that there's a land lease. There's a landowner who has leased the property back to the cooperative since 1956. The lease expires in 2055 or 2056.

We needed to refinance the note, but we ran into a buzz saw: resistance from the banks in giving the standard cooperative loan – a 5- or 10-year note with a 30- or 40-year amortization, so that the co-op virtually pays no principal. Lenders, however, were not willing to get involved in this co-op because of the land lease issue.

### Following the Action

We vainly tried to buy back the lease (since 1956, we've paid about \$2,000 each year in rent). After that, NCB, the primary lien-holder, proposed doing a 25-year, fully amortized loan. Accepting the offer meant that we needed to anticipate all of the necessary capital work over the next 25 years because we probably would not be able to borrow additional funds. All of that principal had to be repaid over the term of the loan.

We sat down with accountants and engineers and contemplated what the cost would be, and we ended up borrowing an additional \$2.5 million from NCB for a total of \$5 million. Since Local Law 11 work runs in a five-year cycle, we had to plan for the modernization of the elevators and a host of other issues. We would have to increase maintenance to cover the increased principal payments.

### Doing It Right

It was very difficult dealing with the situation. Getting everybody on board, and then ultimately selling it to the shareholders, was an absolute necessity. These are people who are not used to this type of thing. The lesson: if you have a land lease situation, you need to prepare as soon as you can. It's not like a regular refinancing, where you're only going out 5 or 10 years. You're looking out 25 years. There are a lot of Section 213 co-ops out there, and they're going to be facing this issue. ■

*Getting everybody on board, and then ultimately selling the deal to the shareholders, was an absolute necessity.*

**STUART HALPER**

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## THE INSIDE TRACK

# Create a Successful Management Partnership

### Setting the Scene

I have been hired by boards that didn't know what they wanted but were vaguely dissatisfied with their current management. They couldn't put their fingers on it, but they knew that something had to change. They hired me because I am knowledgeable and reasonably personable. That's OK as far as it goes, but it also helps explain why they have changed managers so frequently.

### Following the Action

Looking for new management can be very time-consuming and difficult. Many boards are reluctant to put the time and effort into investigation. Investigating a management company is critical.

When a board begins its search, the most important thing is to know what you need. What are the issues you will be facing? For instance, financial challenges (do we have to refinance?), capital projects (do we have Local Law 11 work to do?), and residency issues (do we have too many subtleties?). You should make a list of such topics in your co-op and see what kind of solutions potential managers offer.

Most management companies have the basic ability to provide a statement, to bill, to collect, and to deal with your shareholders or unit-owners. The question is what does the corporation or the association need from the manager? By having a checklist of your property's needs, you can see how knowledgeable the manager is – and you may also get a wide selection of possible solutions if you're interviewing more than one management firm. It will help you

if you have a specific goal, and you look to have the management company fulfill that goal.

There are a lot of companies that are innovative. There are companies that do things better than others. You should go out there and see if your present management company is actually meeting your needs.

### Doing It Right

The driving force should never be the management fee. Depending on what you're paying – you may be paying market, you may be paying above or below market – you should ask yourself: is the management company helping or hurting the property? Hiring new management isn't an easy thing to do, but if you clearly understand why you are dissatisfied with your current situation, you'll do a better job of making sure you don't end up in the same place only with new partners. You should clearly set your goals, know what you're looking for, and choose a company that can meet those goals. The chances are better that you'll have a successful partnership. ■



*Is the current  
management  
company helping or  
hurting the property?*

**PAUL T. BRENSILBER**  
PRESIDENT, JORDAN COOPER

## THE INSIDE TRACK

# Get the Facts Before You Act

### Setting the Stage

This Forest Hills co-op board was led by one director who was determined to pay off the underlying mortgage, which would come due in three years. Money was tight and, like many boards, this one had refused to raise maintenance as expenses increased. There was little money for upkeep, and the property had started looking its age.

### Following the Action

The board was soon faced with a citation by the city to immediately perform facade work, costing over \$200,000. When I had my regular meeting with the property manager on this building, he told me that the board wanted to assess the shareholders for the Local Law work over a 12-month period. I told him that this was too much for the shareholders to handle and instead that he should recommend refinancing. He told me that one longtime board member had convinced the rest of the board that the prepayment penalty was too high and that they should wait the three years to be mortgage-free.

At the annual meeting it was chaos. Shareholders complained about the lobby, the elevator, and the hallways, all of which needed repairs. Then the shareholders were told about the required work, and the board voted on an eight-month assessment, with an average monthly payment of \$410. That led to more yelling and questions.

As the meeting concluded, the board started to leave. I asked them to wait, sat them down, and said there was no need to put such a burden on the residents by assessing them for a short period of time for a capital improvement that would last over 30 years. I requested their permission

to explore refinancing options. One board member, with the loudest voice, stood up and said it was a waste of time because the prepayment penalty was too much. I said that it was worth researching, because their current mortgage had a rate of 7.85 percent, with a small balance of \$350,000 and I was seeing mortgage rates under 4 percent. So, whatever the prepayment was, it would be repaid quickly with the savings on the lower monthly payment of principal and interest. This raised some eyebrows around the table, and these individuals said I should look into it.

I came back with a spreadsheet of bank offers all in the range of 3.50 percent interest rate and a prepayment penalty that was only \$35,000. They settled on a new mortgage with NCB for a 10-year term on a 20-year amortization. NCB was attractive to them, because of the mortgage tax savings on the large proceeds from the new mortgage of \$1.9 million.

The co-op ended up closing the loan at 3.55 percent, and after closing costs, had proceeds of \$1.5 million and was saving \$21,000 a year in debt service. The board cancelled the assessment, completed the city's required work, made the needed repairs, and still had a healthy reserve account, without a burden to the current shareholders.

### Doing It Right

The lessons? Do not let one person feed you information unless he or she has the facts right. Get involved and informed about your building. This isn't a single-family home where you want to have a mortgage-burning party. Look to use the value of your property to fund capital improvements. Listen to the complaints; they will tell you how shareholders feel on the condition of building. Study your budget carefully, reviewing line-by-line items, and make realistic assumptions that will maintain the quality of the building while protecting your investment. ■

*Use the value of  
your property  
to fund capital  
improvements.*

**PAUL ATTINELLO**  
CHIEF FINANCIAL OFFICER,  
KALED MANAGEMENT



## THE INSIDE TRACK

# Explore Self-Funding for Capital Projects

### Setting the Stage

Many associations face large projects but often don't know how to fund them. One option is a loan. Another option is self-funding. One association that we manage took the second choice.

This association has 200 units and an annual budget of \$2.4 million. The capital project they were looking at was going to cost \$1 million, and the work needed to be done immediately. It was time-sensitive, and it was also weather-dependent. They didn't have the option to wait. They only had \$800,000 to fund the project, and they didn't want to deplete their reserves beyond a point that was not comfortable for them, their accountant, or their managing agent.

What were they to do? Self-funding: the board went out to the community and asked people if they'd be willing to prepay 10 months of maintenance to raise the funds for the capital project immediately.

### Following the Action

In such situations, there should usually be a "carrot" to attract the residents. There was. For those unit-owners who prepaid the 10 months, they got an additional month free. The board looked at an alternative option, as well: take out a loan. But there is a cost to obtaining capital – bank fees and an interest rate. The board treasurer determined, along with the accountant, that by prepaying 10 months of maintenance, it would equal out to the 11th month of maintenance being free. This was enough of an incentive for 10 percent of the residents, the number of unit-owners needed to make the plan viable. To find out if this is an option for your building, I recommend talking to your treasurer, accountant, and manager.

### Doing It Right

It's not an option for every building, but you should consider it. When cash is needed, it's sometimes great to think outside the box. If you need to move swiftly, don't look to the bank for a loan or a line of credit. Look to your community. ■

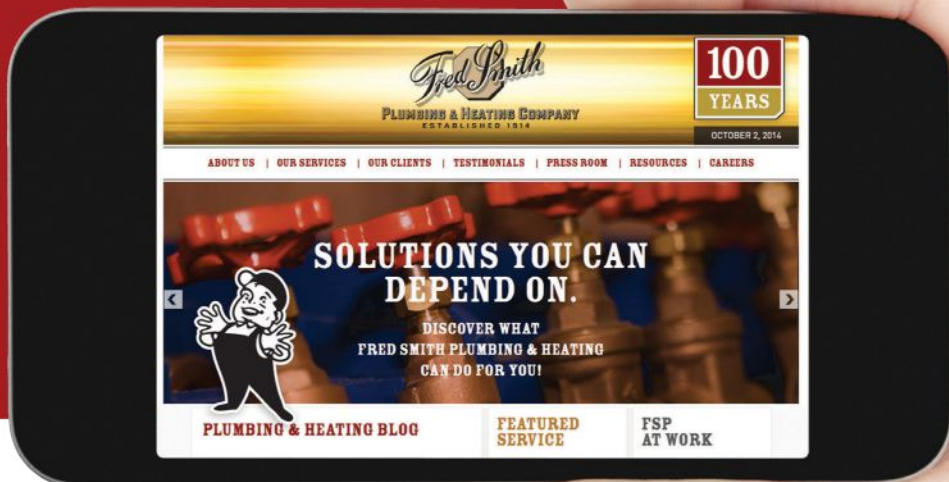
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## THE INSIDE TRACK

# Get Access by Granting Access

### Setting the Scene

Currently, we're trying to get the eighth cycle Local Law 11 work accomplished at a property we manage in Greenwich Village. I found out when we were starting the project from the contractor that they're going to need access to the building next door. But we have not been given access.

