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Who Is Responsible for Water Damage Repairs in a Co-op or Condo? The Building, Or the Shareholder/Unit Owner?

This year, we’ve seen more than the usual number of claims relating to water damage within co-op apartment buildings and condominiums. Failing building steel supply line hoses (e.g. "speed-connecter" hoses), which connect the building waterline to faucets, washing machines, etc. within the apartment unit or condominium unit, and developing a common form of water damage in the area. For simplicity let’s call:

• A co-op apartment shareholder and condo unit owner the “owner.”
• The apartment or condo unit the "unit.”
• The co-op apartment building or condo building the "building." When water hoses or vessels rupture, causing damage to an owner’s unit, and possibly the unit’s or other owners, who is responsible for the water damage repairs - the building or the owner? 

Well just the other any good question in life, there is no simple response. But, here are some important factors to consider when determining the answer.

The governing documents, including the by-laws, govern. The first place that all concerned documents, including the by-laws, govern. The first place that all concerned

predecessors. The question of "who is responsible" relates to damage to the building’s Common Areas (including original, non-upgraded installations within the apartment/unit, plus walls, ceilings, etc.), and to resulting property damage to other units. The "negligence" issue. Governing documents usually make the owner responsible for maintenance/repairs within the unit. If the owner is "negligent" regarding this responsibility, then the governing documents may make the owner liable for damage to his/her unit, the neighboring units, and/or the building, caused by failure to properly maintain a supply pipe line hose. The issue is: "negligence" is a legal standard, and determining negligence - if there is a dispute - often must be settled in a courtroom. Just because the board or managing agent "thinks" the hose broke due to negligence, doesn’t mean that a judge or jury would agree. If the hose was under a sink, and looked perfectly fine a week ago, when the owner checked it, but then subsequently frayed, quickly deteriorated from water pressure, and then broke, was the owner truly "negligent"? If the hose broke at 2 a.m., and the owner was away on a trip, or asleep, and the leak was not discovered for many hours after substantial damage occurred, was the owner truly "negligent”? The House Rules issue. Often times, the "owner is responsible for negligence" language is included in the house rules. In this case, applying the negligence standard may be even more difficult, since house rules are often considered less legally binding than the governing documents. The "repairs and maintenance" vs. "damage after a casuality" issue. As noted above, boards and managing agents often point to the "repairs and maintenance" section of the governing documents, and conclude that the owner is responsible for damage.
Projects in the Ludlow Area and Alexander Street Would Create Over 1,300 Construction Jobs and Nearly 1,000 New Rental Units

The Board of Directors of the Yonkers Industrial Development Agency (IDA) recently approved three projects in the Ludlow area and part of the Alexander Street Master Plan to be created by the City of Yonkers. Located at 150 Downing Street, the project consists of 500 proposed residential units in two 10-story and two 11-story towers. The unit mix will be comprised of 80 studios, 72 one-bedrooms, 302 two-bedroom, and 46 three-bedroom apartments. Building amenities will include a club lounge, fitness center, swimming pool, business center, bike racks and tenant storage units. The project is eligible for tax abatement under the Yonkers Affordable Housing Ordinance. The Ludlow Street frontage will feature 10,330 square feet of retail space to be marketed to restaurant and neighborhood retailers, officials added.

Located within the Alexander Street Urban Renewal area and part of the Alexander Street Master Plan, the project is an integral part of a conceptual land use plan for redevelopment of a critical segment of the city’s Hudson River waterfront. The project consists of a four-story building containing 36 residential rental apartments with a unit mix of six studios, 18 one-bedrooms and 12 two-bedrooms. The requirements of the Yonkers Affordable Housing Ordinance, one unit will be offered as affordable. In addition to the building’s lobby, the ground floor will include 3,125 square feet of neighborhood retail and indoor parking for 35 cars. Building amenities will include a lobby club lounge and a roof deck.

The City of Yonkers and GDC will jointly apply for New York State grants to renovate Abe Cohen Plaza concurrent with the Ludlow Street project. 70 Pier is part of the larger Master Planned redevelopment of the Ludlow Street Neighborhood being undertaken by the City of Yonkers. 70 Pier Street will create approximately 25 construction jobs and four permanent jobs. IDA financial incentives for the project include $310,625 in sales tax exemptions and $2,073,600 in mortgage recording tax exemptions, spokesmen added.

