

HABITAT

HANDLING CORRUPTION

the Attorney Survey

“**W**herever law ends, tyranny begins,” warned 17th Century philosopher John Locke.

Certainly the legal system has been much on the minds of board members of late. The recent indictment of a former co-op board director raised new concerns about corruption and the board. On June 18 Manhattan District Attorney Robert Mogenhau indicted former board members Vincent Torresi for taking kickbacks to steer contracts to a specific vendor. The vendor and his company have also been indicted for agreeing to pay the bribe and bid-rigging.

With such issues in the news. Habitat's sixth annual survey of 23 top law firms asked: “if you suspect irregular or corrupt behavior on the part of either a property manager or a board member or a board director, what specific actions would you take? Have you ever been in this position and if so, what did you do and what was the outcome?”

The answers were as varied as the lawyers who provided them the results follow.

Adam Leitman Bailey

The Law firm of Adam Leitman Bailey has been involved in matters covering corrupt behavior. It is important that a lawyer recognizes the delicacy of these situations as not only a lawyer but as a counselor. Unfortunately, many times a lawyer learns of these issues long after much of the damage is done. If the co-op/condo calls us early enough in the process, many times potential problems can be alleviated quickly.

(1) I see many cases where the co-op or condo rushes into litigation. I look at these cases two years later and see that they could easily have been prevented with a simple meeting or phone call, saving thousands of dollars in legal fees. Many of these issues can be resolved without lawsuits, screaming board members or shareholders. First identify the problems. Take steps to both cease the impropriety or have the person reimburse or rectify the situation. Do not alarm the entire building until the proper time. Often, it vitiates any potential legal battles as the person may rectify the situation peacefully if he/she believes that he/she does not have to protect his/her reputation. I have had cases where the accused was confronted, admitted wrongdoing, reimbursed the board and resigned. I believe that keeping the matter internal assisted in resolving the problem. On another occasion, a managing agent went beyond the scope of its duties and quick procedures were taken that presented a potential messy problem.

(2) On other occasions, approaching the person and explaining your findings results in a vociferous battle. At this point (once again in the interest of saving legal fees and avoiding lawsuits or indictments) the person should be presented with proof of the board has collected.

If steps are not taken to rectify the situation then immediate actions must be taken. Investigations, constant meetings and complete due diligence should be brought to this problem and

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it is important that the accused person does not feel it is one person against him/her but the whole board. So all notices should come from the entire board.

(3) Also, remember that being a board member is a part time job for most members and as a result it is very difficult to discover if a property manager or a board member is stealing from you or taking other actions that are against your interest. This is why it is very important to take the time to pick your employees and board team members carefully. In most cases the board is relying on the honesty of the managing agents. Your governing documents should also provide checks and balances to prevent people from illegally dipping into the money jar.

One of problems that I have encountered is that many of the documents covering buildings do not address the problems that arise in these situations. The law firm of Adam Leitman Bailey has drafted numerous documents addressing these issues that avoid legal battles and facilitate answering these problems. Common problems include removal; how to conduct yourselves under these situations as well as preventive measures that attempt to ensure that the corrupt behavior does not occur again.

Beside the usual corrupt behavior. I have seen members of boards who were friends unable to work together in the future as a result of an incident. It is important to allow the line of communication to stay open and make sure that no member monopolizes the handling of the problem.