### Following the Action

When your contractor is selected and you're ready to go to contract, you should try to get a sense of the impact your project is going to have on the adjoining buildings in the area. It's very important to know this at least six months before the work is to begin.

First, you've got to satisfy the adjoining property's insurance requirements. Some buildings might request a license agreement in which they license the space to you for the short period of time you are utilizing their space. Some properties might require that you pay their legal fees in drawing up the agreement. They might require you to pay for their engineering fees to review the drawings that you have for your project. They might even require that your own engineers spend time meeting with their engineer and their property manager to try to identify potential problems.

Also, they want very detailed schedules – how long will you be there? They want assurances. They want deposits of money. They want non-refundable payments from the building for the inconvenience of utilizing the property.

### Doing It Right

As a professional in the industry, I can assure you that it's important to establish good relations with buildings next to you. At some point in time, the shoe will be on the other foot and they may want to access your property. Who are the supers and the property management companies in the neighboring buildings? You should have an open dialogue. Don't wait until the last minute because you never know what people are going to spring on you. Even with the best of intentions, there might be delays that are unavoidable. Know what you're dealing with. ■

*There are a lot of politics in being a good neighbor.*

**ELLEN KORNFELD**

VICE PRESIDENT,  
THE LOVETT GROUP



## THE INSIDE TRACK

# Let Residents Know How Hard You Work

### Setting the Scene

At a co-op's annual meeting about three years ago, there seemed to be a lot of apathy. We didn't have a quorum, and the discussion turned into the shareholders telling the board and the managing agent that they felt that there was not enough communication and transparency. One of the underlying issues at this master-metered building was high electric bills, and shareholders asked the board to focus on this issue and communicate what they were going to do about it.

### Following the Action

This co-op has electric heat and electric air conditioning. It is master-metered and has through-the-wall PTAC units, which means that people's electric bills can get very, very high. Additionally, a portion of the common areas is sub-metered and is added to each shareholder's electric bill.

Some of the people felt – and probably rightfully so – that their electric bills were much higher than their neighbors in other buildings that got regular Con Ed service.


We did many, many electrical upgrades to reduce costs. We started off by seeing what programs the New York State Energy Research and Development Authority (NYSERDA) and Con Ed offered. We brought in electrical engineers, electrical consultants, NYSERDA experts, Con Ed professionals. We went to dozens of seminars. We examined all the ways to cut electricity bills. We found out that NYSERDA had a program where, if you did outside-wall

insulation, you could reduce electricity uses substantially. You could also get a grant from NYSERDA to do that. That program saved us a great deal of electricity.

As we did all this, we were talking to shareholders about all the different variations for saving electricity: changing old appliances, their lighting, and the way they did things. We prepared and posted a grid of all the electrical charges for the last three years, and everybody could see the variations – the months when the electric charges were higher, how people were saving, and how the things that we did affected everybody. We are now two days away from having a cogen system up on the roof, which will also help with the common-area electric bills.

### Doing It Right

We saved shareholders a lot of electrical money. But if we did it without communicating, nobody would have appreciated it. Shareholders don't realize how hard a volunteer board and a managing agent work on their behalf. In this case, we did a fantastic job, but if we didn't communicate it properly, nobody would have known. ■



*Everyone did a fantastic job, but if we didn't communicate it properly, nobody would have known.*

**STEVEN GREENBAUM**  
DIRECTOR OF MANAGEMENT,  
MARK GREENBERG REAL ESTATE/  
GREENTHAL

## THE INSIDE TRACK

# Get Everyone Involved in a Lobby Makeover

### Setting the Scene

One of the most interesting, difficult, and probably divisive projects for any building, believe it or not, would be hallway decorations. We've done so many of them that sometimes I feel like I'm a decorator.

Recently, I had the opportunity to work on a very large project. I met with the board, and the members interviewed several well-known designers, hired one, and started putting the project together. They put a nice note out to the people in the building saying, "Hey, we're going to be doing the hallways over. Isn't that great?"

### Following the Action

It backfired. Many residents were upset that they were not consulted, because some of them were designers, or someone's cousin was a designer. Everybody knew a designer, and everybody had his or her own taste.

I stepped in and recommended that we have cooperation and/or contributions from everybody. So, against the designer's wishes, we had three separate displays assembled by the designer, incorporating many different aspects of how we felt the hallways should look. They were posted in the lobby. I also insisted that the designer have what we call a "suicide night." He ended up spending an evening discussing with all these shareholders, in the lobby of the building, ideas that had been proposed. We then gave them the opportunity, over several days, to place their comments in a suggestion box.

We ended up taking all the comments – there were probably about 200 – back to our office with the designer and two board members, and consolidating them. A lot of interesting items were added to the project. Many of the people had been in other people's homes, or design centers, or hotels, and they saw little things they liked, things ranging from different baseboards and different crown moldings to different trim around the doors. It was a wonderful thing to do. It added a community spirit to the building.

What I found shocking is that the designer objected to everything. He became an enemy of the project. The board decided that the designer was the biggest obstacle, and he was fired. My asset manager and my director of operations joined with me to implement the project. Through our firm's size and connections, we were able to get most of the materials substantially cheaper than the designer had quoted them originally, and the project was magnificent, under budget, and without a single complaint.

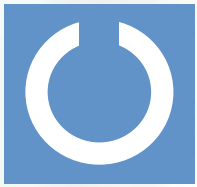
### Doing It Right

A co-op is community. If you're thinking about doing the hallway or lobby, get people involved. Everybody has an idea. That's the right way to do it. ■



*What I found shocking was that the designer objected to everything.*

**IRA MEISTER**  
PRESIDENT, MATTHEW  
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## THE INSIDE TRACK

# Boards Should Lead a Redesign

### Setting the Scene

About two years ago, the board of managers at a pre-war condominium we manage on the Upper East Side embarked on a lobby renovation. We advised the board to hire an architect or a designer to create renderings for the board's review.

When three renderings of the proposed lobby and elevator cab refurbishings were completed, the board distributed them in a survey of the unit-owners to see in which direction the majority wanted to go. Unfortunately, the response was not conclusive and some unit-owners made a number of suggestions. So now, instead of having three different options, there were five or six different ones.



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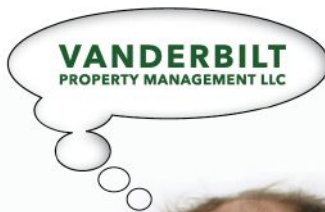
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### Following the Action

The board ultimately decided to go with the design they felt the majority of owners wanted. But halfway through the process – after the designer had brought in the furniture and the contractor had started work – there was an uproar. Many of the owners were protesting the new lobby.

The board subsequently engaged another architect and designer. Some of the purchased furniture was returned. The board chose a new design. The good news was that it was completed on budget. The bad news is that what should have been a six-month project turned into an affair lasting a year and a half.

### Doing It Right

The essential lesson here is that a lobby renovation is going to be contentious, especially if you bring all of the unit-owners to vote on the decision. Our feeling is that boards, or a predetermined special committee of the board, should develop a clear, coherent path themselves.

You cannot satisfy everyone, and yet a board needs to make the decisions on behalf of everyone. ■

*A board  
needs to make  
decisions  
on behalf of  
everyone.*

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## THE INSIDE TRACK

# Think Before You Leap Into an Emergency

### Setting the Scene

We had an oil delivery at a property we manage, and the oil company noticed a spot on the sidewalk. They said, "It looks like you have a leak. You need to address it right away because we cannot deliver oil as long as there's evidence of a leak." I called the boiler company and they came out.

### Following the Action

After filing for permits, we dug up the sidewalk and fixed the fill line where the leak was. Then they noticed that there was dark soil around the fill line. They suggested that we bring in a remediation company. They came in and just started digging and digging. After a while we had to expand the area in which they were digging.

We had to get another permit to keep digging. After we had a hole that was about six feet deep and six feet wide, there was no evidence that we were reaching the end of the spill. We had incurred a hefty expense up until that point. I reached out and contacted an environmental company, and we halted all of the digging. We

took a different approach, where we did borings of what we suspected to be the perimeter of the dark soil.

