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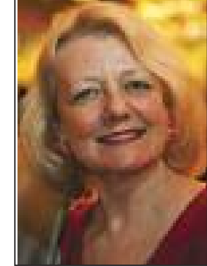

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About The House

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The Ronald McDonald House in New York City is the largest facility of its type in the world. The House can accommodate 84 families, and it is filled to capacity almost every night. The House's location in Manhattan, in close proximity to 12 major cancer treatment centers, draws children and families from across the country and the world, as well as from the metropolitan New York City area.

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How The Heck Do I Get This Mechanic's Lien Off My Property?

By: **Randy J. Heller, Esq., Partner, Gallet Dreyer & Berkey, LLP** February, 2014

You just received, by certified mail, a copy of a mechanic's lien. From the looks of it (on its face there's a County Clerk's office filed stamp), the lien was filed against your real estate. You're not happy. If you own a cooperative apartment, this probably constitutes a breach of your proprietary lease. If you own your condominium, it is likely a breach of the terms of your mortgage. And if you are on the coop or condo board, the lien could play havoc with the building's ability to borrow money. What do you do now?

There are a number of options available to a party looking to have a lien discharged of record in a summary (quick) fashion. However, removing it quickly is often not as easy as you think.

The fastest and easiest way to have a lien discharged is to settle with the lienor. In return for payment (the proceeds of which should always be held in escrow until the lien is removed) the lienor can provide a "Satisfaction of Lien" which can be filed with the County Clerk's office to have the lien discharged. No muss, no fuss. The problem is, the parties often disagree on the true amount due and settlement becomes impossible. Having to negotiate under the duress of a filed lien puts you at a significant disadvantage.

The next fastest option is to discharge the lien by "bonding" it in the amount of 110% of the amount of the lien. In appropriate cases a surety (or bonding company) will provide a bond in return for payment of a premium of generally 1-2% of the bonded amount. However, if the party seeking the bond does not have a long-standing relationship with the bonding company, or a financial statement which satisfies the company's underwriters, you will often have to deposit the full amount with the surety until the lien is finally resolved. So, in many cases this is simply not a viable option.

A similar option is to skip the bond and just deposit a sum equal to 110% of the lien amount into court. This requires some skill to maneuver through the byzantine workings of the court system (and, of course, requires that you have available 110% of the lien amount in cash for deposit into court). And getting the money released afterwards is not so easy. So this too is often not a workable solution.

The underlying merits of the lien are of no matter in quickly discharging a lien. It is irrelevant that the lien is bogus or the amount of the lien is inflated. This may serve as a good defense in an action to foreclose the lien. But it is of no consequence when trying to get the lien discharged summarily. When it comes to looking at the merits, there must be a full-fledged lien foreclosure action, entailing depositions and document discovery.

The reason for that is found in the New York Lien Law which provides that the court is empowered to dismiss a lien only if it is "invalid on its face." That means that so long as the lienor correctly names the owner, fills in all the blanks in the form, and the lien appears on its face to have been filed in a timely manner, the court will not dismiss it no matter how overstated or bogus it might prove to be. The court will not look beyond the four corners of the lien form itself.

If, for example, the lien on its face shows that it was filed more than 8 months after the lienor last performed work or supplied materials to the property (a date which must be disclosed on the lien form), it can be summarily discharged.

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Similarly, if the lienor named the wrong owner, your attorney can run to court with documentary proof of the correct owner's name and get the lien quickly dismissed.

But the Lien Law provides that a lien is to be "construed liberally to secure the beneficial interests and purposes thereof" which is another way of saying that unless the lienor totally misidentifies the true owner of the property on the date it was filed, the court is likely to give the lienor the benefit of the doubt. Keep in mind, too, that even if you are successful in summarily discharging the lien, it may be a pyrrhic victory where the lienor has time to re-file a corrected lien before the 8-month period expires.

So, all your defenses might have to await the trial of a foreclosure action. But your bank generally won't wait until the case comes to trial. Nor will the coop or condo board.

Given these obstacles, a person needing to have a lien discharged quickly sometimes must be more daring. The Lien Law permits an owner to serve a "Demand to Foreclose" upon the lienor. Under this section, a lienor in receipt of a properly served Demand must start its lien foreclosure action within 30 days of receipt or the owner can ask the court to dismiss the lien. This is a bold move: few are anxious to invite a lawsuit. But in the right circumstances it can have the intended effect. Where the lien seeks only a modest amount, the lienor often is unwilling, or unable, to retain a lawyer to bring a complicated and specialized foreclosure lawsuit.

Moreover, if your Demand is accompanied by a transmittal letter which explains why the lienor would be unwise to commence the action (e.g., where you explain how you will assert a counterclaim for damages arising from the lienor's "willful exaggeration" of the amount of the lien), you can sometimes discourage them from suing, and thus have the lien discharged by the court after the 30-day period lapses.

A counterclaim for willful exaggeration can be a potent weapon. The Lien Law provides that one who willfully exaggerates the amount of its lien can be liable to the other party for each dollar in which the lien is overstated. In addition, the entire lien becomes void and unenforceable. Therefore, one who is served with a Demand to Foreclose who, seeking a tactical advantage, may have knowingly taken some liberties with the amount of its lien, may find itself on the horns of a dilemma—either abandon its lien or start the foreclosure action, running the risk of having to defend a counterclaim for willful exaggeration and the possibility of having to pay damages to the party it liened.

Given the need for speed, having an attorney who knows the intricacies of the Lien Law can often make all the difference.

Randy J. Heller, Esq. is a partner at the firm of Gallet, Dreyer & Berkey, LLP. The firm has a substantial real estate practice and represents the owners of hundreds of commercial properties and more than 200 condominium and cooperative buildings. His practice focuses principally in the field of construction law and litigation. He has lectured widely on construction and bonding issues and on the New York Lien Law. He has once again been named by his peers as a Super Lawyer in New York in the field of construction law and has received the top rating in his field by U.S. News and World Reports.

