

ANDERSON KILL CO-OP, CONDO & REAL ESTATE ADVISOR

Tough Love for Apartment Combiners

By Bruce A. Cholst

Demand for large sized apartments has exploded over the past decade, fueled both by a migration of suburban families to the city and by yet another baby boom. This has precipitated a flood of purchases of multiple adjacent apartments — and requests to co-op and condo boards for permission to combine them into a single larger apartment.

Boards should be supportive but vigilant in handling these requests. The benefits of combining multiple apartments can be more than offset by the risk of damage, disturbance and legal liability within the building if the construction is not properly managed by the board.

The key to managing these risks is requiring shareholders and unit owners, and their contractors and architects, to submit to stringent oversight by an architect or engineer retained by the board for the express purpose of protecting the building's interests, and to sign an airtight alteration agreement with provisions designed to minimize risk to the building. These protective measures apply to all apartment renovations but are particularly relevant to apartment combination projects, as these are the most intricate, lengthy and risk-laden types of alterations.

Architectural or Engineering Oversight

The reviewing architect/engineer, engaged by the board at the renovating owner's expense as a condition of board approval, is the association's advocate. The building advocate's role is to ride herd over the owner and the owner's contractors and architect to ensure the work is performed in a manner that conforms with the building's interests as well as the owner's.

The reviewing building advocate operates on two levels. First, he scrutinizes the owner's plans including specifications, drawings, contracts, and other materials the board requires as part of its application process. This evaluation should address not only the project's technical compliance with applicable code, but also its overall safety and impact on the building occupants' quality of life. The building advocate should convey his recommendations to the board suggesting either outright approval or rejection of the project or suggested modifications to address his concerns. The objective of this review process is to articulate problems with the proposed work that could result in damage, disturbance, or legal liability within the building, and correct them at

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the design stage before the work is approved and construction begins.

The second level is regular inspection of the construction site as the project unfolds. Strict monitoring of the work in progress permits the building advocate to troubleshoot potential or pending mishaps and to document the occurrence of any damage. Such documentation maximizes the board's ability to prove the cause of the damage should the owner contest responsibility. Finally, the onsite inspections keep owners honest by preventing surreptitious construction that has not been vetted and may be prohibited by the board, such as installation of an unauthorized Jacuzzi.

The Alteration Agreement

The alteration agreement, drafted by an attorney familiar with construction in co op and condo buildings, is the document that legally binds owners to the restrictions imposed by the board as a condition of its approval of the proposed work. If properly drafted, (1) it shifts legal liability for project mishaps from all other persons to the owner and the owner's contractor, (2) it preserves the board's right to monitor the work and document the cause of any building damage, and (3) it ensures the adequacy of funding to remediate the effects of any issues that arise with the project. Strict enforcement of its terms is imperative. ▲

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