We were able to identify the outline of where the margins of the spill would be. Then we were able to be more isolated in our digging and, in a more economical way, remediate the rest of the evidence of the oil spill. In the end, we did save some money, and we're still waiting for possible insurance coverage. The insurance initially denied the claim. We have an independent adjuster delving into that to see if the building can get coverage for the damage.

### Doing It Right

The lesson to be learned from this is that sometimes in an emergency your first call isn't always your best call. You need to back up and think through what is the best, most efficient and economical way to work through a problem. Even though it's an emergency, take a little time and think through the process. ■

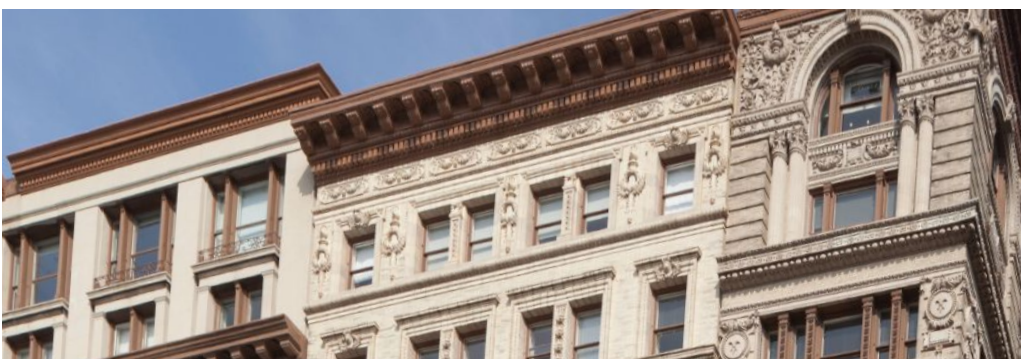


*In an emergency,  
your first call isn't  
always your best call.*

**DAWN DICKSTEIN**  
PRESIDENT & FOUNDER,  
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## THE INSIDE TRACK

# Educate Owners on Who's Responsible for What

### Setting the Scene

There is an issue that is predominant in condominiums, particularly smaller ones that don't have a full-time, on-site resident manager or building staff, where people don't understand what they're really buying. They think if you've bought a new property that nothing will ever need to be fixed or maintained. They're under the misconception that if they write a check every month for common charges, this covers everything that could go wrong in their apartment and that somebody else will be responsible and fix it. Especially in condos where people buy for investment purposes and then put a tenant in there, there's an expectation that management includes the management inside their apartment.

### Following the Action

A number of our buildings have started putting together a handbook to point out the language in the bylaws and clearly delineate what the condo is responsible for, what the managing agent is responsible for, what employees are responsible for – and where that communal responsibility ends. The handbook also helps them understand in a little more detail the mechanical equipment and things in their apartment, how they work, and how they might need to be serviced or maintained. When something goes wrong or needs to be fixed, the handbook spells out who to call.

In a building we manage, we had an owner who is not from the U.S. and spends most of her time outside the country. She has a tenant in the apartment. She called our office on a Friday afternoon and said that her tenant was complaining of a lack of heat. We were about to get a cold spell. Our office was very clear that we'd be happy to help and arrange for somebody to come and make a service call, but with


the understanding that we were doing this as a courtesy, to assist them. Given that there are individual boilers that service each apartment, the odds were fairly good that this repair was going to be something for which the unit-owner would be responsible.

The repair took place. The tenant got heat. Everything was resolved. The bill came to our office, and we forwarded it to the owner. The owner then fired a series of emails back to us, saying that she only wanted somebody to come look at the problem. To which we said, "Nobody's coming on a Saturday in the middle of winter to just look at a problem, and you had asked us to get your tenant's heat back." She said she hadn't authorized the repair, and the vendor should have spoken with someone in her office. To which we said, "It's your problem. We were very clear that we wanted to assist you with it, but we weren't present when this was taking place. Your tenant was there. They could have communicated with you."

Even though we provided all of this education and information in the handbook, she's still refusing to pay the bill.

### Doing It Right

This illustrates that issues like these are going to be an ongoing challenge for boards and management companies. As units and equipment get older, more maintenance and repairs will be required. Boards and managing agents face the never-ending challenge of educating and communicating with unit-owners about where communal responsibility ends and individual owner responsibility begins. ■



*Our handbook  
explains where  
communal  
responsibility ends  
and individual  
responsibility kicks in.*

**BETH MARKOWITZ**  
PRESIDENT, MERLOT  
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**Valdet Bellcishta**  
**Resident Manager**  
**Georgetown Plaza**

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## THE INSIDE TRACK

# Review the Engineer's Specs

### Setting the Scene

In 2013, because of the unfortunate tragedy of somebody falling through a loose balcony that was not secured properly to a building, the city included railings, balconies, fire escapes, and catwalks in Local 11 inspections.

We had a property undertaking a large Local 11 project. In this project, an engineer examined all the balconies and catwalks, and he discovered what looked like hairline cracks. The projected cost for all these repairs was more than \$1.5 million.

### Following the Action

The cracks could have been real cracks, or cracks on welds that may have occurred 50 years ago when the balcony railings were put in. To find out what the structural stability of the railing actually is you have to do a "pull test." The city codes say that a typical balcony has to be able to withstand 50 pounds per square inch on the pull test. We decided to engage an independent firm to test the railings at 200 pounds per square inch, four times the code requirements, to ensure the safety of our residents.

It was determined that many of the so-called cracks were not cracks at all. They were either surface defects or a tiny crack on a weld. By doing the pull test, we were able to prove that almost every single catwalk and balcony railing – in excess of 400 – were safe and in very good shape,

eliminating the need to spend over \$1.5 million. The repairs that we did do – because some were cracks that had to be addressed – were probably in the neighborhood of \$300,000, thereby saving the building \$1.2 million.

### Doing It Right

What this tells you is that although you hire engineers or architects to specify work, it is imperative that your managing agent, as the owner's rep, reviews the specifications' details. Safety is No. 1, but we have to ensure that specifications are right and proper. In this particular case, it was a complete victory for our client, the cooperative. Not only did it save money, but we went over and above what the city code required, ensuring that all the railings and catwalks were safe for our residents. ■



*Safety is No. 1,  
and there are  
ways to ensure it.*

**MICHAEL J. WOLFE**  
PRESIDENT, MIDBORO  
MANAGEMENT

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## THE INSIDE TRACK

# Err on the Side of Fairness

### Setting the Scene

New Bedford Management was hired as the managing agent for a Riverdale co-op about two and a half years ago. At that time, a new co-op board had just taken over from a board that had been in place for a decade. New owners were raising questions about two issues: arrears and sublet policy. We reviewed the co-op's arrears situation. It was terrible. The recently deposed president owed most of the money, a large figure. As to the sublets: over the years, the sublet policy fees had been applied unevenly. Some were charged and some were not. We recommended that the board set up rules in both areas that would apply to everyone equally.

### Following the Action

The new rules stated that whenever a shareholder is in arrears for at least 60 days, New Bedford Management will alert the co-op's attorney, and he will take the necessary legal steps to collect the "past due" amounts. The board had to give up some control – formerly, it determined when to go after a deadbeat (which is why the former board president could rack up such a large bill) – but in the next two or three months, we were able to bring the arrears almost down to zero.

On the subletting front, we made a list of everyone who was subleasing. We discovered that out of all the shareholders in the co-op no one except for the *current* president was paying the sublet fees. That wasn't fair, and the president initially asked for a credit for

the last year of sublet fees that he had paid – if no one else paid, why should he? – but he later reconsidered, saying, "I don't want any credit. I want all the rules to be applied evenly. I really want people to see that I did the right thing for the building."

The word got around that the board president had acted to the benefit of the co-op and at his own expense. The shareholders were impressed. All the back sublet fees were paid.

### Doing It Right

The problem here was that the board was setting aside the co-op's rules to either benefit or essentially punish certain individuals on the board. That was wrong. In the final analysis, if the board errs anywhere, it should err on the side of transparency and fairness. ■



*The board was setting aside the co-op's rules to either benefit or essentially punish some members of the board.*

**PETER VON SIMSON**

CEO, NEW BEDFORD MANAGEMENT

## THE INSIDE TRACK

# Bring the Building's Two Populations Together

### Setting the Scene

A very significant issue that we're observing in many buildings these days is the issue of two populations with very different demographics and socioeconomic situations. Specifically, what we're seeing over the last decade is a younger group of residents coming in and paying very, very significant dollars for apartments – people who have significant assets and significant income. They are moving into buildings where we still have a population of people in their 70s and 80s, possibly original purchasers in these buildings when they became co-ops. Although they're sitting on very significant assets, these people may be retired, semi-retired, and/or living on fixed incomes.

The problem arises when we need to do capital improvements. How do we fund them? To what extent do we actually go forward on these capital plans knowing we have two populations?

### Following the Action

Take, for example, a Local Law 11 project. An architect/engineer is going to define what we need to do to meet our statutory obligations, but we will also ask him to lay out a plan of what we may confront on that facade over the next 5 to 10 years.

