HABITAT

The Perils of the Moonlighting Super

Karen J. Bannan - November 8, 2018

. . . . Traditionally, residents of New York co-ops and condos have called on their supers and other staffers to perform minor jobs that fall outside the auspices of his or her official duties. Many co-ops and condos even encourage the practice, as a **low-cost service** to residents and a way to nurture loyalty in the staff. It's only recently, however, that boards are recognizing the myriad problems associated with this type of arrangement. From lack of **licensing** to **workers-compensation** conflicts to potential **insurance claims**, attorneys and board members have a lot to think about – and legislate.

The biggest issue is liability, says attorney **David Berkey**, a partner at **Gallet Dreyer & Berkey**. A board could face claims if work done after hours by an employee causes **damage** to the building or a third party, or **injury** to the employee. For instance, if the super is putting in a new sink and there is flooding that damages a unit below, it's not always clear whose insurance company – the building's or the homeowner's – is responsible.

"There are several liability concerns," adds Berkey. "Sometimes the co-op or condo board is viewed as a joint employer, especially if that employee gets hurt working in the tenant shareholder's or unit-owner's apartment." The board can also face liability if someone is injured onsite or if the superintendent's work is sub-par. There are several ways a board can protect itself and its unit-owners or shareholders. Berkey advises his

clients to be “ultraconservative” and prohibit the staff from doing any work outside of their official duties in a building. If the board or residents absolutely insist on allowing it, he suggests restricting the types of activities that can be performed.

“You’re looking for **acceptable-risk** items – changing washers on a sink or a speedy connector on a toilet,” he says. In such cases it is also important for boards to require both the employee and the shareholder or unit-owner to sign an **indemnification contract** and for the employee to hold his or her own insurance. “If you’ve got a super who is also a general contractor who is licensed and insured, it could be okay,” [says attorney Teresa Racht].

Iwona Bardecka, a senior account executive at **Century Management**, says the board of a building she manages is currently grappling with this issue. “Right now they are working with **insurance brokers** and an attorney trying to figure out the best way to protect everyone involved,” Bardecka says. “They’re looking to create new rules, add them to the house rules, and issue memos to inform shareholders. Right now, shareholders don’t realize that they’re playing Russian roulette by hiring a building employee. They don’t realize their homeowner’s policy is not going to cover them if there’s a problem.” . . . .