

# The COOPERATOR

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## Go Ahead, Sue Me!

### Handling Lawsuits

By Lisa Iannucci

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Lawsuits are an unfortunate, expensive fact of life these days—chances are that at some point in your lifetime you'll be involved in one to at least some degree. In you live in a co-op or condo community, legal issues arise between boards and residents all the time. Sometimes it's the resident who sues the building for some grievance, other times it's the building that goes after an individual resident. Maybe Jane Doe in 3A has defaulted on her lease in her co-op, or John Doe has consistently caused all manner of trouble since moving into his condo unit, and has now failed to pay his condo charges.



Clearly action needs to be taken, but either way, a lawsuit within a building community makes for a delicate situation, roiling up bad feelings and costing everyone money and time.

### First Moves

So what is the first thing you should do when you get the word that a legal action has been brought against you or the board? Of course your first reaction—whether you're the board president or the individual being sued—might be to panic. After all, a lawsuit conjures up the specter of lost wages, large payments and a tremendous amount of stress for everyone involved.

But don't panic. Instead, according to Manhattan-based attorney **Adam Leitman Bailey**, the wiser course of action is to just take a deep breath, sit down, and read it. "There is a limited amount of time you have to respond to a lawsuit," says **Bailey**. "If it's personally served, you have 20 days, and if it's served by the secretary of state, you have 30. You can get an adjournment [to get more time] but you have to ask before time expires."

Once you are done reading over the paperwork and have an idea what it's all about, it's time to talk to your or your building's attorney. "The next action that should be carried out should be to have the lawsuit reviewed by counsel," says ... Although modern technology has instant communication, there's no guarantee that your attorney will receive a forwarded email or PDF, so most legal professionals advise following up by phone in a few days to make sure it was received.

"Once the lawsuit has started, all of the machinery of the judicial system begins," ... "So there are deadlines that need to be met, and counsel will be able to keep an eye on that. There are insurance considerations as well. One of the ways to lose your insurance coverage is by not providing timely

notification of a potential loss and of a lawsuit. If the circumstances underlying the dispute have not previously been sent to the insurance company for the co-op or condominium, then the building should send over those papers immediately. A third thing that the board should keep in mind is that there is an obligation to preserve evidence. Instructions should go out to all personnel at the managing agent's office as well as members of the board that emails should not be deleted, nothing should be destroyed, everything should be preserved. That's a very important consideration."

How does the dynamic differ between co-op and condo buildings? "There's less chance of a conflict with the condominium association because the condo is an association and the units are independently owned," ... a partner at the Manhattan-based law firm of Seyfarth Shaw. However, the co-op owner owns shares in the entity and the board has a greater role in the co-op. There are generally fewer conflicts that arise in a condo situation."

## Settle if You Can

So reading the fine print and contacting your lawyer are Steps One and Two. Once you speak to your lawyer however, you might be surprised to hear what he has to say. Jokes and assumptions aside, the truth is that most lawyers don't really want to get to the courtroom. "We try not to push people into litigation," ... "Our advice is to settle it if you can arrive at acceptable terms. We might send a letter or get into a conversation with the attorney for the defendant if it's not resolved, but we try to settle and keep the emotion out of it because sometimes people are so angry."

For example ... the building may be suing a contractor who did a terrible on a roof repair and now the board wants to sue. "Talk to the attorney and see if anything can be done to enforce a warranty or make demands. A very small percentage of lawsuits ever go to trial."

"A lot of defendant boards say 'Look, we think this is a baseless claim. Why do we have to spend all this money defending it?' says Goodman. The answer is that very often people assert claims that are ultimately determined to not to have merit, but nevertheless you need to defend it because if you don't, you'll have a judgment entered against you for a case that otherwise might not be meritorious. This is an area where it might make sense to explore a settlement to avoid those litigation costs. That's really a determination that has to be made after consulting with counsel. It's often a business decision whether it makes sense to [go to court] or to settle a case that might not have merit, but also doesn't make sense to spend all that money on attorneys' fees."