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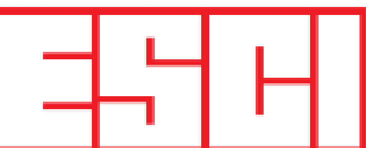

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NYC Rules

Title IV: Environmental Sanitation
Part B: Control of Environment
Article 141: Water Supply Safety Standards

§ Section 141.07: Building Drinking Water Storage Tanks.

Title 24: Department of Health and Mental Hygiene› Title IV: Environmental Sanitation› Part B: Control of Environment› Article 141: Water Supply Safety Standards

(a) Applicability. The owner, agent or other person in control of a building which has one or more water tanks used to store potable water which is distributed as part of the building's drinking water supply system shall comply with the provisions of this section. This section does not apply to the domestic hot water system.

(b) Inspection Requirements. The owner, agent or other person in control of a building shall have the water tank inspected at least once annually. The inspection shall include the examination of the general condition and integrity of the tank, including but not limited to the condition of overflow pipes, access ladders, air vents, roof access hatches and screens. The water tank shall be inspected for evidence of pitting, scaling, blistering or chalking, rusting, corrosion and leakage. Inspection of sanitary conditions, including the presence of sediment, biological growth, floatable debris and insects in the tank and rodent or bird activity on and around the tank, shall be performed. The inspection shall include sampling of the water in the water tank to verify the bacteriological quality of the water supply in compliance with Subpart 5-1 of the State Sanitary Code. Sample results shall be reported by a State certified laboratory equipped to analyze drinking water, in accordance with the latest edition of the Standard Methods for the Examination of Water and Wastewater, published jointly by the APHA, the AWWA and the WEF.

(c) Reporting and Record Keeping. A written report documenting the results of such inspection shall be maintained by the owner, agent or other person in control of a building for at least 5 (five) years from the date of the inspection and such

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reports shall be made available to the Department upon request within 5 (five) business days. The inspection report shall state whether or not all applicable requirements were met at the time of inspection and provide a description of any non-compliance with those requirements.

(d) Public Notice. The owner, agent or other person in control of a building shall post in an easily accessible location to residents in each building served by a potable water tank a notice that inspection results are available upon request. The notice must be placed in a frame with a transparent cover. The public notice shall include the name, address, and phone number where inspection results can be requested. Upon receipt of a request, the owner or manager shall make a copy of the inspection results available within 5 (five) business days.

(e) Corrective Actions. When an inspection identifies any unsanitary condition, the owner, agent or other person in control of a building shall take the necessary steps to immediately correct the condition. If water sampling analysis of the water tank finds noncompliance with the bacteriological quality standards as outlined in Subpart 5-1 of the State Sanitary Code, this condition shall be reported to the Department within 24 hours. If it is found that the quality of such water is attributed to the sanitary condition of the water tank, the owner, agent or other person in control of a building shall clean the tank in accordance with section §141.09 of this Article. A water tank shall be cleaned whenever directed by the Department to correct an unsanitary condition.

(f) Enforcement. If an inspection report required by subdivision (b) of this section is not submitted to the Department when requested, such failure to submit shall be considered prima facie evidence that no inspection was conducted for the time period in question. A separate violation shall be issued for each year for which a required inspection report was not submitted to the Department when requested.

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Excerpts from the:
NOTICE OF ADOPTION TO REPEAL AND RE-ENACT ARTICLE 141 OF THE NEW YORK CITY HEALTH CODE

ARTICLE 141

WATER SUPPLY SAFETY STANDARDS

Introductory Notes:
As part of a comprehensive review of the Health Code to assess the efficacy of these articles in protecting public health, the Board of Health repealed and reenacted Article 141 on June 24, 2009. The section headings and provisions contained in the revised Article have been promulgated to regulate the public health and safety aspects of the New York City water supply for both potable and non-potable usage, to better reflect current practice and the regulatory environment, to assure that the revised provisions provide adequate legal tools to effectively address the public health aspects of public and private water supplies and to harmonize such provisions with related provisions of the New York State Sanitary Code, 10 NYCRR, Subparts 5-1, 5-2 and 5-6.

§141.01 Definitions

"ANSI" shall mean American National Standards Institute.

"APHP" shall mean American Public Health Association.

"AWWA" shall mean American Water Works Association.

"Bottled Water" shall mean any product, including natural spring or well water taken from municipal or private utility systems or other water sources, distilled water, deionized water, or any of the foregoing to which chemicals may be added, which are put into sealed bottles, packages or in other containers, to be sold for human consumption.

"Building" shall mean any enclosed structure occupied or intended for supporting or sheltering any occupancy, including the service equipment therein. The term "building" used herein shall include, where applicable, any affiliated buildings or structures, such as a building complex.

"Bulk Water" shall mean water intended for potable purposes which is transported via licensed potable water tankers or trucks or equivalent from one area to another.

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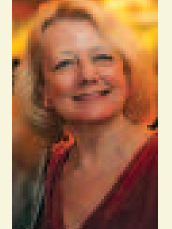

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"Contamination" shall mean the introduction into water of any biological, chemical, physical, or radiological substance, waste or waste water in concentrations that makes water unfit for its intended use.

"Department" shall mean the New York City Department of Health and Mental Hygiene.

"Device" shall mean the mechanical equipment used for the addition of chemicals to the drinking water supply of a building.

"Disinfection" shall mean a process which inactivates pathogenic organisms in water by chemical oxidants or equivalent agents.

"Drinking Water" shall mean water used for human consumption or used directly or indirectly in connection with the preparation of food for human consumption including the cleaning of utensils used in the preparation of food.

"Fluoridation" shall mean treatment of water by the adjustment of fluoride ion concentrations to provide the optimum fluoride concentration in water.

"Groundwater" shall mean water at or below the water table.

"Licensed Master Plumber" shall mean any person licensed by the Commissioner of Buildings to engage in the business or trade of master plumber to perform plumbing work within New York City.

"Municipal Water Supply" shall mean all pipes, mains and structures owned and/or maintained by the City, for the conveyance of drinking water to the public for human consumption or any connection to the municipal water supply system.

"Non-potable Water" shall mean water which is not treated to the approved drinking water standards, is not suitable and not intended for human consumption (drinking, washing or culinary purposes), but is produced and delivered to users for other purposes such as watering of lawns, washing vehicles and property.

