

THE 2006 ATTORNEY SURVEY

THE GREEN REPORT

SERVING NEW YORK BOARD MEMBERS AND PROPERTY MANAGERS OF CO-OPS AND CONDOS

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SEPTEMBER 2006 \$3.95

## THE 2006 ATTORNEY SURVEY



### **Hankin, Handwerker & Mazel**

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**C**urrently, we are counsel to a large V cooperative embarking on a multi-million-dollar capital improvement project. A project of this magnitude can be the source of many dilemmas and legal challenges. The project includes the difficult and onerous task of replacing windows and terraces. This means that the contractor will need access to each and every apartment and the job will entail the moving of shareholders' furniture and personal items that are in the way of the work.

Time is of the essence in this type of work. The contractor can move rapidly as long as all shareholders are cooperative and access is provided concerning the precise time and date needed. In addition, it is critical that the workspace is clear of all items at the time the work is being performed. Any slow down costs money. The prospect of cost overruns because of non-cooperating shareholders should loom large in the minds of the board directors.

In this case, a notice was sent out to the shareholders informing them when access would be needed to measure then windows. As expected, a couple of shareholders were difficult to deal with and slow in providing access. Step 2 involved stronger

letters to the non-cooperating shareholders, with copies to legal counsel. If there still is no cooperation, the next step will be a letter from my office as attorney informing the shareholders that they are acting in violation of the terms of their proprietary lease and that further non-cooperation will result in the filing of lawsuits for access to the apartments to do the necessary work. The proprietary lease in question has a clause that allows the corporation access to make repairs and/or improvements to the building. The shareholders' failure to provide this is a violation. In addition, the shareholders could be liable to the corporation for legal fees in the event the corporation prevails in a lawsuit.

The final step against a non-cooperating shareholder would be suing for access to the apartment. This suit should include an emergency application for access (so as not to impede the progress of the capital work being performed) and a request for legal fees. Fortunately, we have not gotten to this extreme point yet. However, it is critical to provide notice of access to the shareholders early and often and leave yourself enough lead time in the unfortunate event that a lawsuit becomes necessary.