Officials added that the third project approved by the IDA is 150 Alexander Street, a $177.1 million residential development featuring 440 apartments in a seven-story building with 443 parking spaces. The project, which is being developed by Rose Associates, would include 25,000 square feet of new waterfront open space, including a waterfront walkway that will provide access to the Hudson River waterfront. The open space would have a walking promenade with seating and landscaping.

Located within the Alexander Street Urban Renewal area and part of the Alexander Street Master Plan, the project is an integral part of a conceptual land use plan for redevelopment of a critical segment of the city’s Hudson River waterfront, officials said. The project replaces an area that is now defunct and largely inaccessible to the public. It is estimated that the project will create approximately 631 construction jobs and 38 full-time jobs. IDA financial incentives for the project include $3,807,375 in sales tax exemptions and $2,073,600 in mortgage recording tax exemptions, spokesmen said.

The three projects have not yet received approvals from the city. Ludlow Point and 70 Pier Street will be part of a year-long Master Planning process with the city to develop a new plan for the entire Ludlow Street area. In other business, the IDA gave final approval for financial incentives to Momentum Realty Acquisitions for its plans to convert a light-industrial building at 222 & 225C Lake Street into an office and entertainment complex called The Mill. The $5,000-square-foot building, which had been damaged by a fire in 2017, is to be completely renovated in two phases. IDA financial incentives for the $11.7 million project include $240,513 in sales tax exemptions and $137,147 in mortgage recording tax exemptions. The project is being done as part of the Yonkers Opportunity Zone, which is designed to spur development and create jobs, officials said.

Established in 1982, the Yonkers IDA is a public benefit corporation that provides business development incentives to enhance economic development and job growth in the City of Yonkers, spokesmen added.

Who Is Responsible for Water Damage Repairs – The Building, Or the Shareholder/Unit Owner?, Continued from p. 2

casted by lack of maintenance. But the by-laws usually contain language in the “Insurance” section that requires the board to carry insurance for “Dama- Vage” is a Building” caused by fire or other causes of loss. The wording in the section may state that the building is responsible for making repairs, if the loss is covered by the building’s insurance. The “waiver of subrogation” clause in the insurance policy typically requires that the insurer not seek reimbursement from the owner for repairs, if the claim is covered by the building’s insurance policies. The “waiver of subrogation” clause may also waive the “negligence” issue (see above), further support- ing that damage due to unreasonable “causal acts” may be the responsibility of the shareholders/owners. In an owner’s insurance policy, an owner’s insurance carrier may not pay for damages caused by its policy holder, and may not pay a claim that the building’s insurance may be required to pay, given the language in the governing docu- ments. The “waiver of subrogation” clause, which requires the board to carry insurance for “Dam- Ss for the building’s responsibility. Governing documents usually contain a “Waiver of Subrogation” clause, which requires that the building’s insurance carriers release it from liability. Further, however, the board of directors may be held liable in tort if it fails to pay a claim that the building’s insurance may be required to pay, given the language in the governing docu- ments. The “waiver of subrogation” clause, which requires that the building’s insurance carriers release it from liability. Further, however, the board of directors may be held liable in tort if it fails to pay a claim that the building’s insurance may be required to pay, given the language in the governing docu- ments.

The Final Word: Let the insurance companies decide. As a final, definitive legal interpretation, or state definitively what is covered by your governing documents, and protect the building. Your broker is responsible for offering insurance policies, and your broker can help identify governing document language and interpretation.

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EDITOR’S NOTE: Levitt-Fuirst Associates is the Insurance Manager for The Builders Institute / Building and Realty Institute (BRI) of Westchester and The Hudson-Mohican Region. Ken Fuirst and Jason Schincon are Co- Presidents of the company. The firm is based in Tarrytown.
"Wish Lists for Board Members of Co-ops and Condos and Their Managing Agents" was the topic of the May 7 Membership Meeting of The Cooperative and Condominium Advisory Council (CCAC). More than 45 CCAC and Building and Realty Institute (BRI) members attended the program at the Crowne Plaza Hotel in White Plains. The meeting provided CCAC and Advisory Council of Managing Agents (ACMA) Panel Members with a chance to voice their respective concerns to the opposite panel on enhancing communication processes and other procedures involving Board Members and Managing Agents. Pictured during the event are, from left to right, CCAC Panel Member Clementine Carbo and Diana Virrill (CCAC chair); Pictured in the second row, from left to right, are, CCAC Panel Members Sondra Laskay and Cesare Manfredi; ACMA Panel Members John Bonito and David Amster (ACMA Chair); Ken Finger, chief counsel to the CCAC/BRI; and the program moderator; and Jeff Hanley, associate executive director, CCAC/BRI; and the programs coordinator.

