



Board Talk

Talking About Privacy Rights

We recently got a \$1 per share assessment, raising \$98,000. It was after we took out a half-million-dollar mortgage refinancing and had \$244,000 in reserve for construction. We have \$7,000 in reserve (we think) and have shortfalls in our month-invincials. This \$1 per share assessment was given without a vote. Now, these five want to install an intercom system and are requesting that we shareholders and tenants give them our private home telephone numbers to hook up to the intercom system. I refuse to give anyone my private, unlisted number. These five people didn't get any other proposals nor did they disclose how much the system would cost. They did the same thing with a construction job – no bids or proposals – and we could not trace how much they spent on the project because when the shareholders did an audit of the managing agent's office, we audited the operating account and could not trace the checks. Our problem is that the shareholders' election is overdue and the board refuses to wait to install the intercom after the election. The only reason I allege they are rushing this job is for the kickbacks.

Do we have to give these people our private, unlisted telephone numbers? Why don't they find another system that does not require private telephone numbers? I believe that our constitutional rights are being imposed upon; they are threatening that we will get fined if we don't give out our numbers.

IC You do not need to give your telephone number. However, your visitors may not be able to communicate with you from the building entry door. You may need to come down to open the door to your visitors as the intercom they have selected uses the telephone number to communicate your visitor with you. In fact, telephone entry systems may be restricted to local area codes. If you have a cell phone with an out-of-area number, you may be excluded from such a restricted intercom system.

HabitatReporter Attorney Mark Hankin, a partner at Hankin Mazel, responds: "You have an absolute right to privacy over your personal identifying data, i.e. Social Security, name, phone number, etc. New York State has enacted many laws that prohibit release and require notification of a breach of personal identifying data. (See *Information Security Breach & Notification Act* and *New York Social Security Protection Act*). Generally, other than a governmental agency that requires the data in order to provide and confirm its policies, you are not required to provide this data (i.e. IRS, Medicare, etc.). On the other hand, if you provide it because private entities will not give you the service or goods you are seeking without it, they are then

obligated to secure the data and notify you should there be a breach of the security."

Talking About Asbestos Removal

NERIS How should a board handle a president who engaged a company to remove asbestos without proper certification? None of the safeguards were applied, including having the employees help with the removal. There is an open violation and when EPA comes back they will want to see that all paperwork was correctly filed. We are going to be faced with massive penalties.



AR In the end, if the board made a conscious decision to use an unlicensed company, there is negligence. You're in a predicament, but not one that cannot be fixed. Fines are hefty... Was there an ACP-5 or 7 done? Unfortunately, the information required to accomplish this is a lot more than can be transferred through a post and some things with this type of liability should not be posted.

HabitatReporter Here's an opinion on this topic from Ellen Kornfeld, Vice President, of the Lovett Group: "If a board member or officer of the co-op engages a company to remove asbestos by a non-certified company, the questions we have are, did

the other board members or managing agent know about this, and were other bids obtained for the project by certified companies? If the answer is 'no' to both of these questions, I would ask for the president's resignation. The board president did not conduct himself as a fiduciary and not only violated building code and Environmental Protection Agency (EPA) rules; they also exposed their employees to asbestos and could be faced with lawsuits down the road. The Directors & Officers liability insurance would probably not cover the board should a suit be brought due to the failure to adhere to EPA requirements. It is for this reason that the board should require the president's resignation because the D & O coverage could be in jeopardy if someone were to sue the co-op. D & O coverage would not cover acts of a president if they were illegal."

Board Talk is an online discussion forum where board members can post questions to which other board members can respond. Topics range from mouse-proofing to legal retainers – really, anything, and all things, that boards encounter on a daily basis. Some of the responses have been edited for clarity. Want to participate? Go to: www.habitatmag.com/activities/board_talk