ANDERSON KILL
CO-OP, CONDO & REAL ESTATE ADVISOR

Avoiding Disability Conflicts While Replacing an Elevator

By Deborah B. Koplovitz

Just as the parts in cars tend to wear out after 60,000 miles, so too, in buildings in New York City, do systems such as elevators wear out after a number of years in service. The end of an elevator's useful life sometimes catalyzes a series of important upgrades for a building. Getting to that fresh start, however, may entail a precarious process of navigating through the maze of various human rights laws. This is because an elevator's replacement will require its shutdown. And, an elevator shutdown may mean lack of access to an apartment for a disabled resident, which could trigger a claim of discrimination against a co-op or condo board. Or worse yet, it could trigger a claim of discrimination against the individual members of those boards.

Ensuring compliance with disability rights, New York City, New York state and federal disability rights laws is of paramount importance to the co-op/condo team at Anderson Kill P.C. Some recent court cases and examples from our clients' playbooks may help you get the right start when addressing an elevator shutdown.

Understanding the Legal Terrain

It should be well known by now that it is unlawful to discriminate against a person with disabilities. However, many board members are still not aware that a co-op or condo board is considered a "landlord" or "housing provider" under these laws, and is therefore required to comply with same. In addition, when it comes to things like elevator repairs, it should come as no surprise that key among the provisions of the human rights laws is the requirement that housing providers, including co-op and condo boards, ensure physical access to an apartment of a disabled person.

Q: Does the co-op or condo board have to wait for a request to be made?

Technically, yes. However, when an elevator must be taken out of service, we have recommended that a board take proactive steps

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to notify residents as soon as possible, and to ask them to contact management with any requests they may have during the repairs.

Q: Does the co-op or condo board have to say yes to every request?

It is not a foregone conclusion that every request has to be granted. For example, in the not-too-distant past, a request for a temporary restraining order was denied where the tenants requested to be *carried in and out of the building once a week during the elevator repairs.* The court found the tenants' request to be unreasonable since it posed a high degree of risk for liability on the landlord, which liability cannot be delegated to others. *Picaro v. Pelham (1135 LLC),* 2014 U.S. Dist. Lexis 132198. Instead, the court found that the landlord's offer to relocate the tenants was reasonable.

Q: Does the co-op or condo have to pay to relocate a resident?

Faced with a choice between having to share the costs of a temporary relocation and defending a disability claim in court, most boards would (and should) prefer the former. That being said, for numerous reasons, most residents are not going to use the fact of an elevator being out of service as an opportunity to move elsewhere for free. Moving, even short term, is tiring, difficult and disruptive. However, a board should know that the costs of replacing an elevator are not only the construction costs, and should budget accordingly. Ultimately, depending on the configuration of the building and the nature of the disability, agreeing to relocate a tenant may be a board's only option.

However, before granting a request for temporary relocation, a board can investigate any such request and can speak with residents to determine whether other solutions are acceptable. Some of these alternative arrangements could include hiring additional staff to carry packages and/or installing temporary stair-climbing chairlifts in the building's stairwell (if the building's engineer deems that option feasible). One of our client's buildings with two elevator banks that did not connect the two sides of the building was able to craft a solution that involved creating a safe (and insurable) walkway on the building's roof over which residents could cross to reach the upper floors of the other side of the building. Creativity, open-mindedness, consultation with experts, and a dialogue with residents are key components to ensuring that residents are not shut out of the process and their needs are met. These tools could also help avoid becoming embroiled in a discrimination claim.