"NSF" shall mean National Sanitation Foundation.

"Parts per million (ppm)" shall mean a unit of concentration expressed in parts per million (ppm) and is equivalent to milligrams per liter.

page 2 of 10 →

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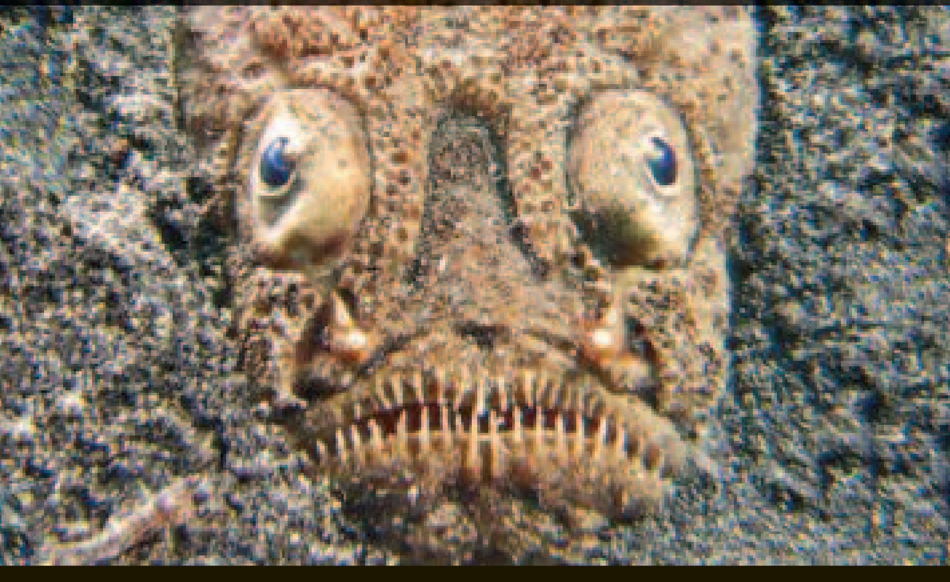

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"Potable Water" shall mean drinking water that meets the water quality requirements established in Subpart 5-1 of the State Sanitary Code which is suitable for human consumption or used directly or indirectly in connection with the preparation of food for human consumption, including the cleaning of utensils used in the preparation of food.

"State" shall mean the New York State Department of Health.

"State Sanitary Code" shall mean Title 10, Chapter 1 of the Codes, Rules and Regulations of the State of New York.

"Water Supply Tank" shall mean any device used to store drinking water used for potable purposes as part of the drinking water supply system in a building.

"WEF" shall mean Water Environment Federation.

"Well" shall mean any excavation that is drilled, cored, bored, washed, driven, dug, jetted, or otherwise constructed when the intended use of such excavation is for the location or acquisition of ground water.

"Well Water" shall mean water taken from below the ground through piping or similar installed device using external force or vacuum.

§141.03 Drinking Water Supply Source

The owner, agent or other person in control of a building shall supply potable water by connecting to the municipal water supply or a source approved either by the Department or the State, which shall be available at all times on the premises of said building. The drinking water supply system of such building shall be connected to such approved source and shall not be subject to contamination. When supplied from a public source, the drinking water supply system shall not be connected to private or unapproved water supplies.

§141.05 Fluoridation of Municipal Water Supply

The municipal water supply shall be fluoridated in the following manner: A fluoride compound shall be added to the drinking water supply at an optimum concentration of about 1.0 ppm of

page 3 of 10 ➔

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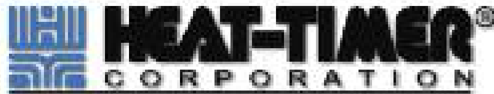

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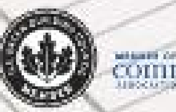

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the fluoride ion, provided, however, the concentration of such ion shall not exceed 1.5 ppm at any time.

§141.07 Building Drinking Water Storage Tanks

(a) Applicability. The owner, agent or other person in control of a building which has one or more water tanks used to store potable water which is distributed as part of the building's drinking water supply system shall comply with the provisions of this section. This section does not apply to the domestic hot water system.

(b) Inspection Requirements. The owner, agent or other person in control of a building shall have the water tank inspected at least once annually. The inspection shall include the examination of the general condition of the tank, including but not limited to the condition of overflow pipes, access ladders, air vents, roof access hatches and screens. The interior and exterior of the water tank and its sealed edges and seams shall be inspected for evidence of pitting, scaling, blistering or chalking, rusting, corrosion and leakage. Inspection of sanitary conditions, including the presence of sediment, biological growth, floatable debris and insects in the tank and rodent or bird activity on and around the tank, shall be performed. The inspection shall include sampling of the water in the water tank to verify the bacteriological quality of the water supply in compliance with Subpart 5-1 of the State Sanitary Code.

Sample results shall be reported by a State certified laboratory equipped to analyze drinking water, in accordance with the latest edition of the Standard Methods for the Examination of Water and Wastewater, published jointly by the APHA, the AWWA and the WEF.

(c) Reporting and Record Keeping. A written report documenting the results of such inspection shall be maintained by the owner, agent or other person in control of a building for at least 5 (five) years from the date of the inspection and such reports shall be made available to the Department upon request within 5 (five) business days. The inspection report shall state

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whether or not all applicable requirements were met at the time of inspection and provide a description of any non-compliance with those requirements.

(d) Public Notice. The owner, agent or other person in control of a building shall post in an easily accessible location to residents in each building served by a potable water tank a notice that inspection results are available upon request. The notice must be placed in a frame with a transparent cover. The public notice shall include the name, address, and phone number where inspection results can be requested. Upon receipt of a request, the owner or manager shall make a copy of the inspection results available within 5 (five) business days.

(e) Corrective Actions. When an inspection identifies any unsanitary condition, the owner, agent or other person in control of a building shall take the necessary steps to immediately correct the condition. If water sampling analysis of the water tank finds noncompliance with the bacteriological quality standards as provided in Subpart 5-1 of the State Sanitary Code, this condition shall be reported to the Department within 24 hours. If it is found that the quality of such water is attributed to the sanitary condition of the water tank, the owner, agent or other person in control of a building shall clean the tank in accordance with section §141.09 of this Article. A water tank shall be cleaned whenever directed by the Department to correct an unsanitary condition.

