

Could You Be Sued as a Co-op Board Member?

By Kathleen Hughes

April 27, 2018

Let's say you volunteer to serve on the board of your New York co-op apartment, and conflicts arise. Legal threats follow.

Just how much personal risk have you taken on?

While most boards carry liability insurance for the directors and officers, would it protect you in the event of legal action? Or could you be forced to pay legal fees and suffer damages?

No one seems to be keeping track of the total number of lawsuits filed against the boards and individual directors of the roughly 6,000 cooperative apartment buildings in New York City. But lawyers say it is extremely common for angry co-op members to file lawsuits and name individual directors — often as a bullying tactic.

At the same time, court awards against individual directors are so rare that many co-op lawyers cannot name a single recent example.

“Board members get sued on a regular basis as an act of extortion by a plaintiff wanting to get the board to act in a particular way,” said Stuart M. Saft, the chairman of the Council of New York Cooperatives and Condominiums and a partner at Holland & Knight.

It is a tactic that usually backfires. Most boards are covered by liability insurance, and those policies usually kick in, covering the legal costs of the board and the individual directors.

The plaintiffs, however, are left paying their own mounting legal costs, winning mostly the enmity of their neighbors. “The plaintiffs think, ‘We’ll sue the individuals, they will panic, and we will have them in our grasp!’” said Mr. Saft. “But that’s not what happens.”

Most co-op boards, of course, are made up of volunteer shareholders elected at a building’s annual meeting. The group then rules on everything from approving new buyers to reviewing and approving renovations and building projects.

But because so many decisions involve the volatile combination of people’s homes, money and control, conflicts can quickly become heated. Many suits seek to overturn a board decision, and many of those decisions are about pets: the weight and size of the dogs allowed in the building.

“Mostly, no one is suing for money,” said Kevin Davis, president of Kevin Davis Insurance Services. “They are fighting over every little detail, and particularly rules on pets. The more money and the more time people have, the more lawsuits you are going to get.”

Mr. Davis added, “In New York City, you have a lot of money, so it’s more intense. Lawsuits are usually filed by the people who live there who don’t want to follow the rules.”

Lawyers say New York courts have tended to protect individual directors of co-ops and condominiums as long as they were acting legally, in good faith and using honest business judgment.

The courts also tend to protect corporate boards acting in the best interest of the corporation, under what is known as the business judgment rule. “As long as you are acting in the best interest of the corporation, you won’t be held liable,” said Terrence A. Oved, chairman of the real estate and transactional department at Oved & Oved LLP.

The big exception, of course, is willful legal wrongdoing such as discrimination and self-dealing. Not surprisingly, directors’ and officers’ liability insurance is not likely to cover damages in those types of claims.

“The risks of legal liability are not high unless you engage in some sort of nefarious conduct,” said Steven D. Sladkus, a partner with Schwartz, Sladkus, Reich, Greenberg, Atlas, LLP.

One inherently tricky part of being on a co-op’s board of directors is that while you have a legal obligation to act in the best interest of the corporation, individual directors are also shareholders — and may have a personal stake in the outcome of a board vote on something like whether to spend money on a roof garden or a gym.

The best way for a board and for individual directors to avoid legal threats, lawyers advise, is to study all corporate documents carefully — the bylaws, the proprietary lease, the offering plan, the house rules and the certificate of occupancy — and follow them uniformly.

“Directors need to know they are handling a multimillion dollar corporation, and if you don’t enforce the documents uniformly, you can be sued. You have to treat everyone the same,” Mr. Davis said.

And the best defense against getting hit with your own personal legal fees is to make sure the board has adequate liability insurance. Not all policies are the same. Most co-op bylaws include legal indemnification for directors — but directors should check.

Insurance brokers say smaller buildings often wind up underinsured either by oversight or because they were trying to save money on insurance. Some try to save money by tacking a so-called endorsement for the coverage on their general liability policy as opposed to having a more expensive stand-alone policy.

“I do run across buildings that don’t have coverage,” said Edward J. Mackoul, president of Mackoul Risk Solutions, in Island Park, N.Y. “There are co-ops that don’t want to pay even \$150 to add coverage because there are just five units and they all know each other.”

Court-ordered monetary awards against individual co-op board directors are so rare that most lawyers can name just one case, frequently referred to simply as Biondi. After a biracial couple was turned down for a sublet in the upscale Beekman Place neighborhood on the East Side of Manhattan, the couple claimed they were victims of racial discrimination.

In 1997, a federal jury in Manhattan awarded them \$640,000 in damages, including \$410,000 in punitive damages against Beekman Hill House and its board members. The jury awarded \$150,000 against the co-op, \$125,000 against Nicholas Biondi, the board president, \$60,000 against Richard Appleby, another board member, and \$25,000 each against three other directors.

“In more than 30 years of doing this, that is the only case I know where there was any personal liability against individual board members,” said Mr. Saft, the real estate attorney.

For weekly email updates on residential real estate news, sign up here. Follow us on Twitter: @nytrealestate.

A version of this article appears in print on , Section RE, Page 14 of the New York edition with the headline: Board Members Beware