2014/15 WINTER

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About The House

The Ronald McDonald House provides temporary housing for pediatric cancer patients and their families. Here families find a strong, supportive and caring environment, which encourages and nurtures the development of child to child and parent-to-parent support systems. Every day, children form friendships with other children and, through these bonds, regain a sense of control and experience the fun of childhood. Parents also gain strength and new understanding through the friendships they form with other parents who understand exactly how they feel.

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.

Because we know that cancer can be financially as well as emotionally devastating, The Ronald McDonald House asks each family pay only a nominal fee of $35 per night.

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To give money, after taxes, with profit margins as tight as ever, is increasingly more and more difficult. The fact that we can give our expertise helps everyone, and immediately! Imagine, no cash reserves used for building operations. It is so easy to help and very gratifying indeed.

OSHA® FactSheet

December 1st, 2013 Training Requirements for the Revised Hazard Communication Standard

OSHA revised its Hazard Communication Standard (HCS) to align with the United Nations' Globally Harmonized System of Classification and Labeling of Chemicals (GHS) and published it in the Federal Register in March 2012 (77 FR 17574). Two significant changes contained in the revised standard require the use of new labeling elements and a standardized format for Safety Data Sheets (SDSs), formerly known as, Material Safety Data Sheets (MSDSs). The new label elements and SDS requirements will improve worker understanding of the hazards associated with the chemicals in their workplace. To help companies comply with the revised standard, OSHA is phasing in the specific requirements over several years (December 1, 2013 to June 1, 2016).

The first compliance date of the revised HCS is December 1, 2013. By that time employers must have trained their workers on the new label elements and the SDS format. This training is needed early in the transition process since workers are already beginning to see the new labels and SDSs on the chemicals in their workplace. To ensure employees have the information they need to better protect themselves from chemical hazards in the workplace during the transition period, it is critical that employees understand the new label and SDS formats.

The list below contains the minimum required topics for the training that must be completed by December 1, 2013.

➢ Training on label elements must include information on:

- Type of information the employee would expect to see on the new labels, including the
  - ✓ **Product identifier:** how the hazardous chemical is identified. This can be (but is not limited to) the chemical name, code number or batch number. The manufacturer, importer or distributor can decide the appropriate product identifier. The same product identifier must be both on the label and in Section 1 of the SDS (Identification).
  - ✓ **Signal word:** used to indicate the relative level of severity of hazard and alert the reader to a potential hazard on the label. There are only two signal words, "Danger" and "Warning." Within a specific hazard class, "Danger" is used for the more severe hazards and "Warning" is used for the less severe hazards. There will only be one signal word on the label no matter how many hazards a chemical may have. If one of the hazards warrants a "Danger" signal word and another warrants the signal word "Warning," then only "Danger" should appear on the label.
  - ✓ **Pictogram:** OSHA's required pictograms must be in the shape of a square set at a point and include a black hazard symbol on a white background with a red frame sufficiently wide enough to be clearly visible. A square red frame set at a point without a hazard symbol is not a pictogram and is not permitted on the label. OSHA has designated eight pictograms under this standard for application to a hazard category.
  - ✓ **Hazard statement(s):** describe the nature of the hazard(s) of a chemical, including, where appropriate, the degree of hazard. For example: "Causes damage to kidneys through prolonged or repeated exposure when absorbed through the skin." All of the applicable hazard statements must appear on the label. Hazard statements may be combined where appropriate to reduce redundancies and improve readability. The hazard statements are specific to the hazard

classification categories, and chemical users should always see the same statement for the same hazards, no matter what the chemical is or who produces it.

✓ **Precautionary statement(s):** means a phrase that describes recommended measures that should be taken to minimize or prevent adverse effects resulting from exposure to a hazardous chemical or improper storage or handling.

✓ **Name, address and phone number of the chemical manufacturer, distributor, or importer**

- How an employee might use the labels in the workplace. For example,
  - ✓ Explain how information on the label can be used to ensure proper storage of hazardous chemicals.
  - ✓ Explain how the information on the label might be used to quickly locate information on first aid when needed by employees or emergency personnel.
- General understanding of how the elements work together on a label. For example,
  - ✓ Explain that where a chemical has multiple hazards, different pictograms are used to identify the various hazards. The employee should expect to see the appropriate pictogram for the corresponding hazard class.
  - ✓ Explain that when there are similar precautionary statements, the one providing the most protective information will be included on the label.