The engineer will often recommend, and rightly so, that it is more cost-effective to do as much work as possible now. That, of course, increases tremendously the magnitude of that project.

There are various ways to fund the costs. Most buildings have some


reserve fund money, but the board is going to render a decision on whether to assess to fund that project, or to take on additional debt, refinance the underlying mortgage, utilize a line of credit, or take out a second mortgage. The assessment on a major capital project can squeeze the elderly population on fixed incomes, while for the younger population it does not create an economic burden. The board needs to address that.

Once you come to terms with that, how do you retain the sense of community? It's not always easy. What can we do to financially assist the elderly population so they can stay in the apartments they've lived in for 20, 30, 40 years – while also taking into account the needs of the younger population who have spent a tremendous amount on their apartments and believe, as board members, that they have a fiduciary duty to do what's best for the corporation?

### Doing It Right

As managers, we need to bring both of these groups together. It's almost a social work concept as opposed to financial planning or financial management. If we're doing an assessment, can we push that assessment out and create a longer period of time so that the older population can more easily fund it? Are there appropriate hardship situations, where we can even spread it out beyond that? Or can we work with shareholders to utilize the equity in their own apartments to generate the funds to pay the assessment? Is there a compromise on the scope of work, on the magnitude of work? These, I think, are solutions to trying to bring these populations together.

I understand and respect both positions. I empathize with both populations. We managers need to straddle that fence and figure out the best way to achieve what we need to achieve for these buildings. ■



*Boards have  
a fiduciary duty to  
do what's best for  
the corporation.*

**NEIL B. DAVIDOWITZ**  
PRESIDENT, ORSID REALTY



## THE INSIDE TRACK

# Look for More than One Way to Solve a Problem

### Setting the Scene

Two years ago, we took over a 119-unit property located in Yonkers on the water. The shareholders certainly had problems: about a year and a half before our arrival, a retaining wall had collapsed onto the Metro-North railroad tracks that run along the water. The collapse alone would have been bad enough, but paying for repairs was going to be an issue. This co-op was not wealthy.

First, they had to borrow money from their bank for emergency repairs. The tracks had to be cleared, and the hillside stabilized. Doing that, combined with money already owed (\$5 million in two mortgages), left the building in a very precarious financial position. Then they received the repair estimates for the retaining wall: between \$3 million and \$4 million. The only way to obtain those funds was through a 50 percent maintenance increase. No one could afford that.

### Following the Action

Shortly thereafter, they hired my firm. The situation was dire. The bank that had loaned them money to make emergency repairs was now calling in that loan – roughly \$670,000. When the co-op couldn't pay it back, the bank moved to default on their mortgages. Major repairs had been neglected for a number of years on the balconies, fire escapes, and roof. This, coupled with the condition of the tracks, left the co-op needing \$7 million to \$9 million. Again, no one could afford that.

We recommended to the board to hire another engineer to get a second

opinion about the retaining wall, and with a slightly revised scope of work we were able to find a contractor who came back with a bid of around \$2.2 million, which was far below other estimates. Still, we had to find a way to deal with the pending default and make repairs so that banks would lend.

Facing foreclosure at the end of last year, we were able to bring in temporary financing from a third-party lender – \$6.5 million – which we obtained for 18 months at a higher interest rate than normal. Since the cost of repairs was lower than originally anticipated, we were able to obtain this mortgage (and only put in a 20 percent assessment).

After that, we explored another option with our engineer which

proved to be a less expensive approach. The cost is estimated to be around \$780,000 (down from \$2.2 million). This will allow us not only to repair the retaining wall but address other issues, which will make it easier to get financing from a lender. If that happened, we would be able to reduce the assessment considerably. We are currently awaiting approval from the city of Yonkers on the building permit.

### Doing It Right

The lesson: there's more than one solution to a problem. For boards, it's to tap into your professionals for help. They've had the experience in dealing with situations over the years that can help bring you to your goal. ■

*Paying for  
repairs – without  
defaulting –  
was going to  
be an issue.*

**DAVID AMSTER**  
PRESIDENT,  
PLI MANAGEMENT



## THE INSIDE TRACK

# Clean the Apartment, Fight the Disease

### Setting the Scene

It seems like almost every building in New York City has at least one hoarder or someone who acts like a hoarder. It is the responsibility of the managing agent to identify these people, report to the board of directors what's going on in the apartments, and take appropriate action to help them cope with the problem.

Hoarding is a disease. We recognize that now. The solution for cleaning up a hoarder's apartment isn't just going in and removing items. It's really getting them help in the long-term to resolve their issue of why they hoard in the first place.

### Following the Action

One building I manage has three hoarders with different conditions. The first person used the apartment for storage, and just collected things and put them in the apartment. She didn't live in the building. We went to this person and discussed the condition and threatened to take her to court. We've solved this problem by having her remove a lot of things from the apartment, and by going in every month to exterminate the apartment so there are no vermin. She's no longer a problem.

The second hoarder was actually an estate. Someone had died. The family did not want to deal with the apartment. The apartment had the possessions in it. It even had food. We went in and cleaned out the refrigerator. We turned the water off in the apartment so that there'd be no leaks. We also go in and exterminate the apartment monthly.

Last summer, I was able to get the decedent's family to come in and start removing some items. However, this

has stalled. Now I'm approaching them to see if they will consider selling the apartment to the next-door neighbor.

The third hoarder in this building was a person who lived in squalor. You could not walk around in this apartment. The bathroom was so full of junk that the hoarder used the building's bathroom downstairs and would sit in the lobby all night because it was more comfortable than the apartment. We called the New York City Department for the Aging and got them involved. They helped make her aware that the condition was not acceptable.

### Doing It Right

The manager absolutely needs the cooperation of the board of directors to correct a hoarding condition. If the managing agent is the only one willing to do it, it's not going to work because often, you will have to litigate. It also requires that you have a board member or members who are prepared to monitor the apartment along with the managing agent. So the long-term solution is a partnership between the board and the managing agent. ■



*You must get  
long-term  
help to resolve  
hoarding issues.*

**FREDERICK RUDD**  
PRESIDENT, RUDD REALTY

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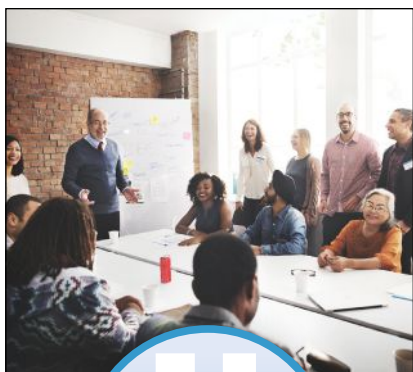
# Know When to Use a Consultant

### Setting the Scene

My story is about doing a conversion to a dual-fuel boiler, which means that we can choose when to use gas and when to use oil, whichever is more cost-effective for the building (we are locked in with Con Edison to use gas for the first few years).

### Following the Action

We asked for references for several consultants and ended up selecting Robert Germain, who has been fantastic. He guided us from the beginning to the end, and put together a perfect



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manual for the project. We bid it out, selected a contractor, and applied to Con Ed to install gas service. We started the entire process last spring, and, as of June, it's almost complete.

Although we started planning it nearly a year ago, the actual installation of an entirely new system took about six months. It was a fairly complicated project, but the consultant made a world of difference. In the end, we've gotten a great product. We just got our gas approved. We're getting the meter installed, and then we'll be running natural gas for the building, which we're all very excited about.

### Doing It Right

For boards that have to undergo large projects – such as a boiler conversion from oil to gas, or going to dual fuel – it is very important to use a consultant. I've done conversions without one and with a one, and I find that using a professional who knows the ins and outs of Con Ed, and how to obtain the proper permitting, inspections, and sign-offs was a tremendous help. It made the process a lot easier for everyone. ■

*Using a professional who knows the ins and outs of the process is a tremendous help.*

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## THE INSIDE TRACK

# Find an Amicable Arrears Solution

### Setting the Scene

We had a unit-owner in a condominium who had a very good job. She owned her apartment for many years. All of a sudden, she wasn't paying her common charges. The board looked at the growing debt with mounting concern. Its members knew that there are limited options for collecting common charges in a condo. There was a lot of discussion about legal actions, such as putting a lien on the apartment, but also talk of ways to help the owner out.

### Following the Action

This subject was discussed at almost every meeting. Then we asked the board to let us intervene, and we had a conversation with the unit-owner. She was very apologetic. She had lost her job. We then went to the board, explaining that we believed the unit-owner was looking to pay every single penny owed. We asked the board to give her one final chance before beginning legal action.

We went back to the unit-owner and had a second discussion. We brainstormed. One possible solution: if she temporarily moved in with her parents and rented the apartment, she would have money (from the renter) to pay her current common charges and would also be able to pay a portion of her arrears every month. We followed this course. The apartment was soon rented.