**Bailey** adds that his approach is generally to contact the other attorney to determine how he can make this lawsuit go away. "I'd rather have my clients spend as little in legal fees as possible," he says. "If we are in the wrong, I'd rather have the building pay it to them and settle it for cheap than pay for legal fees. However, I don't want to invite people to sue the building, but they aren't going to be able to just push us over either." ...

## Notify Your Insurer

If ADR fails and the lawsuit is a definite, it must be filed next with the building's insurance company as quickly as possible to confirm legal and insurance coverage. "A condo has right to free counsel as long as they follow the rules, or their insurer will disclaim coverage," says **Bailey**. "Get it in within the week. Don't wait months to get it in. If in doubt, file the claim. A week is never deemed too long of a time."

Directors and Officers, or "D&O" insurance, as it's commonly called, is a vital component of any building's coverage portfolio. Simply put, says Arthur Schwartz, senior vice president of Masters Coverage Corporation in Manhattan, "D&O protects directors and officers from damages resulting from allegations

of wrongful conduct and lawsuits. It provides legal defense coverage as well as indemnification of damages.”

“Even if under D&O the damage award is not covered by the policy, the building can get legal representation by the counsel appointed by insurance policy,” ...

Another important factor in all of this is confidentiality. Once you’ve spoken with your building’s attorney and insurance company, don’t talk to anyone else ...

“Otherwise, things are said that may create a problem, or someone may claim that you said something and you didn’t.”

“I think the most important thing is not to admit liability,”... “Refrain from making any statements to investigators, to the plaintiff or the plaintiff’s attorney or any representative of the plaintiff until the board speaks with its own counsel and its own insurance carrier.”

## Gather Information

Once the lawsuit moves forward, it’s time to start gathering information about the case, including witness interviews. “We collect documents, letters, emails, memos, and get some statements from the board members and managing agents and put together a paper trail as to what claim might be about,” ...

No matter what happens with the lawsuit—whether it’s decided or settled—it seems to have an impact on the building. “What happens is board could sue a contractor, for example, and not get much back, and these lawsuits cut both ways. The residents may second guess board. If they don’t sue, they’ll wonder why they didn’t and if they did and spent a lot of money on this and only got back a little more, they’ll question it. Things that affect a lot of people and doesn’t satisfy many creates tension. It’s always possible that there will be some criticism raised by unit owners.”

## Patching Up the Wounds

Let it be said that some tenants or shareholders simply like to sue. “When you have someone not thinking straight, it gets out of hand,” says **Bailey**. “A better attorney convinces clients how much the cases cost. Condos are different than co-ops because with condos, you can’t go to housing court. They have to go to state Supreme Court, and a case could take years.”

Litigation also has a corrosive effect on a building community as a whole, and dealing with the aftermath is almost as important as dealing with the suit itself.

Some legal professionals advise boards to reach out to resident through correspondence, or possibly a memo explaining the situation with a view to countering misinformation and putting people’s minds at ease.

“It has to be carefully drafted,” ... “and I don’t know if I’d recommend that typically, but if that was determined to be advisable, then in an announcement could maybe go into a memorandum or a newsletter that’s distributed regularly. I wouldn’t recommend doing a separate one for purposes of announcing a settlement or the end of a lawsuit. I think the most positive spin should be put on the announcement. Just keep it really general that we’re happy to report that we achieved the resolution of a dispute and we look forward to moving forward.”

Whether or to what degree a building community moves on “depends on the kind of case it is,” ... “Certainly in any litigation can have a financial impact on the budget of the co-op or condominium. That’s one type of residual effect. There’s no doubt that people take their co-ops or condominiums very seriously, and they take a lawsuit very personally. Hopefully though, once the settlement is achieved or a case is terminate, that provides some closure and people can go on with their lives. Take the high road, because this where people live, this is their home, everybody sees each other in the elevator, in the mail room. The idea is to try to make it into a genial, comfortable environment as possible. “

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