➢ Training on the format of the SDS must include information on:

- Standardized 16-section format, including the type of information found in the various sections
  - ✓ For example, the employee should be instructed that with the new format, Section 8 (Exposure Controls/Personal Protection) will always contain information about exposure limits, engineering controls and ways to protect yourself, including personal protective equipment.
- How the information on the label is related to the SDS
  - ✓ For example, explain that the precautionary statements would be the same on the label and on the SDS.

As referenced in Dr. Michaels' OSHA Training Standards Policy Statement (April 28, 2010)– with all training, OSHA requires employers to present information in a manner and language that their employees can understand. If employers customarily need to communicate work instructions or other workplace information to employees in a language other than English, they will also need to provide safety and health training to employees in the same manner. Similarly, if the employee's vocabulary is limited, the training must account for that limitation. By the same token, if employees are not literate, telling them to read training materials will not satisfy the employer's training obligation.

OSHA's Hazard Communication website (http://www.osha.gov/dsg/hazcom/index.html) has the following QuickCards and OSHA Briefs to assist employers with the required training.

- Label QuickCard (English/Spanish)
- Pictogram QuickCard (English/Spanish)
- Safety Data Sheet QuickCard (English) (Spanish)
- Safety Data Sheet OSHA Brief
- Label/Pictogram OSHA Brief (to come)

This is one in a series of informational fact sheets highlighting OSHA programs, policies or standards. It does not impose any new compliance requirements. For a comprehensive list of compliance requirements of OSHA standards or regulations, refer to Title 29 of the Code of Federal Regulations. This information will be made available to sensory-impaired individuals upon request. The voice phone is (202) 693-1999; teletypewriter (TTY) number: (877) 889-5627.

For assistance, contact us. We can help. It's confidential.

OSHA® Occupational Safety and Health Administration

U.S. Department of Labor
www.osha.gov (800) 321-OSHA (6742)

OSHA FS-3642 02/2013

UNITED STATES DEPARTMENT OF LABOR

U.S. Department of Labor

Assistant Secretary for
Occupational Safety and Health
Washington, D.C. 20210

APR 28 2010

MEMORANDUM FOR: REGIONAL ADMINISTRATORS

FROM: DAVID MICHAELS, PhD, MPH
Assistant Secretary

SUBJECT: OSHA Training Standards Policy Statement

The purposes of this memorandum are to reiterate OSHA's policy that employee training required by OSHA standards must be presented in a manner that employees can understand, and to provide enforcement guidance to the area and regional offices relative to the Agency's training standards. This position applies to all of the agency's agriculture, construction, general industry, and maritime training requirements.

Employer's Training Obligation

Many OSHA standards require that employees receive training so that work will be performed in a safe and healthful manner. Some of these standards require "training" or "instruction," others require "adequate" or "effective" training or instruction, and still others require training "in a manner" or "in language" that is understandable to employees. It is the Agency's position that, regardless of the precise regulatory language, the terms "train" and "instruct," as well as other synonyms, mean to present information in a manner that employees receiving it are capable of understanding. This follows from both the purpose of the standards -- providing employees with information that will allow work to be performed in a safe and healthful manner that complies with OSHA requirements -- and the basic definition that implies the information is presented in a manner the recipient is capable of understanding.

OSHA has a long and consistent history of interpreting its standards and other requirements to require employers to present information in a manner that their employees can understand. See, e.g., CPL 2-238(D)(1998) ("[i]f the employees receive job instructions in a language other than English, then training and information to be conveyed under the [hazard communication standard] will also need to be conducted in a foreign language"); letter from Russell B. Swanson to Chip MacDonald (1999) ("instruction that employers must provide under §1926.21 must be tailored to the employees' language and education...."). Courts and the Commission have agreed with OSHA that an employer may not take advantage of "an adequately communicated work rule" when it did not communicate that rules to a non-English speaking employee in a language that employee could understand. See, e.g., Modern Continental Construction Company, Inc. v. OSHRC, 305 F.3d 43, 52 (1st Cir. 2002); Star Brite Construction Co., 19 (BNA) OSHC 1687, 1695 n.12 (N. 95-0343, 2001).