The board reviewed the package and approved the sublet, and the tenant moved in. Every month, the unit-owner collected the rent and paid her current common charges and a part of her arrears, based on the payment plan we had discussed. She kept on track and was able to pay back everything she owed. She eventually secured a new job. When the sublet ended, the tenant moved out and the unit-owner moved back in. She is currently in very good standing with the condo.

### Doing It Right

In these tough economic times, nobody is immune to bad luck. A layoff can happen. Somebody can get sick and not be able to work anymore. They can fall behind for any reason. Before adding legal bills and putting more stress on the person, try for an amicable solution. ■



*The balancing  
act of living with her  
folks and renting  
the condo solved  
the problem.*

**SAMI NAJJAR**

PARTNER, SANDRA GREER  
REAL ESTATE

## THE INSIDE TRACK

# Shift the Information Dynamic

### Setting the Scene

A large flaw in our industry tends to be in communication and transparency. As a company, we've tried to mitigate this through the use of technology. In 2016 we made rules for employees and added policies and procedures that altered the way we do business.

The major impact was the level of communication the employees have with the board members and the community overall. We put in parameters on visits, on meetings, on weekly phone calls – all to enhance the level of communication our employees have with the board members.

In addition to that, we actually interviewed board members and asked, "What is the problem? What do you see as the biggest flaw in the industry?" It all came back to transparency. They wanted information at their fingertips.

### Following the Action

We migrated to a software platform that allowed us to open our business

data to clients. In addition to having an online portal for homeowners to pay their monthly charges, make a maintenance request, and get all their documentation, we've actually created a board member login to our data bank. In that, they can find the data that they want – financial numbers, delinquency reports, site inspections, you name it.


We didn't have that typical fear of, "Don't release this unless it's been reviewed 65 times. Don't release this unless it's in the PDF format." We told our boards, "If you really want the data, let's get you the data."

### Doing It Right

These changes have given us the ability to meet the board requirements and enhance our communication

with the board and, further, educate the board as to what they can and can't do. It has managed to shift this dynamic of "I don't have enough information" to "Now I have all this information. What does it mean? How do I deal with it?"

The next level in this education process is teaching them what to look for in the numbers, where you might say, "Here is what your overruns are. Let's try and mitigate that." Or, "You're spending too much money on payroll, so let's cut this or reorient the organization so that doesn't happen. It's not cost-effective." That's the kind of impact we're trying to have on board members, so they can be better and more involved members of their community. ■



*Installing a  
new software  
program increased  
transparency  
among the board,  
the manager,  
and the staff.*

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Instructor  
Michael Esposito,  
Audit Partner,  
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## THE INSIDE TRACK

# Be a Good Neighbor When Granting Access

## Setting the Scene

I manage an eight-unit condominium on the Upper East Side of Manhattan. An adjacent building's manager requested access to our rooftop, which is built as a roof and terrace for recreational purposes. This has become a standard event in New York City. With all the construction and Local Law 11 work going on, buildings require access to neighboring buildings from time to time.

## Following the Action

I recommended to the board that it have an attorney fashion an access agreement.



## Navigating the Admissions Process

Deciding whether to admit a prospective purchaser can be a treacherous minefield, one with the potential to bankrupt both your board and corporation. There can be no question of discrimination, and you have to be confident about the financials of the purchaser. In this course, you will learn the best practices to follow so that your decision-making is safe from legal action, particularly if you decline an applicant.



Instructor  
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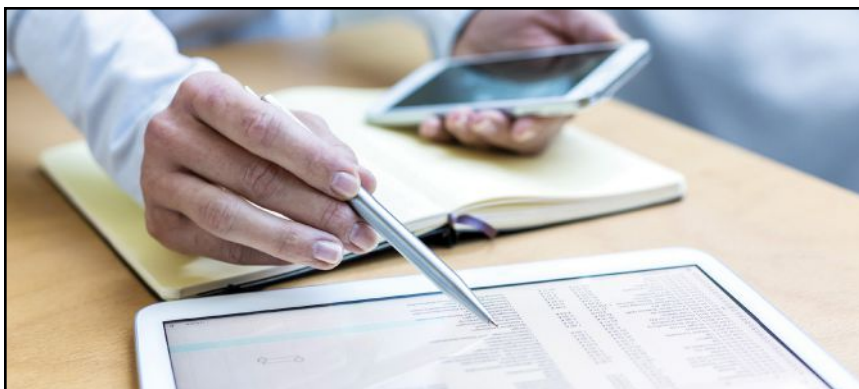
*This is not  
the time for a  
money grab;  
it's the time for  
common sense.*

**JEFFREY HEIDINGS**  
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In this particular case, the penthouse of the building also has limited common-element roof rights. That unit-owner had to be indemnified and protected. We did it in a very neighborly fashion. No fee was charged. We did make sure that the agreement contained a quid pro quo clause that allows us to have access to the neighboring building in case we needed to do any work on our roof or facades that would entail using their premises. We're protected in that regard, and the work proceeded normally and is now completed.

### Doing It Right

Neighboring buildings in New York City may eventually need access to your rooftop or facades to do their Local Law 11 work. This is not the time for a money grab. It's the time for making a common-sense agreement that protects your co-op or condo and allows the neighboring buildings proper access – and ensures that they return the favor in the future if that becomes necessary. ■



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**Instructor**  
Michael J. Wolfe  
*President, Midboro Management*

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**THE INSIDE TRACK**

# Know When to Put Quality of Life First

**Setting the Scene**

Sometime in the past, a situation arose at one of the co-op properties we manage. A shareholder died in his apartment. For some period of time, no one knew about it. Then, for various reasons, people became aware of it, and the board became aware of it.

The municipal authorities took the body away. However, when someone dies, there is residue, there are smells, and there are other issues I don't really want to go into that need to be handled. It gets worse if they are ignored.

**Following the Action**

We recommended to the board that it should hire a remedial service, do the necessary work, and do it quickly. The board decided that it would be better from a financial point of view to allow the estate to take care of this so that the co-op wouldn't have to spend the money. We are talking about maybe three or four thousand dollars.

*Sometimes quality of life is more important than the bottom line.*

**ROY STILLMAN**

 PRESIDENT, STILLMAN  
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We tried to convince the board that ignoring its responsibility in this delicate matter would be a mistake, that we should do what was necessary under the authority of the proprietary lease, and then bill the estate afterward. If the estate proved difficult about paying for the clean-up, we were confident we could recover the money when the unit was sold.

The board did not listen to us. Fortunately, however, the neighbor of the person who had died was a nurse and was aware of the situation. She told us that she planned to go to the county authorities, claiming a health problem unless the board dealt with the problem immediately. When we advised the board of this threat, it reconsidered. We went in and took care of the situation. Shortly thereafter, the estate sold the apartment. The co-op was repaid.

### Doing It Right

The lesson to be learned here is that it's good to be concerned about the financial aspects of an issue, but sometimes quality of life is more important. ■



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**THE INSIDE TRACK**

# Create a Team Environment

**Setting the Scene**

We were hired as managers at a building, a 140-unit garden-style complex, where there was tension between the board and the superintendent/staff. One problem was there was no structure to the employees' day-to-day schedule. Guidelines were offered by the union, but the building manager and board didn't set the day-to-day routines. As a result, the board didn't know what the super or staff were doing – while the super and staff were getting instructions from a number of different board members, as well as the manager.

When we were presented with this situation, we discussed it with the board. The members' underlying issues were communication and protocol. There were also a lot of issues going back and forth between the staff and the board. It was mainly because the board members were taking it on themselves to speak to the superintendent and staff directly. When we talked with the superintendent, his issue was communication or, rather, the lack of it.

**Following the Action**

We suggested a few changes. The first was to give the board and the super a maintenance handbook. This not only outlines the day-to-day and monthly schedules for the super, it also offers a preventive-maintenance schedule, which tells exactly what is expected. By having a daily schedule, the board could see, on an hourly basis, that the super was

*Having a daily  
schedule let the  
board see what  
the super and staff  
were doing.*

**CARMELO MILIO**  
PRESIDENT, TRION REAL  
ESTATE MANAGEMENT

working. The problem was that this hadn't been communicated to the board by the previous management company.

### Doing It Right

The lesson that was learned from this situation is that just because you don't see a staff member performing a specific task doesn't mean it isn't being done. The most important thing is that the property has clear communication between the staff and management, and that the communication is then relayed to the board. What that's done in this property is create more of a team environment, where everybody understands everyone else's responsibility. ■



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**THE INSIDE TRACK**

# Pay Attention to Who Is Insured

**Setting the Scene**

It was the weekend, and we received a phone call in the middle of the night. A pipe had burst on an upper floor of a large Upper East Side co-op that we manage. The super was able to get there quickly and shut the water off, but not before there had already been damage to eight apartments and a commercial store. Now we were confronted with a situation involving a number of different shareholders, with various levels of damage that needed to be addressed quickly.

