

With the economy sinking many co-ops and condos are

Tightening their Belts

No More Mr. Nice Guy

Tough times demand tough actions. Ronald A. Sher, an attorney who specializes in co-op and condo law, urges boards to get hard-nosed if the economy continues to worsen and more co-op and condo residents fall behind on their monthly payments.

"Boards have to make sure they're vigilant that shareholders and unit-owners are current in their monthly payments," says Sher, a founding partner in Himmelfarb & Sher. "There's no more permitting shareholders to be carried, and then collecting a late fee."

Instead, Sher advises his clients, who are sprinkled throughout the metropolitan area, to take prompt and decisive action.

"Plenty of boards wait three, four, five months before they refer [arrears] to counsel," he says. "But boards are going to suffer hardships if they do that. There's something inherently unfair in the concept of being neighborly and accommodating to your neighbors. By being a 'good' neighbor, you're potentially being a fiscally irresponsible board member."

By letting arrears build up, you're being a merciful neighbor but an irresponsible board member.

TO HABITAT MAY 2009



Dial "L" for Lawyer

YOUR SUPERINTENDENT is suddenly hit with a stroke. An owner's teenage son lives alone in an apartment and holds wild parties. The sponsor refuses to give up control.

Different dilemmas with a common solution: call your attorney. From headaches to crises, your lawyer should be among your first line of defense (right up there with your manager). But when should you call and when can you go it alone? And what can a board learn from the experiences of co-op/condo attorneys that will help it make that decision?

As part of our annual attorney survey, we found out, asking New York City's premier co-op/condo counsellors this question: "Tell us about a legal problem you have encountered (in the last two years) in a co-op/condo association that provides a lesson for how other boards of directors should conduct themselves. What is the lesson?" Thirty-seven lawyers offered insights and information about how to stop minor troubles from becoming major problems. Their responses follow.

Himmelfarb & Sher

RESPONSE BY Ronald A. Sher, Partner

This legal problem involves effective labor relations with the building staff, in conjunction with the implementation of employee disciplinary proceedings. The lesson learned is that a board of directors and its managing agent must maintain detailed records and properly document staff problems and impose progressive punishment that is both fair and reasonable. The board of directors should require that the managing agent document employee performance problems and/or chronic improper conduct so that there is a record noting the incident, date, time, place, and reason for the write-up. The range of discipline can vary, including written notice, informal meeting with union rep-

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resentative, suspension, or termination. Accordingly, the extent of discipline should have a logical progression based upon the lack of performance and/or conduct. The employee should be spoken to by the managing agent and receive a copy of a write-up, along with any requirements and/or recommendations to improve such performance, with a copy to the union. Moreover, it is important to emphasize that the lack of documentation and/or the failure to maintain records can significantly undermine and substantially weaken an employer case establishing adequate grounds for disciplinary action.

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