

ANDERSON KILL Co-Op, Condo & Real Estate Advisor

EDITOR'S NOTE:

"A man's home is his castle" — so co-op and condo boards have no right to stick their noses in an owner's apartment renovation and dictate its progress, right? WRONG! Each and every apartment renovation is laden with potential for mishap. When any such difficulty occurs it typically spawns damage, disturbance and legal liability throughout the building.

When a board exercises its broad discretion to permit the owner to undertake a renovation project, which will no doubt enhance both the value and the owner's enjoyment of the apartment, it assumes the inherent risk of mishap with attendant prospect of damage, disturbance and legal liability. At the very least, as a quid pro quo for exposing their shareholders and unit owners to such risk, boards should be insisting upon owners' compliance with regulations and procedures designed to minimize the risk of mishap. In that regime the building derives the best of all worlds, since owners can enjoy the benefit of upgrades to their units while the rest of the building's exposure to risk is contained.

In the below article our guest author, architect Frank Fortino, explains what policies, procedures, regulations and "best practices" co-op and condo boards can implement to contain the risk of mishap and thus minimize the prospect of damage, disturbance and legal liability within their buildings while still permitting owners to reap the benefit of improvements to their homes and investment properties.

Bruce Cholst, Editor, Anderson Kill Co-op, Condo & Real Estate Advisor

Best Practices for Managing Residents' Renovation Requests

By Frank Fortino

Apartment renovations often involve highly charged emotions. After all, these spaces offer a unique opportunity to reflect individual style and creativity. The board members of condominium and cooperative buildings, however, have a responsibility to manage these personal projects in a way that protects the long-term interests of the building and its residents.

While apartment renovations are a frequent source of conflict between homeowners and boards, many have successfully managed these projects with a few simple systems. Specifically, they bring in knowledgeable part-

ners, set clear guidelines, and maintain open communication with shareholders.

Adopt and Distribute an Alteration Policy

An alteration policy explains building rules governing alterations. Having this document in place benefits both shareholders and board members. Individual unit owners can review the building requirements when planning their renovations, and board members can refer to established guidelines when evaluating applications for alterations. A well-documented policy can also avoid conflicts by letting

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prospective buyers know what kind of renovations are generally allowed.

- **Set shareholder expectations:** The policy should outline the procedures for shareholders to follow when requesting board permission for renovations. For instance, unit owners may be required to submit a standard application that includes a detailed statement of work, names and contact information for all contractors, and projected schedules for each part of the proposed work. The alteration policy also explains minimum standards that shareholders must follow, such as code compliance, insurance requirements, a security deposit, and an alteration agreement with the co-op/condo.
- **Communicate building standards:** This document should also explain building policies on such issues as “wet rooms” over “dry rooms,” “noisy” spaces over “quiet” ones, and general work rules. This is also the place to publish any standards for uniformity, such as window type and color, rules for visible window treatments, color and finish of entry doors. Identify any idiosyncrasies specific to the building’s construction, such as an inadequate electrical service or the presence of asbestos. These limitations are often more restrictive than code compliance.

Partner with Construction Specialists

On the front end, condo/co-op boards work with a registered architect to create the specific guidelines that explain what the building does and does not allow in apartment renovations. With this document in place, architects and other experts review homeowners’ alteration applications to ensure that the proposed work complies with city construction codes and the building alteration policy. They also confirm that the plans adhere to best practices and maintain the integrity of the building.

Construction experts assist the renovation process in several ways:

Confirm the scope of work: During the internal review, an architect looks at the proposed plans to ensure completeness. Some-

times a unit owner may unintentionally leave out information. Such omissions may also arise in an attempt to avoid filing fees. An independent, expert review helps to confirm the accuracy of the proposed alteration project.

Identify required filings: A construction code/zoning consultant reviews the project scope to determine which city agencies should be involved and the applications required by each. In addition to permits from the New York City Department of Buildings, historic properties or those in historic districts also require approvals from the Landmarks Preservation Commission. After work has been completed, the shareholder needs to secure sign-offs and letters of completion. Some buildings retain code consultants to serve as liaison, handling all interactions between the unit owner and city agencies. Incorrectly filed applications or those that do not get closed out can result in violations or hamper the building and its ability to obtain mortgages or refinancing.

Review compliance issues: Some alterations, such as enclosing balconies or terraces and sub-dividing large apartments, can have unexpected zoning consequences. A tenant combining apartments and reclaiming some of the building corridor in a post-1980 new building may inadvertently cause a zoning noncompliance if that corridor floor area was previously deducted during the new building review. Plans to add or upgrade air conditioning units may not only conflict with building guidelines, but the location of the units may also fail to comply with zoning regulations or with Landmarks Commission rules. Projects that involve window replacement have to adhere to building standards for uniformity, as well as to energy code requirements. Changes to interior lights and new wall penetrations are also subject to energy code compliance. A code and zoning expert can save the board and owners time and money by identifying — and resolving — these challenges during the planning process.

Ensure accuracy of filings: A code consultant should review filing applications for the DOB and other agencies, especially if the building allows tenants to self-certify filings.

Independent verification of accuracy and completeness of paperwork and drawings can head off potential audits for both building code and energy code compliance.

Consultants help balance the desires and goals of the unit owner with the needs and interests of the building. From clearly conveying the processes and rules in an alteration policy to communicating and collaborating with owners and project teams throughout the renovation, these advocates can help reduce the friction that often accompanies such undertakings. ▲

About Anderson Kill

Anderson Kill practices law in the areas of Insurance Recovery, Commercial Litigation, Environmental Law, Estates, Trusts and Tax Services, Corporate and Securities, Antitrust, Banking and Lending, Bankruptcy and Restructuring, Real Estate and Construction, Foreign Investment Recovery, Public Law, Government Affairs, Employment and Labor Law, Captive Insurance, Intellectual Property, Corporate Tax, Hospitality, and Health Reform. Recognized nationwide by Chambers USA, and best-known for its work in insurance recovery, the firm represents policyholders only in insurance coverage disputes — with no ties to insurance companies and has no conflicts of interest. Clients include Fortune 1000 companies, small and medium-sized businesses, governmental entities, and nonprofits as well as personal estates. The firm has offices in New York, NY, Stamford, CT, Newark, NJ, Philadelphia, PA, Washington, D.C., and Los Angeles, CA.

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