**Following the Action**

We immediately brought in our insurance coordinator, a specialist in our office who's very familiar with insurance matters. She needed to talk to the building's super, the affected shareholders, the board, the building's insurance company, and also all the insurers of shareholders who had sustained damage to discuss breadth of coverage and how to proceed with the required repairs.

We updated the board right away, assessed the situation, developed a scope for the repairs that needed to be done, and then put the process in motion. Fortunately, the building had good insurance with a reputable firm and the shareholders also had insurance.

*There were various levels of damage that needed to be addressed quickly.*

**ANDREW S. LAZARUS**  
SENIOR VICE PRESIDENT,  
TUDOR REALTY SERVICES

## Doing It Right

More and more, as managing agent, we are dealing with insurance matters. No longer is our role as managing agent limited to just ensuring that the building's policy is in place, but we are more frequently dealing with claims, often that touch multiple shareholders and the building itself. It's important to have someone at your managing agent's office handle these matters who is well-versed on how to address these issues and can then coordinate with the various involved parties.

This is another great example of why it is so important for boards and shareholders/unit-owners to be aware of what's covered per the proprietary lease and bylaws and what's not, and to understand the importance of having proper insurance in place from reputable firms that cover the types of issues that often arise. It is also a reminder why it's important to update the building's governing documents, to the extent not already included, to require that shareholders have insurance in place. Boards need to keep a focus on insurance, discuss these issues with the managing agent, understand the process in the event of damage. They should also remind shareholders from time to time about the importance of these issues and how to be prepared and best protected. ■



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## THE INSIDE TRACK

# Be Flexible and Forward-Thinking

### Setting the Scene

In 2015, a co-op we manage on the Upper West Side installed a dual-fuel boiler. This has advantages: sometimes the oil part won't work and you can use gas; other times there's a gas leak so Con Edison turns off your gas and then you have to use oil. In this particular building, we had just that problem. There was a gas leak on several risers going up to shareholders' apartments. Con Edison "red-flagged" the building – meaning they shut the gas off – and before the service could be restored, each line had to be tested and pressurized, and several lines had to be repiped as well.

### Following the Action

The property was now without heat, hot water, gas stoves, or gas dryers. We immediately contacted our plumber and had him switch over to oil so that the building's heat and hot water would function. That was on day one, so nobody



was inconvenienced. We then contacted a master plumber who came in to test the gas lines and find the leaks.

It took months to get gas service restored. During that time, we did little things to ease the burden on the shareholders. For instance, at our request, the building's laundry company provided electric dryers. These take about 15 minutes more to dry a full load, but they're better than nothing. We also provided hot plates for residents in lieu of stoves.

### Doing It Right

The lessons? When you're upgrading or doing a capital project, try to think ahead. Flexibility is the key. If you're considering a boiler project, consider dual fuel. If you're considering upgrading your laundry room, put in 220 lines, so if you have to plug in electric machines, you don't need to rewire the entire space. Think about emergencies. It's always good to prepare. ■

*When doing capital projects, build in flexibility.*

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**THE INSIDE TRACK**

# Understand Your Choices in Tax Benefits

**Setting the Scene**

My story today deals with a 77-unit cooperative in the Bronx. As the board did its budget for 2017, it anticipated receiving its co-op tax abatement and then assessing shareholders against that abatement. The abatement would generate additional funds, because the sponsor and non-primary residents would not be eligible for the abatement, but they would still have to pay the assessment.

The building had also recently completed a very large capital project and applied for and received a J-51 tax abatement. However, when they received their property tax bill they found that they were also granted a J-51 tax exemption for the capital work. The problem: when a building has a J-51 exemption, they can't participate in the co-op abatement program.



## Following the Action

As the new property tax figures for 2016 and 2017 came in, we realized that the J-51 tax exemption made all the shareholders ineligible for the abatement, not just the sponsor and non-primary residents. This meant that the co-op was going to lose an additional \$15,000 a year, money that they would have collected from the sponsor and non-primary residents.

The co-op could fight the city to remove the J-51 exemption so that all the primary residents could go back into the co-op abatement program. If they did that, however, the co-op would have to agree to never apply for a J-51 exemption again. The risk to this strategy is that the co-op abatement program is not a sure thing. It only goes for two to three years at a time and requires periodic renewals by the city and the state.

However, should the co-op keep its J-51 exemption, which is a 28 percent tax break – \$61,000 this year – the situation is less fluid. The exemption program is solid for at least the next 14 years. The co-op has to decide which avenue to pursue.

## Doing It Right

When co-op boards are preparing their annual budgets, they need to pay close attention to what kind of tax exemption or abatement the city will be providing them. The city will put your building in one tax abatement or exemption bucket, and you need to understand what it is, what the benefits are, and what your options are. ■

*Tax breaks  
may not be a  
sure thing.*

**CARL BORENSTEIN**  
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**THE INSIDE TRACK**

# Make Sure Systems Fit the Building's Needs

**Setting the Scene**

For over 30 years, we've managed a co-op in the Columbia University area of Manhattan's Upper West Side. About 25 years ago, the co-op installed a "state of the art" intercom system through the telephone lines. Today, if you're younger than 35, you probably do not have a landline, so if you live in this co-op, it's not state of the art: it's nothing. You do not have access to the intercom.

**Following the Action**

The buzz around town was to go wireless, so the board asked us to investigate the pros and cons of such a system. The first problem we faced was that the building has a great number of sublets, mostly Columbia undergraduate and graduate students. That means there is a substantial change of tenancy almost every semester. Going wireless would have meant having to list at least four individuals per apartment on the intercom panel in the lobby. It's a 53-unit building, so having over 200 names that change every six months didn't make sense. So the board decided to go "old school" and re-install a wired system, even though it was more costly.

*Even though  
the buzz is about  
wireless, here it  
just didn't fit.*

**JEFFREY M. WEBER**

**PRESIDENT, WEBER-FARHAT  
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To reduce the period of construction disruption, we ran the lines in the hallways. We had to re-plaster and paint, but it was easier doing that in the common space than in each individual unit. In the apartments themselves, it took about a half an hour to drill a hole through the wall and set the unit up; the damage was minimal.

**Doing It Right**

In such situations, you must ask: does the system fit the building? Even though the buzz around town is to go wireless, for this particular building, it just did not work. The needs of the building did not call for it. Bottom line: everyone now has a video intercom system. ■





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## THE INSIDE TRACK

# Reach Out to Your Elected Officials

### Setting the Scene

About two years ago, a property we manage called Lindsay Park desperately needed new windows. Built in the 1960s, the seven-building, 2,702-unit complex in Williamsburg, Brooklyn, still had the originals – and they were in bad shape. As a Mitchell-Lama, the challenge had always been obtaining the several million dollars' worth of funding necessary to do the replacement.

### Following the Action

The board applied for and received a \$12.9 million Federal Weatherization Assistance Program grant, the largest in New York State at the time. But the grant required the co-op to contribute 25 percent of the total cost, roughly \$4 million. The residents didn't have the money. The board tried to come up with some creative options to make this work.

We discussed several different possibilities, and the board went to elected officials. Assemblyman Vito Lopez,



an influential figure in Brooklyn, actually negotiated with the Division of Housing and Community Renewal. We wound up reducing the owners' equity component down to half a million dollars, which the building was able to afford, and the grant was allocated to us. The windows were done, as well as a lot of other nice improvements, all for half a million dollars. Almost free!

## Doing It Right

Elected officials need votes when they run. If you're in a building – particularly a larger building – you house a lot of their constituents: a captive audience. Boards need to rally that support and develop a rapport with elected officials. It's a two-way street. They need votes, and often-times boards need help.

The bigger moral is: don't give up. Persevere. Try to come up with creative solutions. Think outside the box. There's usually a way to make things happen. I think that is the happy ending to our story. ■

*Develop a rapport  
with elected  
officials – they  
want your vote.*

**JAY SILVERBERG**  
PRINCIPAL, ZENITH  
PROPERTIES

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# Expertise

## CASE NOTES

### The Sins of the Father

BY RICHARD SIEGLER AND DALE J. DEGENSHEIN

➤ **CAN YOU BE** booted out of your apartment for a crime you didn't commit?

You've lived in your co-op for almost a decade. Without warning, the board announces it plans to evict you. The reason? A previous shareholder performed an apparently unauthorized alteration in what is now your apartment. You didn't do it, and you didn't know about it. Is the proposed eviction fair?

In New York City cooperative apartment buildings, when shareholders perform alterations in their apartments, they are generally required to enter into an alteration agreement, which states, among other things, that a shareholder must obtain co-op board approval and Department of Buildings (DOB) permits before starting work.

In *Coliseum Tenants Corp. v. Benmark*, the shareholder who remodeled the unit did neither of these things. That was news to the current shareholder, Gadi Benmark, who had purchased an apartment at 30 West 60th Street in 2007. The space was marketed as a “one-bedroom-plus,” and before purchasing it, Benmark was provided a copy of the floor plan.