In practical terms, this means that an employer must instruct its employees using both a language and vocabulary that the employees can understand. For example, if an employee does not speak or comprehend English, instruction must be provided in a language the employee can understand.

UNITED STATES DEPARTMENT OF LABOR

Similarly, if the employee's vocabulary is limited, the training must account for that limitation. By the same token, if employees are not literate, telling them to read training materials will not satisfy the employer's training obligation. As a general matter, employers are expected to realize that if they customarily need to communicate work instructions or otherworkplace information to employees at a certain vocabulary level or in language other than English, they will also need to provide safety and health training to employees in the same manner. Of course, employers may also provide instruction in learning the English language to non-English speaking employees. Over time this may lessen the to provide OSH Act training in other languages.

Additionally, OSHA's training provisions contain a variety of specific requirements related to employee comprehension. For example, §1910.147(c)(7)(i) (Lockout/Tagout) requires the employer to verify that the employees have "aquired" the knowledge and skills which they have been trained; §1910.134(k)(5)(ii) (Respiratory Protection) requires retraining when "inadequacies in the employee's knowledge or use of the respirator indicate that the employee has not retained the requisite understanding or skill;" §1910.1030(g)(2)(vii)(N) (Bloodborne Pathogens) requires "[a]n opportunity for interactive questions and answers with the person conducting the training session;" and many other standards have analogous requirements. Employers need to examine the standards applicable to their workplaces to be familiar with these specific requirements.

In order to assist employers in meeting their training obligations, OSHA has created a web-based assistance tool. The tool is intended to help employers with a Spanish-speaking workforce identify the Spanish-language outreach resources on OSHA's website. While the site includes links to Spanish-language resources, it is intended primarily for English-speaking and bilingual users. The site is located on OSHA's public website at the following address: http://www.osha.gov/dcsp/compliance_assistance/quickstarts/hispanic/index_hispanic.html.

Enforcement Guidance for OSHA Compliance Officers

OSHA compliance officers are responsible for checking and verifying that employers have provided training to employees. In addition, CSHOs must check and verify that the training was provided in a format that the workers being trained could understand.

CSHOs should determine whether the training provided by the employer meets the requirements and intent of the specific standard, considering the language of the standard and all of the facts and circumstances of the particular workplace. For example, CSHOs should look to whether workplace instructions regarding job duties are given in a language other than English and determine whether the employer already is transmitting information with comprehensibility in mind. CSHOs should also look beyond any basic paper documentation; i.e, an employer may have training records but employees may not have been able to understand the elements included in the training.

If the compliance officer determines that a deficiency exists in the employer's training program, he/she must document evidence of any barriers or impediments to understanding, as well as any other facts that would demonstrate that employees were unable to understand the training and apply it to their specific workplace conditions. If a reasonable person would conclude that the employer had not conveyed the training to its employees in a manner they were capable of understanding, then the violation may be cited as serious if it is within the guidelines set out in the FOM.

SIDEWALKS – Every Building Has One.

(and, many sidewalks have defects)

By Margie Russell

Winter is over and now is the time to address your sidewalk issues. Especially if you are planning to erect any scaffolding before construction kicks in.

What is a NYC sidewalk defect? Excerpts are from NYC DOT, Department of Transportation. According to section 19-152 of the NYC Administrative Code, any of the following shall be considered a defect which would result in a violation:

"• One or more flag(s) (square of sidewalk) missing or sidewalk never built.

• One or more flag(s) cracked to such an extent that one or more pieces of the flag(s) may be loosened or readily removed.

• An undermined flag below which there is a visible void or a loose flag that rocks or seesaws.

• A trip hazard, where the vertical surface differences between adjacent sidewalk flags are greater than or equal to 1/2".

• Improper slope, which shall mean (i) flag(s) that do not drain toward the curb and retain water, (ii) flag(s) that must be replaced to provide for adequate drainage or (iii) a cross slope exceeding established standards.

