

# HABITAT

## Money (That's What I Want)

In smaller buildings, shareholders who miss their maintenance payments can cause big headaches for the entire co-op. Self-managed boards and attorneys share their tips and strategies for making sure everyone stays current with their maintenance.

The 16-unit East Village co-op has come a long way. Many shareholders have been there from its days as a down-and-out rental building, through its conversion to a Housing Development Fund Corporation property to the present. Now, as a strong, self-managed co-op in a hot neighborhood, the prices of apartments have skyrocketed. The shareholders are proud of the work they've done to make their building a stable place to live.

So, tensions are understandably inflamed by a two-year conflict with the tenant in the ground-floor commercial space - a church - that also owns two residential units in the building. The church has been in the commercial space since the building became a co-op, and is claiming ownership, arguing that it shouldn't have to pay rent to the co-op. In protest, it has stopped paying the monthly maintenance on the two units. "They are shareholders, but also tenants," sighs the board president. "They don't want to be tenants because they think they own the commercial space."

Although the monthly maintenance is low, every little bit makes a difference. And with late fees, penalties, and legal fees adding up - and with a lawsuit lurking around the corner - the non-payment problem is costing the cooperative a great deal of money and great psychic energy. The situation illustrates vividly how problems can escalate when shareholders don't pay their maintenance.

Maintenance is crucial to the health of any co-op. But self-managed properties and smaller co-ops need that monthly maintenance even more: to keep the bills paid on time, to pay down the mortgage, and to cover emergency costs if the reserves aren't large. The impact of one non-payment in an eight- or nine-unit building is much larger than in one with 50 or 60 units.

The chief problem for self-managed buildings is keeping everyone on schedule, and taking the right measures when someone isn't pulling his or her weight. Even the toughest board member will find that asking his next-door neighbor to cough up the maintenance he owes, and then pay a late fee on top of that, can be tremendously awkward.

In addition, the strong sense of community can also work against a self-managed building in non-payment disputes. Board members might be more lax about going after missed maintenance because the personal connections among residents are tighter, thinking, "Oh, he will get it to us eventually."

Tom Flynn, the board president at Linden Court Complex, a 16-unit co-op in Jackson Heights, refuses to let unpaid maintenance accumulate. Likening himself to the dictatorial Roman general, Cincinnatus, Flynn proudly says he's never had any problems collecting from residents, except in the cases where a shareholder dies and the family doesn't keep current with the bills.

If shareholders do pay a few days late at the beginning of the month, Flynn simply requests that they give him three checks written and dated in advance for the next three months' worth of maintenance. "When you come in here, you have to pay your maintenance and you agree to that," he says, "no matter what your circumstances are."

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When late fees get assessed at Deborah Sue Lorenzen's eight-unit Park Slope co-op, she says she usually gets a phone call saying two things: "I'm terribly sorry" and "Can I have the late fee forgiven?" But Lorenzen, the board president, always holds firm. Even though the fee, a small percentage of the already-low maintenance, is not likely to break anyone financially, she says it's important to treat every shareholder the same when dealing with late payments.

"When you're living in a building that's only got eight units, it's noticeable when someone doesn't pay their maintenance in a timely fashion," she says. But she does credit the building's cohesiveness and community feel as strong factors that keep most shareholders on time. "For the most part, people are very thoughtful that someone is volunteering to get the maintenance, and take it to the bank and deposit the checks. They know that it's possible their turn is going to come around. And they don't want to be the ones who make the phone call."

Spread out the responsibility. If your co-op distributes tasks and duties for managing the building, then make sure that collecting maintenance is one of the jobs that everyone gets to do. Familiarizing everyone with the process means that they're more likely to think twice about making a late payment. And getting everyone involved eliminates the sense that there's one person who is solely responsible for collecting money from the residents.

Convenience helps speed everything along, so make it as easy as possible for the shareholders to pay their maintenance every month. At Mike Gordon's two-building, 27-unit Park Slope co-op, for instance, there's a lock box in each lobby where residents drop their maintenance checks in envelopes every month. Starting on the first of the month, Gordon checks the boxes daily and

keeps track in his ledger about who has paid and who hasn't. "It makes it much more convenient," Gordon says. "I go there, and I know what I'm going to find generally. You're not at the mercy of the mail."

Enforcing your building's late fee procedures is another way of tightening up lateness problems. Usually the policy is written into the proprietary lease, and buildings with leases that haven't been modernized might have a late fee that's only 6 or 8 percent per annum. That's well below the 18 or 20 percent that credit card companies charge, thus inducing a financially strapped shareholder to put other bills at the top of the "must pay" pile. Make sure that your building's late fee is high enough to make shareholders think twice about not paying the monthly maintenance on time.

If the problem is bigger than the occasional shareholder being a few days late every now and then, there are more steps a building should take...

...Setting up a hardship policy is another option that can help shareholders in arrears work themselves out of a hole. It's a particularly good fit with the community-minded aspect of self-managed buildings, where board members and neighbors might find it particularly painful to bring a non-payment proceeding against one of their own. A hardship policy basically allows for a delinquent shareholder to work out a payment schedule with the board, if he or she can prove or document an inability to pay the full maintenance on time. While it's not an ideal option, a payment schedule is significantly better than an extended non-payment dispute.

If the shareholder gives no indication that he or she is interested in working things out, then the co-op should consider acting quickly about bringing a non-payment proceeding in housing

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court. Co-ops that wait more than three months before initiating a non-payment suit run the risk of falling under “laches,” a kind of statute of limitations that might prevent a co-op from being able to collect the money owed through the housing court system. Non-payment proceedings can be brought by self-managed co-ops without a lawyer or a managing agent, but it can be difficult and confusing to do so. Attorney [Adam Leitman Bailey](#) recommends seeking out a lawyer with experience in both landlord/tenant law and co-op/condo law to help.

Turning to the shareholder’s mortgage lender is another way to go. If there have been no steps to fix the problem, inform the bank. Unpaid maintenance is a warning sign of financial difficulty and, through the terms of the shareholder’s recognition agreement, the lender will put pressure on the shareholder to correct it. Negligent shareholders are much more afraid of a bank calling in their loan than they are with any late fees.

What should buildings not do? Don’t try changing the locks on a resident’s door or blocking the hallways. And don’t put a list of delinquent shareholders on a bulletin board or any common space. That opens up the co-op to a lawsuit from one of the named delinquent shareholders, whether or not the information on the sheet is correct.

Sometimes a lawsuit is the last, only, and best resort for a co-op that’s got a serious problem with non-payments on its hands. But self-managed buildings have a variety of resources at their disposal before situations escalate to that level. Take advantage of the building’s close-knit community to let delinquent shareholders know they can work with the board to repair any arrears. Be firm but communicative, and remind them that everyone is equally responsible for the well-being of the cooperative.