§141.09 Building Water Tank Cleaning, Painting and Coating

(a) Applicability. The owner, agent, or other person in control of a building which has one or more water tanks as part of its drinking water supply system shall comply with the provisions of this section.

(b) Qualification. No person or entity shall engage or hold themselves out as engaging in the business of cleaning, painting or coating of a water tank of any kind that is part of a building's drinking water supply system without holding a valid permit issued by the Commissioner, unless:

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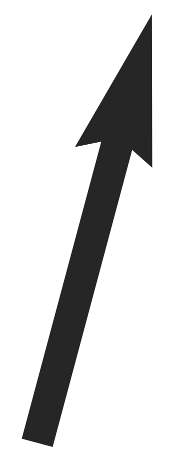

For information on what precisely this is, and how it can help, please turn to page 5

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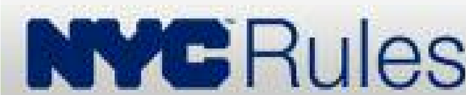

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(1) that person is a licensed master plumber, as defined in section 141.01, or (2) that entity is a corporation or partnership in which one of the officers or partners has the qualifications required by subdivision (b)(1) above.

(c) Cleaning, Painting or Coating Requirements. Water tanks that are a part of a building's drinking water supply system shall be cleaned, painted and coated in accordance with the applicable provisions of the Administrative Code of the City of New York, the State Sanitary Code Part 5-1 and applicable industry standards and recommendations including, but not limited to, AWWA, NSF/ANSI, or other national standards developed by ANSI-accredited organizations. All products related to work performed shall be certified by ANSI-accredited organizations. No paint containing lead in any form or in any amount shall be used on the inside of a water tank. When a tank is cleaned, painted or coated, the water supply connections to and from the tank shall be disconnected or effectively plugged to prevent foreign matter from entering the distribution piping.

(d) Disinfection. All water, dirt, and foreign material accumulated during the cleaning and/or painting process shall be discharged from the tank. The tank shall then be disinfected in accordance with the applicable provisions of the Administrative Code of the City of New York and industry standards and recommendations including, but not limited to, AWWA, NSF/ANSI, or other national standards developed by ANSI-accredited organizations. All products related to work performed shall be certified by ANSI-accredited organizations. The drinking water supply tank shall be completely drained and flushed with potable water before refilling for use.

(e) Sampling. After painting or treating the interior of the tank, a water sample will be taken to ensure volatile organic compounds are not found at levels greater than that allowed by Subpart 5-1 of the State Sanitary Code. Sample results shall be reported by a State certified laboratory equipped to analyze

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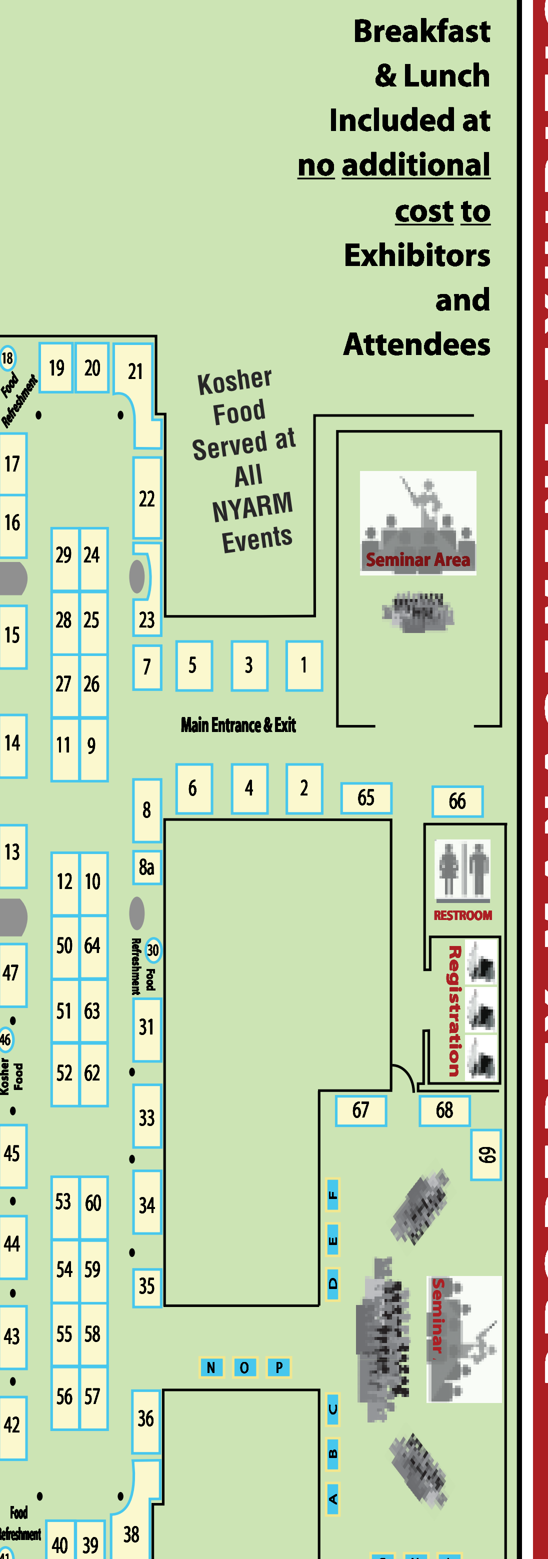

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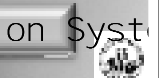

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drinking water, in accordance with the latest edition of the Standard Methods for the Examination of Water and Wastewater, published jointly by the APHA, the AWWA and the WEF.

(f) Record Keeping. A record of the date, address and work performed including a list of the cleaning, paints, coating and disinfection products used shall be maintained by the owner, agent or other person in control of a building for at least 5 (five) years from the date of the completed work and such records shall be made available to the Department upon request within 5 (five) business days.