• Hardware defects, which shall mean (i) hardware not flush within 1/2" of the sidewalk surface or (ii) cellar doors that deflect greater than 1" when walked on, are not skid resistant or are otherwise in a dangerous or unsafe condition.

• Defects involving structural integrity, which shall mean a flag that has a common joint, which is not an expansion joint, with a defective flag and has a crack that meets the common joint and one other joint.

• Non-compliance with DOT specifications for sidewalk construction.

• Patchwork, which shall mean (i) less than full-depth repairs to all or part of the surface area broken, cracked or chipped flag(s) or (ii) flag(s) which are partially or wholly constructed with asphalt or other unapproved non-concrete material. What turns a defect into a sidewalk violation? A sidewalk violation is an official notice issued by DOT stating that your sidewalk is defective. There is no fine associated with a violation. A copy of the notice is filed with the County Clerk and remains on file until the Clerk receives official notification from the City that satisfactory repairs have been made. A violation can complicate selling or refinancing your property.

DOT recommendations:

a. Hire a contractor who is familiar with DOT specifications for sidewalk repair work as contained in Chapter 2 of Title 34 of the Rules of the City of New York http://www.nyc.gov/html/dot/downloads/pdf/hwyrules.pdf. Use the Department of Consumer Affairs' database of licensed contractors to verify if the contractor you are considering is licensed.

b. Once you have chosen a contractor, by calling 311 you can find out whether there are any consumer complaints pending against them.

c. Make sure the contractor obtains all necessary permits before beginning the work. This is both the owner's and the contractor as responsibility. Where sidewalks are concerned, no job is too small on this front. Call 311 and request a Sidewalk Construction Permit.

d. After the work is completed, call 311 again and request a Sidewalk Violation Dismissal. An inspector will come to verify that the work has

continued next page

con't: Sidewalks

been satisfactorily completed.

e. If you received the notice of violation later than the date shown on the violation. The 45 days begin when the violation is received by the property owner as indicated on the certified mail receipt. In cases where the violation notice is not delivered by mail, the violation will be posted on the property. The posting date is the start of the 45 days.

If you don't start the work within 45 days, DOT may perform the work or cause the work to be performed by one of its contractors, and bill you for the cost. There is no fine or penalty associated with a sidewalk violation. A sidewalk permit however, does not extend the 45 day period to start repairs. If you want to repair your sidewalk privately, you or your contractor must take out a permit and begin the repairs within 45 days of receipt of the violation." *DOT, Department of Transportation Regulations LINK http://www.nyc.gov/html/dot/html/infrastructure/sidewalkintro.shtml .*

People and sidewalks are not going away, nor do we want them to. Sidewalk inspections should be part of every buildings' daily activities, and it is easily done when the staff is sweeping or hosing.

Margie Russell, executive director of the NY Association of Realty Managers (NYARM) has a wealth of experience from a real estate career that began 30 years ago. Formerly a property manager of some of the city's largest multifaceted cooperative and condominium apartment and mixed-use buildings, she increased the market value of stagnant buildings through innovative problem solving, project management and staff retraining. Among her real estate related endeavors she coordinates, plans and conducts: the NY Accredited Realty Manager Certification program and educational/networking events for building management and industry professionals.
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NYARM Code of Ethics

Co-Authored by Howard Schechter, Esq., & Andrew Brucker, Esq., of Schechter & Brucker, PC

Article I: Manager has a duty of Good Faith & Loyalty to the Owner of the Building

1-1 *Manager* owes his/her allegiance to the Owner of the building which he/she is managing, and must act in the best interests of the Owner.

1-2 ***Manager*** must put no interest ahead of Owner's interest, within the bounds of the law.

1-3 ***Manager***, when called upon to be an advocate for Owner, shall use his best efforts and vigorously present Owner's point of view.

Article II: Manager has a duty to use Care, Skill & Diligence

2-1 ***Manager*** must use that degree of care in acting for the Owner which a careful real estate owner would use in managing his/her own building.

2-2 ***Manager*** shall recommend that Owner hire an expert (e.g. engineer, attorney, etc.) when the task is beyond the manager's expertise and training.

2-3 ***Manager*** must follow-up and follow through on all actions which he has taken or which he should take on behalf of the Owner.

