

## Ripped-Off ... Who's Responsible?

### Q & A

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By Adam Leitman Bailey, Esq.

**Q** A Shareholder in our building claims that some valuables he kept in a storage room in the basement of our co-op were stolen after the lock to his storage space was allegedly broken. He is threatening to sue the co-op for "the failure to properly secure the premises." He is also claiming that his burglary was a breach of his Warranty of Habitability. He sent a police report to our board describing the incident, and is demanding that the co-op reimburse him for the replacement cost of his valuables, which totals over \$100,000.

A paragraph in our proprietary lease states that shareholders "shall not use such storage space for the storage of valuables...." This shareholder has never sought or obtained our consent to store valuables in the storage room, and such conduct has continuously been discouraged, with signs prohibiting the placement of valuables hanging outside the storage room. Is my co-op required to pay this shareholder for his lost valuables?

-- *Brooklyn Shareholder*

**A** According to Adam Leitman Bailey, a real estate lawyer in Manhattan, "Using the facts given in the question, the co-op is not responsible for the shareholder's loss. By signing the proprietary lease, the complaining shareholder is bound to abide by the rules and regulations governing its operations including the proprietary lease. A court may only refuse to enforce regulations that are, unreasonable or capricious." Safety and security issues are undoubtedly in the realm of reasonableness, and within the discretion of the co-op. The co-op therefore had every right to include said provision in the proprietary lease. So long as the corporation's directors have not breached their fiduciary obligation to the corporation, the exercise of their powers for the common and general interests of the corporation may not be questioned.

In addition, according to the facts stated above, the co-op and its agents have not acted negligently or unreasonably with regard to the storage room. Not only does the governing agreement prohibit such a use by the shareholder, but the shareholder also failed to receive-or even request permission to use the space to store valuables. Furthermore, it appears that the co-op has actively attempted to enforce the banning of valuables from the storage room. As a result, the cooperative has sufficient reason to reject the shareholder's claim."