

Condos and Co-ops: Is Your Workers' Comp Coverage In Place?

By: Steven R. Goldstein, Esq.

Properly insuring your building is one of the more important responsibilities of a co-op or condominium board. Most governing documents require that the property be insured against a casualty loss. Almost all co-ops and condominiums also carry liability insurance, boiler and machinery insurance, directors' and officers' liability insurance and an excess policy of insurance.



There is one type of insurance that is legally mandated: workers' compensation / disability insurance. In New York State, this insurance coverage is necessary for any work done for the building, including the minor work done by a part-time porter who sweeps the lobby twice a week.

Under the law, the co-op or condominium, and not the property management company, is legally responsible for any shortcomings in the coverage. Workers compensation coverage is subject to governmental audit and, in the event of non-compliance, potentially stiff penalties.

Many well-meaning boards, particularly in small self-managed buildings, don't realize they are required to maintain this type of insurance coverage. The sanctions can include criminal prosecution for the commission of a misdemeanor or felony.

In connection with the financial repercussions, the New York State Workers' Compensation Board (WCB) will go back in time and impose a monetary penalty for the entire period that the building employed persons to perform any building services without securing workers' compensation insurance. The civil penalty is \$2000 for each ten-day period of non-compliance or up to twice the cost of providing compensation for the entire period of non-compliance. In some cases, the period in question can go back for many years.

We have often seen board presidents or other officers receive a notice of violation from the WCB, advising them of liability for tens of thousands of dollars or even more, when the well-meaning board member had no idea of the lapse or even the requirement to secure the coverage.

Fortunately, the members of the board and other building residents have usually been able to avoid the potentially devastating consequences of these lapses by following an intricate series of prescribed administrative steps and requesting a waiver or reduction of the penalty.

In the event a Board receives a notice of a WCB violation, the first thing it must do is *immediately* purchase a workers' compensation policy. This is important because the Workers' Compensation Board will not even consider an application for reconsideration until evidence of proper coverage is provided. It is also helpful to be able to argue to the WCB that upon learning of the problem, the Board immediately took affirmative steps to bring the co-op or condominium into compliance with the law. While it is often said that "ignorance of the law is no excuse", in

our experience, quickly curing this omission has been a critical factor in obtaining a waiver and/or significant monetary penalty reduction for our clients.

Workers' compensation policies can be secured from any number of private insurance carriers, or from the New York State Insurance Fund (NYSIF). The latter is a quasi-state run insurance company which exists to make sure that every employer in the state can secure the mandatory coverage.

To the extent a Board elects to try to remedy the problem without the assistance of counsel, great care should be taken in dealing with the bureaucratic nature of the WCB.

It is essential that every phone call be documented in detail. Written notes of these calls, along with every letter and email should be dated, and contain the name and contact information for the person at the WCB with whom the board member spoke.

A clear and complete record of all interactions with the WCB will be necessary when the board, as they often do, ultimately calls upon an attorney for further help. Additionally, copies of these notes and other writings should be distributed to every board member so that if board membership changes, the records can be easily provided to a lawyer if one is eventually retained to clear up an on-going problem.

Board members should be cognizant that even though the problem is being addressed, penalties continue to accrue and with the passage of time, it becomes more difficult to obtain a complete waiver or significant monetary penalty reduction. If the issue remains unresolved for even a short period, it may be best to retain a specialist to look into the matter.

Steve Goldstein is Counsel at Braverman Greenspun, a law firm dedicated to representing Boards of Directors and Managers of Condominiums and Co-ops in the metropolitan New York City area. Over the firm's 50-year history, we have served as general counsel to hundreds of properties and developed broad expertise in litigation, transactions, leasing, financing, and the governance issues facing cooperatives and condominiums. One of the first firms in New York to specialize in this practice area, Braverman Greenspun provides some of the most sought-after counsel in the industry.