2-4 ***Manager*** must serve all tenants impartially and without bias of any kind.

Article III: Manager shall have the Duty to Act in accordance with his authority, and the Manager shall obey instructions from the Owner

3-1 The precise relationship between the Owner and manager should be set forth in a written document, which should clearly set forth the authority granted to the manager. If, during the management of the building, there is a need by the manager to take on additional responsibilities or duties, a written document signed by the Owner should be prepared.

3-2 Owner shall at all times have the right to limit, by specific instruction to manager, the general authority granted to the ***Manager***.

3-3 In the event there is a situation which is considered an emergency (defined as a situation in which immediate action is necessary or there will be serious damage to property or injury to person or persons), the ***Manager*** may take action(s) which are beyond those delegated to him. However, such actions must be taken in good faith, must be reasonable in nature and, should not go beyond remedying the immediate situation. ***Manager*** should notify the Owner as soon as practical as to the situation and the steps taken by the Manager.

Article IV: Manager shall have the Duty to disclose information to the Owner

4-1 ***Manager*** shall prepare prompt, timely and complete information reports for Owner.

4-2 ***Manager*** shall promptly report to Owner any physical damage to the building, the need for repairs, and any incident which may adversely affect the Owner.

4-3 ***Manager*** shall promptly inform Owner of any events which, even though remedied, may have affected Owner and of which the Owner should be aware.

4-4 In the event ***Manager*** learns of any fact which may affect the Owner, whether adversely or not, ***Manager*** should disclose such information to the Owner.

Article V: Manager shall not Act adversely to the interest of the Owner, or for his benefit

5-1 **Manager** must not accept any personal gift from any one or any company servicing (or selling goods) to any building which he/she is managing, or from any one or any company which seeks in the future to render services or sell goods to the Owner.

5-2 **Manager** must not have any interest (either direct or indirect) in any party with which the Owner will do business, unless full disclosure of such potential conflict of interest is outlined in detail to the Owner, and Owner agree in writing to such arrangement.

5-3 Even if approved by writing by Owner, ***Manager*** must not influence Owner in his/her decision to use a business in which Manager has any interest (whether direct to indirect).

Article VI: Manager shall not co-mingle Owners Funds with this any Funds, and shall use the utmost responsibility in handling Owner's Funds

6-1 ***Manager*** must keep all Owner's funds in accounts which are clearly unrelated and segregated from his funds or the funds of any other party. Any account should be clearly titled so that the Ownership of the funds are without doubt.

6-2 ***Manager*** must place Owner's funds in the safest places possible unless otherwise specifically instructed, in writing, by the Owner.

6-3 ***Manager*** should not, without prior written instruction by the Owner, place Owner's funds in any investment vehicle which may decrease in value.

6-4 ***Manager*** should not lend money to any parties without first receiving written instruction from the Owner to do so.

6-5 ***Manager*** must be at all times hold Owner's funds as fiduciary, and as such must keep careful, accurate and detailed books for such funds.

Article VII Manager has a duty to tenants and to the public to protect safety and obey the law

7-1 Notwithstanding his duty of loyalty to the Owner, ***Manager*** should always consider the safety and welfare of tenants and the public, even beyond the concerns of the Owner's.

7-2 ***Manager*** shall not knowingly act in violation of any applicable law or regulation, or assist Owner to evade any applicable low or regulation.

7-3 ***Manager*** shall not make false or misleading statements to any governmental agency.

7-4 ***Manager*** shall not deny repair or service to any tenant in an effort to compel him/her to move, or to extract extra compensation or rent.

7-5 ***Manager*** shall at all times be committed to the letter and spirit of equal opportunity housing. Manager shall provide housing without regard to race, creed, color, sex, national origin, marital status, sexual preference, family status (e.g. children), veteran status, age, handicap, or disability, as provided by law.