"Current Trends in Flooring Solutions for Multi-Family Buildings and Complexes” was the topic of the May 16 Membership Meeting of The Advisory Council of Managing Agents (ACMA). Beth Boyle, senior account manager, New York & Connecticut, Shaw Contract, was the keynote speaker at the event. More than 35 ACMA and Building and Realty Institute (BRI) members attended the program at the Crowne Plaza Hotel in White Plains. Jeff Hanley, associate executive director of the BRI, is pictured standing at the front of the meeting table, on the far left, while introducing Boyle: Albert Amnesitz, executive director of the BRI, is pictured standing at the front of the reading table, on the far right.

"A Preview of the Public Hearings and Deliberations of the Westchester County Rent Guidelines Board" was the topic of the June 25 segment of "Building Knowledge with The Building and Realty Institute (BRI)." Pictured during the event are, from left to right, Albert Amnesitz, executive director, BRI; Eric Messar, a member of the executive committee of Group 458; Karen Sidel (Murphy Brothers Contracting), panel member; Hilary Messer (Sunrise Building & Remodeling), panel member; Karen Sidel (Murphy Brothers Contracting), panel member; Victoria Bruno (Kings Capital Construction), panel member; Vincent Matutina, president, BRI; and Jeff Hanley, associate executive director of the BRI. A total of 75 BRI, BRI and building, realty and construction industry members attended the meeting at The Crowne Plaza Hotel in White Plains. Each panel member is a BRI member.

New York State Workers Compensation Group 512, the compensation insurance group of The Cooperative and Condominium Advisory Council (CCAC), announced a 20 percent dividend for the policy year ending Jun. 1, 2017. The announcement was made at the group’s Annual Meeting on May 16 at the Terrytown offices of Group Manager Levitt-Fuirst Associates. Pictured during the event are, from left to right, Marc Spar, managing director, workers compensation groups, Levitt-Fuirst Associates; Jason Schiciano, co-president, Levitt-Fuirst Associates; Donna Premuto, director, workers compensation claims, Levitt-Fuirst Associates; Ron Forst, co-president, Levitt-Fuirst Associates; and Ankie Magone, account executive, Levitt-Fuirst Associates.

"A Conversation with Women Leaders in Construction" was the topic of the Jun 14 General Membership Meeting of The Builders Institute (BI)/Building and Realty Institute (BRI). Pictured during the event are, from left to right, Albert Amnesitz, executive director, BRI; Eric Messar, a member of the executive committee of Group 458; and Ken Fuirst, co-president, Levitt-Fuirst Associates. Marc Spar, managing director, workers compensation groups, Levitt-Fuirst Associates; Jason Schiciano, co-president, Levitt-Fuirst Associates; and the program moderator, Stacey Tompkins (Tompkins Escavating), panel member; Hilary Messer (Sunrise Building and Remodeling), panel member; Karen Sidel (Murphy Brothers Contracting), panel member; Victoria Bruno (Kings Capital Construction), panel member; Vincent Matutina, president, BRI; and Jeff Hanley, associate executive director of the BRI. A total of 75 BRI-BRI and building, realty and construction industry members attended the meeting at The Crowne Plaza Hotel in White Plains. Each panel member is a BRI member.

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Projects Supported by IDA Incentives in 2018 to Generate $881.4 Million in Private Investment in Westchester’s Economy, Continued from p. 5

of the units will be affordable. The project is being developed by Lennar Multifamily Communities. Jobs created: 700 construction and 20 permanent. Total IDA incentives: $31.75 million.

440 Hamilton Avenue, a $203 million mixed-use development in downtown White Plains featuring 468 rental units in two towers and 2,240 square feet of commercial/retail space. A total of 15 of the units will be affordable. Jobs created: 695 construction and 31 permanent. The developer is Rose Associates. Total IDA incentives: $5.02 million.

The Collection, a $136.2 million mixed-use development in White Plains consisting of 276 rental units in two buildings on Westchester and Franklin Avenues. Seventeen of the units will be affordable. The project, which is being developed by Saber Realty, the developer of The Collection in White Plains and the Riverfronts Square mixed-use retail complex in Dobbs Ferry. The development will include various green building features including a green roof on both buildings. Jobs created: 180 construction and 15 permanent. Total IDA incentives: $1.16 million.