§ 141.11 Chemical Treatment of Building Drinking Water

(a) Applicability. The provisions of this section shall apply to any person proposing to, or engaging in the business of chemical treatment of the drinking water supply system within a building. No owner, agent or other person in control of a building shall add any chemical or other substance to the drinking water supply unless such addition is performed by the holder of a permit issued by the Department. The provisions of this section do not apply to the treatment by addition of chemicals to water not intended for human consumption, however whenever such water is treated,, all necessary precautions shall be taken to prevent the treated non-potable water from coming into contact with or contaminating a potable drinking water supply system, including through an accidental inter-connection or cross-connection.

(b) Certification. A permit to treat water chemically in a building shall be issued only for anti-corrosion, anti-scaling or disinfection purposes. Such permit shall be issued to:

(1) A person who has a degree with a major in chemistry, chemical engineering, or sanitary engineering from a college or university approved by the Board of Regents of the University of the State of New York and who has at least 5 (five) years experience in the chemistry of water or in closely related work or a water treatment plant operator with a certification issued

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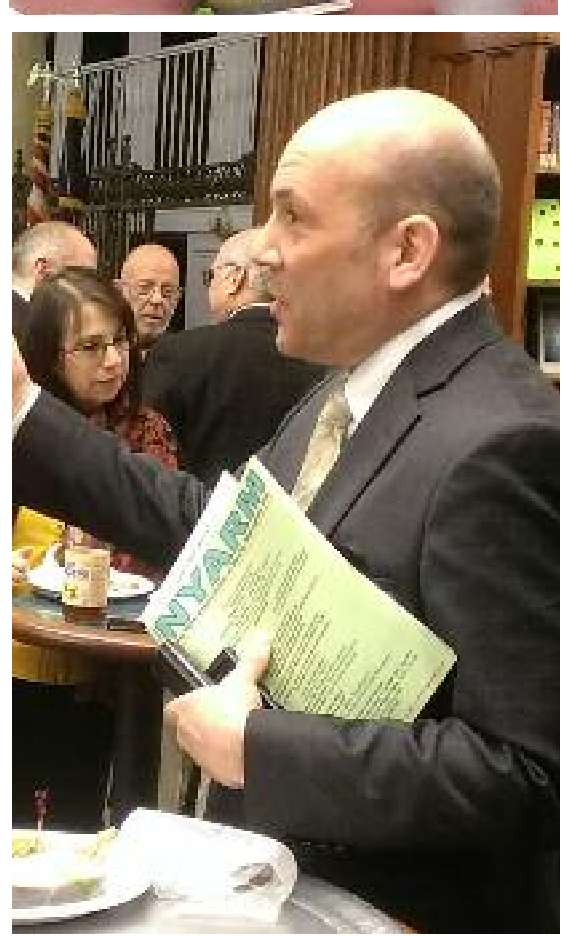

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by the State under Subpart 5-4 of the State Sanitary Code or an equivalent license or certification acceptable to the Department for the appropriate treatment types; or,

(2) A corporation or partnership in which one of the officers or partners has the qualifications required by subdivision (b)(1) of this section and is engaged in the full time supervision of all operations involving the addition of chemicals to drinking water for potable purposes.

(c) Operators Requirement. The actual addition of chemicals shall be performed only by the permittee or by a representative who is under the direct supervision of the permittee. All personnel involved in the addition of chemicals to the drinking water supply shall have successfully completed the appropriate course approved by the State under Subpart 5-4 of the State Sanitary Code, based on the system treatment complexity, flow and/or service population.

(d) Product Standards. The only chemicals, drinking water additives, treatment devices or equipment that may come in direct contact with drinking water for potable purposes must be in compliance with Subpart 5-1 of the State Sanitary Code, applicable industry standards and recommendations including, but not limited to, AWWA and NSF/ANSI 60 Drinking Water Treatment Chemicals-Health Effects and NSF/ANSI 61 Drinking Water System Components-Health Effects

(e) Cross Connection Control. To prevent the treated water from entering the municipal water supply system, cross connection control prevention shall be provided by installing a State-approved RPZ (Reduced Pressure Zone) Backflow Prevention Device on the potable water service connection to the building.

(f) Design, Installation and Maintenance. The system used to chemically treat the water shall be designed, installed and maintained in accordance with the manufacturer's specifications and applicable industry standards to ensure proper chemical dosage and operation. The system shall be tamper

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proof. Maximum feed pump capacity shall be adjusted to prevent any overfeed of chemicals above recommended levels.

The installation of the device shall be such as to prevent the back-siphoning of chemicals. Sampling taps shall be provided both upstream and down stream of the chemical addition point in order to ensure representative samples.

(g) Sampling. Prior to placing the system in operation, the permittee shall confirm that the drinking water supply, after being chemically treated, complies with Subpart 5-1 of the State Sanitary Code. Once the system is operational, the permittee shall take monthly samples of the treated water, to ensure compliance with applicable sections of Subpart 5-1 of the State Sanitary Code. A permittee shall maintain or retain the services of a State certified laboratory equipped to analyze drinking water, in accordance with the latest edition of the Standard Methods for the Examination of Water and Wastewater, published jointly by the APHA, the AWWA and the WEF. Records of water sampling and analysis shall be maintained on file by the permittee for at least 5 (five) years and made available to the Department upon request within 5 (five) business days.

(h) Water Quality. A permittee who is operating and/or maintaining a system under this section shall ensure that the system used to chemically treat the water meets the requirements of the State Sanitary Code, Subpart 5-1 relating to Public Water Systems and applicable industry standards and recommendations including, but not limited to, AWWA, NSF/ANSI, or other national standards developed by ANSI-accredited organizations. All products related to work performed shall be certified by ANSI-accredited organizations. The health effects and the maximum dosage shall be monitored and maintained within limits set by the approved product.

(i) Maintenance Record Keeping. All personnel who work or maintain the chemical addition device, shall keep records showing the dates and times of service and the amount of each chemical applied to the drinking water supply being treated.

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Such records shall be maintained on file for at least 5 (five) years and made available to the Department upon request within 5 (five) business days.

