

When disputes arise around repair responsibilities ...

UPDATING DOCUMENTS IS KEY

Conflict often arises around who is responsible for various types of co-op repairs and maintenance. Boards need to look at their governing documents to help figure this out, but often they do not spell out the relative responsibilities when it comes to items such as floors, windows and pipes behind walls. Water damage is another contentious issue. Boards should review their documents and make changes that shift repair responsibilities to shareholders to ensure that insurance obligations aren't in conflict — and communicate those changes clearly to residents.

WHERE CONFLICTS ARISE.

Window repairs can be confusing. In a co-op, windows are typically owned by the building, but repairs may be needed either inside or outside the unit,

which shifts the responsibility for the work. In condos, windows could be part of the unit or a limited common element, which again changes who is responsible for repairs. Similarly, radiator valves embedded in walls might be the co-op's responsibility, but exposed valves could fall to the shareholder. Fireplaces and their flues raise questions about whether they are considered part of the chimney system, making them the building's responsibility, or decorative elements, making them the owner's responsibility. There is often confusion about whether parts like chimney caps or fireplace fans are treated like HVAC equipment, which could further affect who pays for repairs. Ultimately, repair obligations often depend on specific language in proprietary leases or condo bylaws, creating a need for clear interpretation of these documents.

UPDATING DOCUMENTS. If the governing documents are silent on the issue of repairs — as they often are — the next step is to look at past practice. So if a co-op has been replacing the windows for 20 years but it is clear from the governing documents that they are part of the unit, the board can't simply change its policy without notifying shareholders. A board needs to make it very clear to owners that

this represents a change as part of the updating of the documents. In addition, since casualty damage and repairs are addressed differently, it's important to ensure the provisions align within the documents. Otherwise, issues may arise where you aren't required to insure something but are still obligated to repair it, or shareholders might mistakenly believe the co-op is responsible for a repair when, in fact, it falls under their own insurance.

CRAFTING CHANGES.

One approach when changing the governing documents is to list all the components — bathroom tiles, floors, cabinets, appliances, chimney, windows — and itemize how each will be treated if repairs or replacements are required. We are dealing with a building where a fireplace chimney flue needs repair. The building hasn't replaced one in 40 years. We think it's the shareholder's responsibility. However, if the board concludes, after taking legal advice, that the \$40,000 installation for a new liner is the building's responsibility, it will expose itself to \$2 million of potential repairs.

ALTERATION AGREEMENTS.

Another way to help prevent disputes over repair responsibilities is to make sure your alteration agreements are very clear. You get situations in which a prior shareholder repaired their apartment's gas lines, and then there's a gas leak 15 years later, but the current owner had no idea there was a previous alteration and that they are now responsible for it. The board needs to make sure anybody who buys understands they are assuming the liability for repairs made by the previous shareholders.



KEN
JACOBS

Partner

Smith, Buss & Jacobs