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MEMORANDUM

FROM: Howard Schechter
TO: All New York City Cooperative and Condominium Boards and Managing Agents
RE: New Buildings Department Forms and Procedures for Apartment Alterations
DATE: December 12, 2008

Introduction

As of August 4, 2008, the New York City Department of Buildings changed certain forms and procedures that impact apartment alterations in New York City cooperatives and condominiums where building permits are required. **In light of these changes, Boards should consider changing their alteration policies in regard to the question of who files the application for the permit and when it is submitted.** Our complete recommendation is set forth on page 3 below.

Background

Under its old policy, the Department of Buildings permitted individual shareholders and unit owners to file for building permits as the "owner" of the property provided the applicant represented to the Department that the cooperative or condominium Board had approved. If the Board did not approve and learned of the filing, it could object in writing to the Department and the Department would freeze the processing of the application and revoke any building permit issued.

In order to assure control over the apartment alteration process, most Boards refused to permit individual shareholders and unit owners to file for building permits, requiring instead that the Board file as owner on forms prepared by the shareholder or unit owner's design

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professional. This policy was designed to avoid potential disputes over whether the Board had authorized the individual shareholder or unit owner to file the application.

The New Buildings Department Policy

The new policy adopted by the Buildings Department now requires that the Board sign the initial "Plan/Work Application" (Form PW-1) even if the individual shareholder or unit owner is permitted to file the application as the owner. It will no longer permit the individual shareholder or unit owner to state that the Board has approved the filing without a signature for the Board. This is a positive development for cooperative and condominium Boards in that it should prevent most unauthorized filings for permits.

Other portions of the new Buildings Department policy, however, suggest that Boards reconsider their approach to these filings. Among the other changes made by the Department are the adoption of a revised "Cost Affidavit" (Form PW3). The new form is required for all new jobs and all previously approved jobs in which an amendment changes the cost of the work. In the new form, the applicant must certify the estimated cost of the work at the time of initial submission of the application and the actual cost of the work at the time of sign-off. Knowingly or negligently making a false statement in the affidavit is a misdemeanor punishable by fine or imprisonment or both. A fact sheet issued by the Department makes clear that the permit applicant is ultimately responsible for the accuracy of the PW3, "as he or she is most knowledgeable of the actual value of the work performed."

Clearly neither the Board nor the managing agent has this knowledge. Only the individual shareholder or unit owner does. Accordingly, insisting that the Board be the permit applicant for individual apartment alterations exposes the Board member or agent who signs and the cooperative or condominium itself to potential penalties if the cost figures or other information given in the PW3 is inaccurate.

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Recommendations

All Boards should have a standard form of alteration agreement that the shareholder or unit owner is required to sign before undertaking an alteration for which a building permit is required. In order to assure that the building, the Board members and the agent are insulated from the potential exposure created by the new Buildings Department policy, we are also recommending that Boards consider changing their policy on permit applications as follows:

- 1. The individual shareholder or unit owner should be the applicant on the PW1: Plan/Work Application, with the Board signing off on the PW1 only for the purpose of authorizing the application.**
- 2. The PW1 should be signed only after the Board has approved all aspects of the alteration and an alteration agreement has been signed. The practice of some Boards "fast tracking" alterations by signing the PW-1 before the alteration is fully approved should be avoided.**
- 3. The plans filed in support of the permit application should be the exact plans approved by the Board as set forth in the alteration agreement.**
- 4. No amendment to the Buildings Department application should be permitted without the prior written approval of the Board.**

Please contact us if you wish to discuss these issues further or to modify your alteration policies or agreements.