(j) Chemical Storage. All chemicals shall be kept only in the original sealable container provided by the supplier and in a secured area without public access acceptable to the Department. Such containers shall be clearly marked to indicate that their contents are to be used only for the treatment of the drinking water supply.

(k) Termination of Treatment. When a device is no longer in service, the owner, agent or other person in charge of the building in which it is installed shall cause the device to be completely disconnected from the water supply system and all openings shall be properly sealed.

(l) Reporting.

(1) System Installation and/or Termination.

Within 24 hours after the installation and commencement of treatment or termination of a system, the permittee shall report to the Department the following information:

(A) The owner, name, address, and description of the premises where the device is located;

(B) The date the device was installed and/or terminated and the approval date for the device;

(C) The chemicals to be used with the device; and,

(D) The name and address of the permittee.

(2) Water Quality

When the water quality exceeds the standards as defined under subdivision (h) of this section, the permittee shall provide a report to the Department within 24 hours analyzing the cause of the water quality exceedance and any corrective actions that were taken.

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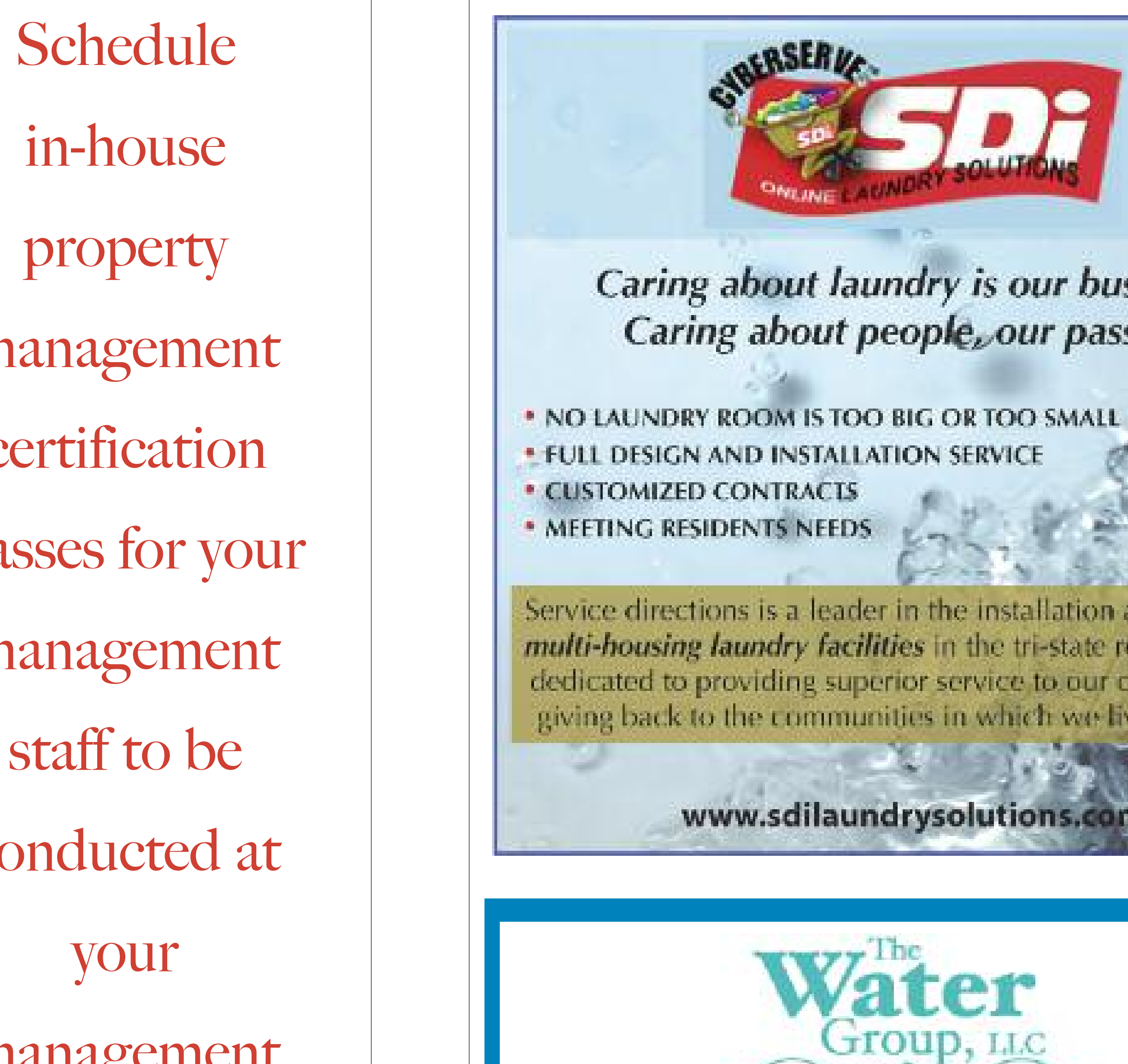

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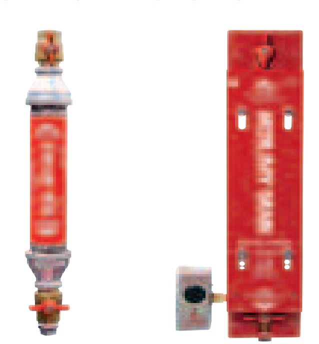

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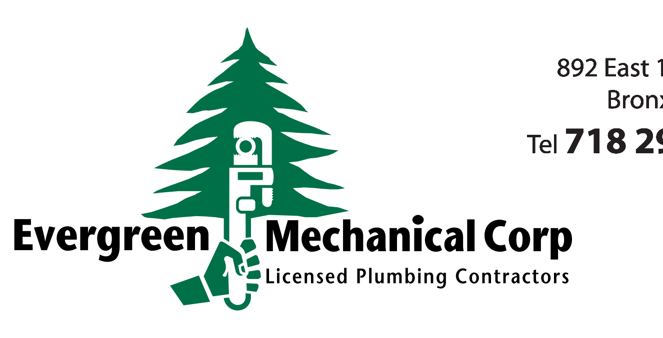