Eight years after the sale was approved, Benmark received a “notice to cure” from the board, which alleged that the apartment had been illegally subdivided from a “one-bedroom to a one-bedroom with a separate guest room,” in violation of

the proprietary lease. The board said it had not become aware of the unauthorized alteration until 2015, when the manager found the apartment advertised on the Airbnb website.

Benmark submitted a proposal to legalize the alteration. The board responded with a second “notice to cure.” When Benmark did not remove the wall, the board served him with a “notice of termination,” requiring him to surrender and vacate the premises within five days.

The case went to court. The board argued that the alteration was

performed without its permission or a DOB sign-off, and that even if Benmark did not make the alteration, he stands in the shoes of his predecessor shareholder and is responsible for the alteration.

Testimony revealed that the alteration was not made by the last shareholder who lived there, but by the shareholder before that. Given that more than two decades had passed since the changes were made, the manager was unable to confirm with certainty that the board had *not* given permission for the construction of the



LIZA DONNELLY

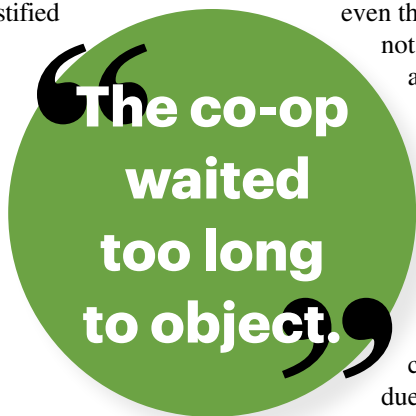
wall. Moreover, Benmark and other witnesses testified that building staff and board members had been inside the apartment over the years and had not questioned the legitimacy of the layout.

The cooperative argued that Benmark had breached the lease provision that required shareholders to comply with all laws, and that these changes had been performed without a DOB permit. The court found in favor of Benmark on this point. It cited a de facto waiver of the alteration agreements and also the little-used defense of laches, which is defined by one source as “an unreasonable delay by the plaintiff in bringing the claim.”

The Benmark case showed:

- that the cooperative had a valid claim but...
- it had delayed in asserting its claim without showing a good cause for the delay;
- Benmark would lose significant value in the apartment if forced to remove the alteration; Benmark would then have to market it as a one-bedroom rather than a junior-four, which has a significantly higher price tag.

The court found that, although the cooperative had acted promptly after seeing the layout of the apartment on the Airbnb website, testimony showed that the apartment had been in that configuration for years. Indeed, the floor plan was included in Benmark’s application package for purchase. A board member testified that he had been inside the apartment. Further testimony showed that it would have been impossible to perform the alteration without the building staff seeing materials being delivered to the apartment. The court also noted that the board had waived its claim because it knew of the apartment reconfiguration for many years but had not challenged it.



On this point, the board argued that even though Benmark may not have constructed the alteration, as an assignee of the lease he stood in the shoes of his assignor. The court disagreed.

### The Takeaway

This case is an important reminder to purchasers: always do your due diligence. Purchasers may want to review DOB records and have their lawyer get as much information as possible from the managing agent – not just what can be gleaned from board minutes. If a purchaser suspects an alteration may have been performed without appropriate permits and sign-offs, it would be prudent to obtain from the cooperative written confirmation that the alteration work was done with consent, or an indemnity from the seller, should an issue involving a previous alteration arise.

Further, this case highlights the importance of properly maintaining records. We believe this problem will be minimized given the data programs available and the current practice of scanning most documents electronically.

Finally, although it is not discussed in depth in the decision, Benmark was using the apartment for short-term rentals, in violation of the law and therefore the lease and building rules. There is no discussion as to whether Benmark has ceased that practice. ■

### ATTORNEYS:

For Coliseum:

Axelrod, Fingerhut & Dennis

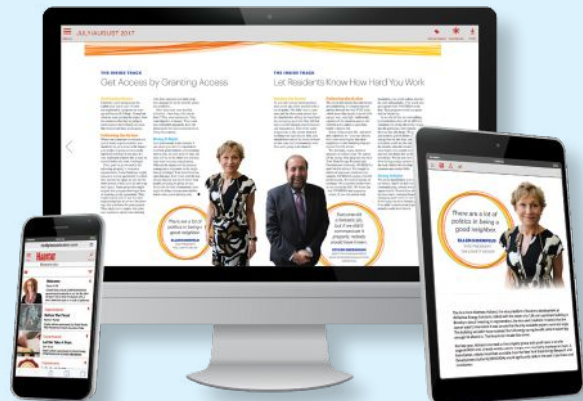
For Benmark: Nadel & Ciarlo

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## NUTS & BOLTS

# Saving Taxes on Air Rights

BY JASON KLEINMAN

➤ **WHEN I JOINED** my co-op board a few years ago, I did so with the naive expectation of being able to end our building's "spending problem." I quickly learned there was little we could do to cut spending short of rationing hot water. What our building has is a revenue problem. We need more money to cover our costs. Unfortunately, increasing shareholders' maintenance fees seems to be our only way for raising revenue and doing so, of course, would not endear us board members to our fellow shareholders.

Some of our more fortunate neighbors have found another way to fix their revenue problems – by turning their buildings' air rights into fortunes. Air rights, with few exceptions, are transferrable only to neighboring buildings. This makes a building's air rights valuable to the extent the building itself – or surrounding buildings – need the air rights for constructing up. If your neighbor is a deep-pocketed real estate developer, you have a potential fortune on your hands.

With that potential fortune come brokers and real estate and land-use attorneys who can help make the deal happen. There are also people like me, tax attorneys, who ordinarily work behind the scenes to help a building keep what it earns.

A poorly structured air-rights sale can result in tax at rates north of 60 percent. A building that thought it was netting \$10 million can end up netting less than \$4 million. The reason this happens is because cooperative apartments are structured as "C" corporations, which are probably the costliest way of doing business.

As you may know, businesses today tend to be organized as limited liability companies, or "S" corporations. Owners of such businesses have significant advantages relative



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to owners of C corporations. First, the former are taxed once on their capital gains whereas the latter are taxed twice (once at the corporate level, then again at the shareholder level). Second, the former enjoy a discounted capital gains tax rate of 20 percent, while the latter do not.

The reason co-ops continue to be organized as C corporations is because the rules and procedures for cooperative corporations developed during the early 20th century, before the advent of more tax-efficient means for structuring businesses. Because cooperative apartments are not organized for making money, the costliness of operating as a C corporation ordinarily is not apparent. This becomes apparent only when the building has an opportunity for making money, as it may have with an air rights sale. This is where tax planning can create meaningful savings.

There are three common ways to save on taxes when structuring an air-rights sale, each with its pros and cons:

**The cash sale.** This may be the most common technique for transferring air rights. With this approach, the building sells the air rights for a single cash payment and pays tax at the entity level at a rate of approximately 50 percent. This rate results from the sum of real-estate transfer

taxes, as well as the corporate taxes on the gain. The advantage to be gained here is that the corporation retains the net sale proceeds, thereby avoiding the second layer of taxes that shareholders would have to pay if they received a dividend.

**The promissory note.** This offers a few advantages over the cash sale. First, the corporate taxes on the gain are due only when principal payments are made to the co-op. Second, when principal payments are eventually made, they might be made in relatively small increments, thereby permitting more of the gain to be taxed at lower brackets. Third, promissory notes feature interest payments, which can provide the building with an added source of revenue.

**The like-kind exchange.** This offers perhaps the greatest tax savings. With this approach, the building reinvests its sale proceeds in investment property – for example, nearby commercial real estate – and potentially does not incur any city, state, or federal corporate taxes on the gain. The challenge with this approach is making sure the building continues to qualify for the few tax benefits available. These include permitting the shareholders to deduct real estate taxes paid by the cooperative corporation. A building that acquires too much investment real estate risks forfeiting such benefits.

The tax rules for cooperative corporations are complicated; the tax rates on their earnings are confiscatory. My hope is that co-ops presented with this type of opportunity will be proactive on managing their related tax costs. Otherwise, the government will end up earning the most money on an air-rights deal. ■

*Jason Kleinman is a partner in the law firm of Herrick Feinstein.*

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## Dear Habitat

*Our co-op requires licensed and insured plumbers to perform work on the premises. However, in order not to spend money, shareholders also sometimes get the super-intendent to perform in-the-wall plumbing. This has resulted in several instances of subpar work that created damage and additional costs. Sometimes (if it is a board member), they will hire legal plumbers. Can we refuse to allow or permit illegal work in our apartments – work that creates possible liability for neighbors and may also not be covered by our own insurance or the co-op's insurance? Can we require the co-op to send a legal plumber – as per city laws and co-op rules – when it is work that the co-op must perform?*

Board decisions are normally protected by the Business Judgment Rule. However, if the board is using an unlicensed plumber where a licensed one is required, then it will not be protected. Additionally, most proprietary leases provide that the board has the right to access apartments on reasonable notice to make repairs. If a shareholder denies access for repairs, he or she could be sued for breach of the proprietary lease.

