

Keeping apartment renovations from going off the rails requires ...

A CLOSE EYE AND IRONCLAD AGREEMENTS

Apartment alterations can go sideways in so many ways, not only for residents of the apartment being renovated but for the board and all the residents of the building. All too often, alterations are headaches, but each offers a lesson.

NEVER-ENDING ALTERATION.

We had a condo board that was using a standard alteration agreement form but didn't fill in all the blanks, including the amount of the security deposit and the date by which the alteration had to be completed. Sure enough, work ran over the amount of time that the board had anticipated, and the unit-owner took the position that because there was no date on the agreement, the project could continue indefinitely. It's a common problem: A unit-owner or shareholder will sign and submit an alteration agreement, which is countersigned by the managing agent. The board isn't actually involved. But you need to double-check to make sure there

are no omissions and nothing has been overlooked. That's what happened here, and the dispute landed us in court.

The alterations began when COVID-19 first hit, and it's still ongoing. We always recommend putting a specific

time frame in an alteration agreement — say, six or nine months, depending on how extensive the work is. Not filling in all the blanks may seem like a little error, but it can cause a big issue.

CHANGE IN PLANS. There was another case where the unit-owner submitted an agreement specifying what work they were going to do, which required approval from the Department of Buildings. The unit-owner didn't get it and proceeded with the alterations — which were different from what was in the agreement — without the proper permits in place. You need to follow through and monitor work after an agreement is finalized.

We suggest keeping the reviewing architect or engineer involved as an alteration proceeds to ensure that the work is in accordance with the plans that were approved. Many boards have their resident manager or super check in on the work, but they're not necessarily equipped to recognize problems. And that could cost you if there are violations because they're issued against the building itself and not the resident doing the work.

PASS-ALONG PROBLEM. When people do alterations and the apartment is passed from owner to owner, how do you make sure that the current owner takes responsibility for any issues arising from the work? That's been a big issue. So in our formal alteration agreement, we include what's called an



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assignment and assumption agreement, in which the shareholder or unit-owner who's performing the alteration commits to having whoever purchases their apartment sign this alteration and assumption agreement and take responsibility for all the obligations under the alteration agreement. Let's say something goes wrong with the plumbing, and it had been altered by a previous resident. It's hard for boards to hold the new owner responsible for any repairs. So managing agents should make sure an assumption agreement is signed by an incoming purchaser at the closing table. In fact, every management company and board should have an electronic database for every single apartment in their building. And every time an alteration is made, the alteration and assumption agreement goes into the record. So if you're two or more owners down the road, you can say to the shareholder or unit-owner that they are responsible for all previous alterations, and you'll have a repository of documents to prove it.

The bottom line is that you can't let your paperwork go awry. It's easy to keep and maintain electronic files on platforms like BuildingLink, Google Drive and Dropbox. And the managing agent and individual board members should all have access — so if there's a change in management and files don't get transferred over, someone on the board can access those documents, and they won't get lost in the shuffle.

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