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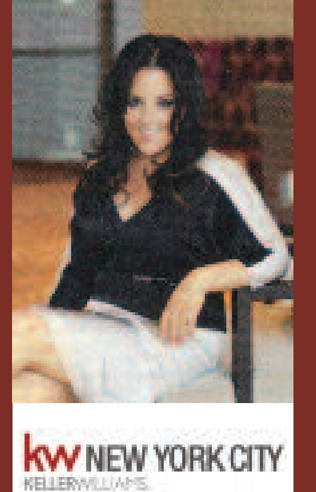

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Best Practices for Board Communications

By: **Geoffrey Mazel, Esq.** February, 2014

As we all know, Cooperative Boards' of Directors powers are statutory in accordance with the New York State Business Law. Board communications in Board meetings are private and each Board member is obligated to maintain confidentiality as fiduciaries of the Coop Corporation. In spite of these privacy issues, Boards can best serve their shareholders by being as transparent as possible. This is a tricky balance that often can use the assistance of an experienced Coop attorney or Managing Agent.

Good communication always starts with good records and good minutes of Board meetings. Good minutes will be a record of Board actions in the form motions and a resulting vote. Votes can be anonymous or you can list how Board members voted. This is entirely up to the Board.

Board minutes are not open for public viewing. However, shareholders often need to review Board minutes when they are selling their apartments. If minutes are not available for review a shareholder might have trouble selling their unit. Therefore, most Coop Boards do make shareholder minutes available for review in sale/transfer situations, although not required to do so by law. Additionally, it is important to make sure that the minutes are either redacted or there is a separate set up executive minutes for all privacy issues which are not given to the public for review.

In addition, many Coops have websites and newsletters, which are excellent forms of communication to their shareholders and help a buildings' reputation. A Coop Corporations' website and newsletter should only have basic information accessible by the general public. Items such as pictures of common areas; listing of amenities; address; history of the building etc… If the website contains organizational documents; bylaws; form leases; application forms and other items unique to the building, those items should only be accessible through a password only for shareholders.

The advent of emails as a Board tool of communication has brought greater levels of communication, but also a new level of exposure to Board members and others involved in email threads. As an attorney for many Coops I have come to the conclusion that emails can be the enemy. Too many Boards spend too much time giving their opinion in emails, very often on sensitive matters. These emails can be subject to a subpoena and can be used against the Coop Corporation if any litigation ensures. Emails can create a permanent written record of an entire conversation and many things can be transmitted that are misconstrued. Therefore, Board members need to keep email communications to a minimum. I encourage Boards to wait until the next meeting or do a conference call.

As stated throughout, Board members are volunteers who act as fiduciaries. Therefore, they need to be extra careful when communicating Board business to shareholders and other third parties. A Board needs to be transparent, but that does not mean every issue is discussed in an open forum with all to listen. Board members need to make important decisions and need to act in the Coop Corporations' best interests. Good communication is essential, but it must be practiced in the context of what is best for the Coop Corporation.

Geoffrey Mazel is a founding partner of Hankin & Mazel, PLLC, located in midtown Manhattan and Great Neck, NY.. His focus has been devoted to real estate law, with extensive experience in cooperative and condominium law, litigation, and sales and acquisitions.

Mr. Mazel graduated from St. John's Law School and received his B.A. from the State University of New York at Binghamton, where he graduated with honors. His practice has been devoted to real estate law, with extensive experience in cooperative and condominium law, litigation, and sales and acquisitions. Mr. Mazel counsels several dozen Cooperative and Condominium boards of Directors/Managers, which encompasses over 10,000 units of Coop/Condo housing, including many of the largest Coop/Condo Boards in the City of New York and the metropolitan area.

Mr. Mazel has served as an adjunct Professor at the New York Institute of Technology teaching the real estate paralegal course; has served as President of Glen Oaks Village Owners Inc., a 3,000 unit Cooperative in Queens, NY; he is a former member of the Committee on Cooperative and Condominium Law of the Association of the Bar of the City of New York and was the Chairperson of the Steering Committee for the Federation of New York Housing Cooperatives and Condominiums. Currently, Mr. Mazel serves as the Campaign Treasurer and as a legal advisor for Jon Kaiman, the Supervisor of the Town of North Hempstead and candidate for Nassau County Executive and is serving as the co-chairperson of the Cooperative/Condominium Law Committee of the Queens County Bar Association with his partner, Mark Hankin, Esq.

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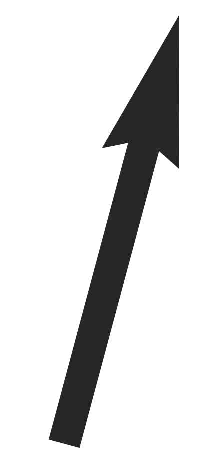

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The Epidemic Of Human Rights Complaints

By: **Mark L. Hankin**

March 10, 2014

Recently it appears the number of Human Rights complaints relative to Employment and Housing Discrimination are on the rise in the State of New York. These complaints come in many forms. The most common being age, race, sexual orientation and/or disability related discrimination. As owner representatives and managers of property in the State of New York, you are the person in the position of authority responsible for the decisions affecting the building's staff employees and residents. Understanding this responsibility and making prudent and reasonable decisions under the law, may prevent or deter a Human Rights complaint or, provide substantiation to defend a complaint.

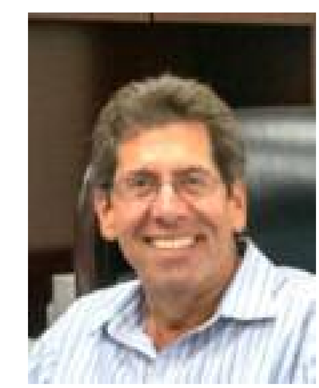
The simple solution is to first (1) recognize employment and/ or housing discrimination issues and then to (2) take reasonable and appropriate measures to investigate and resolve the issue before a claim is filed. Even if a claim is filed, reasonable and timely corrective action may result in a dismissal of the complaint. The "STOP" and "THINK" approach will prevent or deter any potential claim of housing and/or employment discrimination.