If someone you believe to be unlicensed shows up at your door, immediately make your concerns known to management. If they refuse to pause work, put your concerns in writing to management and the board. If non-compliant and subpar work is being done on an ongoing basis, work with other shareholders to document these instances and demand a policy be adopted formally requiring the cooperative board to engage licensed and insured contractors.

KAROL ROBINSON, Partner, Anderson Kill

New York City law requires a licensed master plumber to do plumbing work within the walls of your apartment. Any resident could justifiably refuse access unless the co-op complies with this law. The co-op could attempt to gain access when the resident is not present but the co-op would be particularly unwise to risk that after the resident's principled refusal, especially if well-documented. As a deterrent, you could put the board on notice that such illegal work could



lead to claims against the co-op that its insurance carrier might refuse to cover; and you could attempt to use any subsequent refusal to comply as the basis for electing a new board. Also, the self-dealing component that you mention might expose board members to individual liability not indemnified by the co-op or its insurance carrier. If you mention that, the board might deem it wise to change this unlawful practice, especially because losses, and thus liability, from seemingly minor plumbing repairs could be substantial.

ROBERT TIERMAN, Partner, Litwin & Tierman

Co-ops and condos routinely use building personnel to perform plumbing and electrical work, [because] the cost of a plumber or electrician can be significant. That said, whether or not the work being performed would require a [licensed] plumber or electrician definitely depends on the nature and extent of the work, as well as the ability and experience of the building's personnel. Therefore, yes, you can refuse to allow repairs in your apartment by unlicensed professionals when city laws require that they be licensed. However, the fact that a repair is made behind the wall will not in all cases require such a professional. Before denying access, you may want to bring in your own engineer to render a definitive opinion.



ABBEY GOLDSTEIN  
Partner, Goldstein & Greenlaw

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## MANAGEMENT TRANSITIONS

### Upper East Side

#### 1834 Second Avenue, HDFC

50-unit co-op. Transition to: Veritas Property Management (05/01/2017)

### Upper West Side

#### 137 Riverside Drive

51-unit co-op. Transition to: Tudor Realty Services (06/01/2017)

### Harlem

#### 133-41 West 140th Street HDFC

55-unit hi-rise co-op. Transition to: Harlem Property Management (05/01/2017)

### 2942 Fifth Avenue

48-unit co-op. Transition to: All Area Realty Services (07/01/2017)

### West Village

#### The 99 Jane Street Condominium

84-unit mid-rise condo. Transition to: Midboro Management (06/01/2017)

## BUILDING LOANS

### Murray Hill

#### Midtown Manor Apartments

##### 211 East 35th Street

75-unit co-op, 4.0% unsold shares

LOAN: \$360K TERM: 10 years

RATE: 3.76% CLOSING: 05/31/2017

LINE OF CREDIT: \$500K, 10 years

BANK: NCB

LOAN OFFICER: H. Seligman

BUILDING REP: Kaled Management

### Gramercy

#### 237 Apartment Corporation

##### 237 East 17th Street

15-unit co-op, 6.7% unsold shares

LOAN: \$500K TERM: 15 years

RATE: 4.48% CLOSING: 05/30/2017

BANK: NCB

LOAN OFFICER: H. Seligman

BUILDING REP: Maxwell Kates

### East Islip, Long Island

#### Great River Owners

##### 100 Connetquot Avenue

50-unit co-op, 0% unsold shares

LOAN: \$2.4 mil TERM: 10 years

RATE: 3.81% CLOSING: 05/31/2017

LINE OF CREDIT: \$500K, 10 years

BANK: NCB

LOAN OFFICER: M. Goldstein

BUILDING REP: Fairfield Property Services

### Jackson Heights, Queens

#### Jaxboro Corp./34-41 85th Street

143-unit co-op, 8.4% unsold shares

LOAN: \$3 mil TERM: 10 years

RATE: 3.72% CLOSING: 05/31/2017

LINE OF CREDIT: \$500K, open

BANK: NCB

LOAN OFFICER: M. Goldstein

BUILDING REP: All Area Realty Services

All data, covering the past three months, has been voluntarily submitted, and the omission of any professional from this section is no reflection on his or her business. To have your item published in an upcoming issue, call (212) 505-2030 ext. 3006, fax (212) 254-6795, or e-mail: [ifundichely@habitatmag.com](mailto:ifundichely@habitatmag.com).

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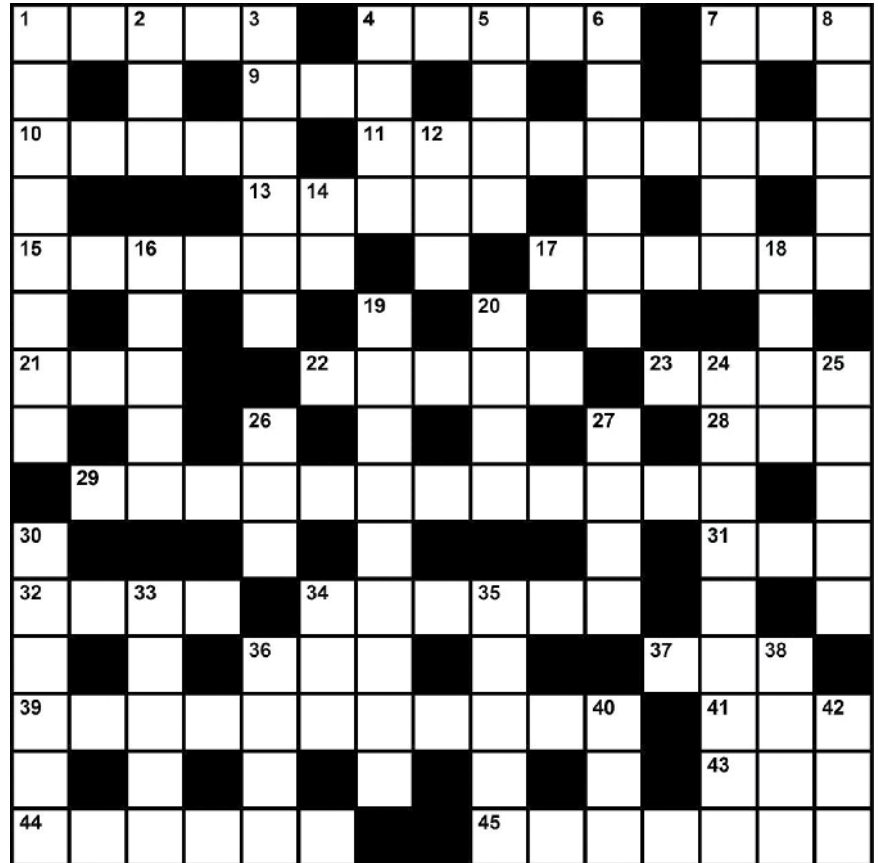
BY MYLES MELLOR

## ACROSS

- 1 Good to partner with them when switching to LED lighting (2 words)
- 4 Preservative treatment prolongs the life of these supported structures
- 7 What Ralph Kramden drives
- 9 The Beatles worked for this company
- 10 Musical theme
- 11 Mechanical device to douse out a fire
- 13 Cultural values
- 15 What Sherlock Holmes does
- 17 Bob Marley's greatest hits album
- 21 "\_\_\_ Day Now" (Bob Dylan hit)
- 22 Clarence was one, from *It's a Wonderful Life*
- 23 Award for Tina Fey
- 28 Court group, for short
- 29 Board review of available funds as against future renovation and upgrade costs (2 words)
- 31 This group controls interest rates (nickname)
- 32 Disputed new branding name for southern Harlem
- 34 Brooklyn or Queensborough
- 36 Vienna's land, for short
- 37 Lawn cover
- 39 It's used to reduce utility bills (2 words)
- 41 The way you feel after a swim
- 43 Concerned with living things in their environment (prefix)
- 44 Walk nonchalantly
- 45 Johnny Depp role

## DOWN

- 1 Steve Martin or Eddie Murphy, for example
- 2 Obstacle for Williams or Federer
- 3 Imperfection, as in construction



- 4 Satellite receiver
- 5 2006 Pixar film
- 6 A boulevard where Norma Desmond lived
- 7 The beast's true love
- 8 Violin-maker, for short
- 12 Filled with gold, at rainbow's end
- 14 Audi sports car
- 16 "Parsley, sage, rosemary and \_\_\_"
- 18 Desensitize
- 19 Studio of Frankenstein and Hitchcock
- 20 Movie foes of the Sharks
- 24 Vessel of the pilgrims
- 25 Hudson \_\_\_
- 26 The Thing's Grimm first name
- 27 Rubik's creation
- 30 Certain poplars
- 33 They provide lift on runways
- 34 What Americans like to do
- 35 Western nerds
- 36 Home of the Taj Mahal
- 38 Geometric art style
- 40 The British offer you a good cup of it
- 42 Wrecker's job



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