101 Wolfs Lane, a $28 million mixed-use, transit-oriented development in Pelham near the Metro-North station. The project, which is being developed by Matrak Real Estate Development, will have 58 rental units and 7,970 square feet of commercial/retail space. Three of the units will be affordable. Jobs created: 144 construction and 36 permanent jobs. Total IDA incentives: $1.47 million.

138-158 Westmoreland Avenue, a $19.3 million mixed-use development in White Plains, with 62 rental units, which of six will be affordable, and 4,300 square feet of commercial/retail space. Jobs created: 40 construction and 36 permanent. The developer is Westmo- reland Lofts. Total IDA incentives: $867,000.

Key Items

In addition to providing financial incentives to business, the County also provides tax-exempt financing to public-nonprofit corporations through the Local Development Corporation (LDC). In 2018, the LDC provided tax-exempt bond financing of $11,465,500 to Bethel Nursing Home for renovations to a nursing home in Ossining, officials said.

Established in 2012, the LDC is a private, nonprofit corporation created for the benefit of local government to promote economic development. Since its inception, the LDC has assisted not-for-profit organizations and public benefit corporations in securing tax-exempt bond financing benefits totaling more than $800 million, officials added.

In an initiative to educate the not-for-profit community in Westchester on the many benefits of tax-exempt financing with the LDC, the county’s Office of Economic Development held a series of meetings in 2018 with various organizations. They included the Not-For-Profit Council of the Business Council of Westchester (BCW), the YWCA of White Plains, the Westchester Library System, ArtsWestchester and Westhab.

“The Not-for-Profit Council of the Business Council of Westchester is an important part of our county’s economy. We want to let them know that we’re here to help them grow,” Gibbons said. More information about the Westchester County IDA and LDC can be obtained by visiting westchestergov.com.

Lower Interest Rates Stabilize Builder Confidence, Continued from p. 1

Due to the partial government shutdown, there were no new Census figures released in mid-January on housing starts and permits, NAHB said. NAHB estimates that the December Census data would show that single-family starts ended the year totaling 767,600 units, which would mark a 3 percent gain over the 2017 total of 748,900, the NAHB said.

But, NAHB added, the slowdown in sales during the fourth quarter of 2018 has left new home inventories elevated in some markets.

Derived from a monthly survey that NAHB has been conducting for 30 years, the NAHB/Wells Fargo HMI measures builder perceptions of current single-family home sales and sales expectations for the next six months as “good,” “fair” or “poor.” The survey also asks builders to rate the Traffic of Prospective Buyers as “high to very high,” “average” or “low to very low.” Scores for each component are then used to calculate a Seasonally Adjusted Index where any number over 50 indicates that more builders view conditions as good than poor, NAHB officials said.

Specifics

All the HMI indices recorded gains in January. The index measuring Current Sales Conditions rose two points to 65. The component gauging Expectations in the Next Six Months increased three points to 64 and the metric charting Buyer Traffic edged up one point to 44, NAHB said.

A look at the Three-Month Moving Averages for Regional HMI Scores showed that:

* The Northeast dropped five points to 45;
* The Midwest and South both fell three points to 52 and 62, respectively;
* The West registered a one-point drop to 67.

NAHB officials said that the NAHB/Wells Fargo HMI is strictly the product of NAHB Economics. The report is not seen or influenced by any outside party prior to being released to the public.

The index measuring Overall Housing Market Conditions was 59, down three points from December. NAHB officials noted that sales of new and existing homes increased in January.

“Builder traffic was up 17 percent from December making it the best January since 2006,” NAHB said.

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A Regional Perspective

Albert Annunziata, executive director of The Builders Institute (BlW) Building and Realty Institute (BlR) of Westchester and The Mid-Hudson Region, said the HMI’s contents about confidence levels of builders are “encouraging for the building and realty industry.”

Annunziata, however, added that a series of negative factors continue to affect the building, realty and construction industry in the Westchester and Mid-Hudson Region.

“The lack of land, anti-industry regulations and labor shortages continue to provide obstacles that thwart the development of single-family homes in our region,” Annunziata said. “Some areas of our region have seen levels of activity, while many other areas have not.”

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