Recognizing potential claims of employment and/or housing discrimination is key. An older employee's reaction to new hires or downsizing; a minority employee's disparity in wage parity; an employee's sexual orientation and its affect upon other employees; a pregnant employee's request for a reasonable accommodation; a disabled employee's request or sick leave or an accommodation based upon their specific disability or, complaints by employees of unequal treatment based upon age, race or marital status. Residents who are blind and require special services and accommodations in order to navigate around the premises, disabled residents who require wheel chair accessible ramps and access doors and hearing impaired persons which require accommodation for access to and from their dwelling. All of these potential claims must be addressed seriously as they may have serious consequences and ramifications. STOP AND THINK.

You can prevent a claim by taking reasonable, timely and appropriate measures once the issue is recognized. Always require that any complaint be placed in writing. Thoroughly investigate the complaint, request documentation to support the allegation and, record all of your findings. Always provide the complainant with your findings. Even a legitimate and through investigation may not prevent a claim from being filed, however it becomes a powerful tool and basis for the defense and dismissal of an unfounded claim.

Mark L. Hankin is a founding partner of the firm. His practice focuses primarily on representation of clients in real estate and corporate litigation with a concentration on cooperative and condo representation. As a skilled litigator, he regularly handles a wide variety of trials and/or hearings before the Federal and State courts of the State of New York; Arbitration Tribunals; New York State and New York City Division of Human Rights; and mediations.

Mr. Hankin is a graduate of S.U.N.Y. at Stony Brook with a B.S. in Political Science and M.S. in Public Administration. He received his Juris Doctorate from Syracuse University. He is admitted to the practice of law in the States of New York (1984); New Jersey (1984); and, Florida (1985). Mr. Hankin is a member of the New York State Trial Lawyers Association; American Trial Lawyers Association; New York State Bar Association (member of Committee on Cooperative & Condominiums; Queens County Bar Association (co-chairman of Committee on Cooperatives and Condominiums); and, the Nassau County Bar Association (member of Real Property Committee).



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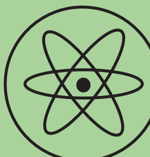

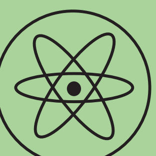

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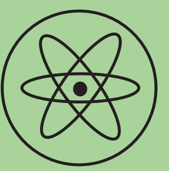

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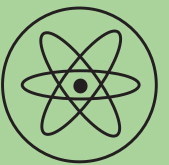

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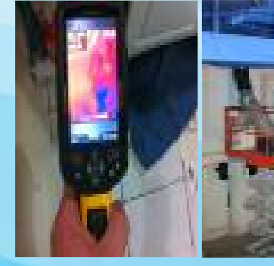

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What Real Estate Owners and Managers Can Learn from Tugboats and Glaucoma

By: **Jay L. Hack, Esq., partner, Gallet Dreyer & Berkey, LLP** February, 2014

This article was adapted from an article published in the Fall 2008 issue of the New York State Bar Association Business Law Journal.

In law school, law students study a case called The TJ Hooper. A federal appellate court, in 1932, decided that a tugboat operator was negligent because the boat didn't have a radio, even though tugboats generally did not use radios at that time. The court decided that those new-fangled radios were inexpensive and easily available, so as technology marched forward, the tugboat industry was required to march along with it.

The same principle explains why, regardless of your age, you have a little puff of air blown into your eye when examined for new glasses. In1974, a court held that an ophthalmologist was negligent for not giving a glaucoma test to a young patient, even though common medical practice was not to give the test to patients under age 40. The test was simple, low cost, and harmless, so failing to give it was negligent, even if the probability of glaucoma was very small in a patient under age 40. In 2008, a federal circuit court decided that the same legal principle applies when it comes to banks implementing technology to discover check fraud.

Why is this idea important to real estate owners and property managers? Because it explains a very important principle about responsibility and negligence. The common law rule of negligence is that a person must act, in dealing with other people, in the same manner that a reasonably prudent person would act under those circumstances. For many years, courts decided how a reasonably prudent person would act by looking at how other people in the same position act in similar circumstances. Thus, the tugboat operator said "Other tugboats don't have radios, so it's reasonable not to have one." The ophthalmologist said, "Other doctors don't give glaucoma tests to people under age 40, so I wasn't negligent just because I didn't give the test."

However, the courts said no. As technology improved and there were inexpensive ways to protect the people that the tugboat operator and the ophthalmologist were dealing with, they were obligated to adopt those technological improvements even though adoption was not the industry standard. They couldn't just escape from responsibility by pointing to other people in the same industry who acted the same way, because the court could instead find that the entire industry was negligent.

The same concept applies to property owners and managers, so you need to keep yourself educated about cutting edge developments and methodologies in your industry. Do you have to be the first to adopt the most high-tech protective device? No, probably not. But neither should you be the last, and as the price of a device that could protect the residents or tenants of your buildings comes down, you can't just close your eyes until after the damage is done. I strongly recommend that you should conduct a risk assessment of your buildings, determine what risks exist, decide whether there are methods available to reduce those risks, and then take appropriate steps to implement those methods when it is reasonable to do so under the circumstances.

You do not want to bend over backwards to argue that doing nothing is "reasonable." As time passes, inaction will look worse and worse to a court that is trying to assess whether you should have done more to protect an injured occupant. Don't just wait until the next occupant or passerby is injured and a new safety rule or local law is adopted to force you to take action. You don't want to be the owner or manager with the word "defendant" stuck after your name when an avoidable problem is not avoided. An ounce of prevention can be worth a lot more than just a pound of cure.

Jay L. Hack, Esq. is a partner in the law firm of Gallet Dreyer & Berkey, LLP. The firm has a substantial real estate practice and represents the owners of hundreds of commercial properties and more than 200 condominium and cooperative buildings. Mr. Hack's practice focuses on the regulation of banks and other financial institutions. He is the Chair of the Business Law Section of the New York State Bar Association, which is the second largest section, with over 4,400 members. He is also a member of its Banking, Securities and Derivatives committees. He is a graduate (with honors) from the University of Michigan and a cum laude graduate of Boston University School of Law. His article on the Federal Rules of Evidence in the Boston University Law Review has been cited as authority by the United States Supreme Court.

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