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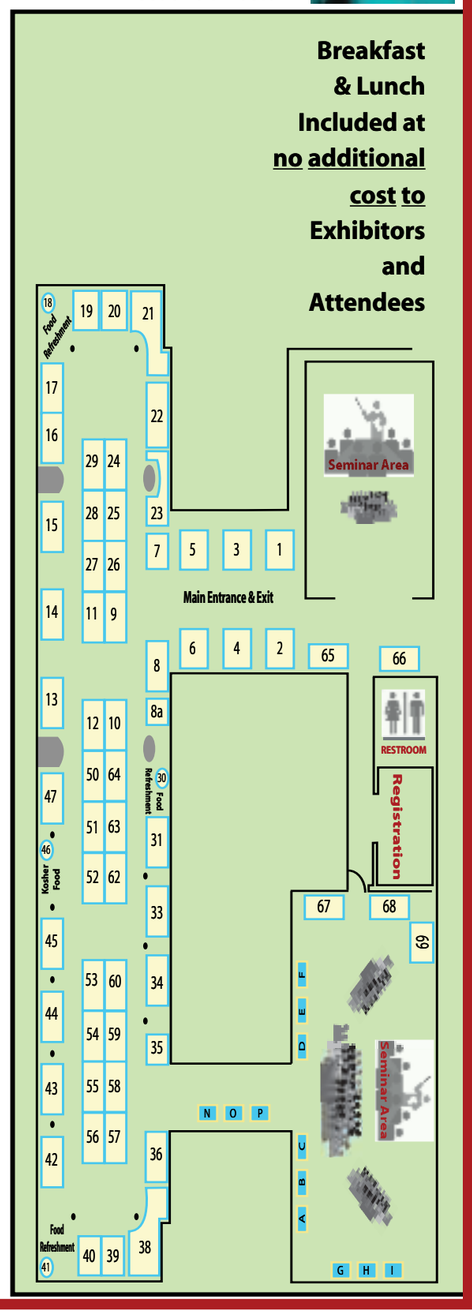

PROPERTY MANAGEMENT EXHIBITION

Fear Management For Managers In A Volatile World

By: **Margie Russell's interview with Mardi-Ellen Hill** January, 2015

Fear management was the topic at several recent NYARM seminars. Mardi-Ellen Hill, a Thought Leader Consultant, was among the presenters and she provided us with an objective approach addressing the natural fears building staff and management has alike, about how they will perform during emergencies. Combine that with actually having to deal with the emergency event and how fear in-the-present, affects performance. Since preparedness is a key mainstay, and fear is a significant impediment to performance, then understanding the dynamics of preparedness and the impact of fear is something that warrants being dissected.

Ms. Hill explains, "Preparedness is working our way back to the beginning of an emergency, and all the things that have to come into play in that arc. Once that emergency starts to tick, all the things you planned, are going to take a backseat to different and more pressing events happening. Then, out of these newly prioritzed events occurring, other events are going to flourish. Understanding preparedness, is understanding that a storm does not hold a fixed destination. Landing a plane where once one assumed there was a landing point, is simply not going to work. What is the real meaning of destination in the midst of an unfolding crisis? The destination is found buried in a uniquely personal time arc we measure as productivity in the course of a day, a week, a month, a year. When you're in the midst of an emergency, that time arc is rapidly adjusting inside us relative to the rhythm of the events unfolding incrisis.

How does that fit in? "Fear and fear management is not only proportionate to a generally accepted level of risk, it is also proportionate to our understanding and characterization of what risk means individually to each one of us. We perform based on a unique combination of our inner clock and the clock we are taught to abide by. Again this is a uniquely personal experience. Thus, REHEARSAL and PREPAREDNESS are essential work states to carefully execute in order to achieve high-octane performance. Rehearsal also allows us to preserve our strength under stress, reducing fear".

But the day to day management of a building must continue, before, during and after a crisis. "It's quite a difficult thing to balance both what is normal outside an emergency and a crisis, plus extrapolate and think about what that crisis situation looks like. These two parallel worlds

continued next page

operate simultaneously, in tandem. And since the leader is the one who controls the group clock, to really be effective as a manager, as a person in a thought leadership position, one has to be able to evaluate both worlds and work from both of them simultaneously. This requires a full understanding of the fact that we are conditioned to, and abide by, an internal clock during a regular work schedule. It also requires the realization that each member of a team has a different and unique response duration, and that the tandem of the emergency clock and each individual's p
ABLE behavior-performance".

From a practical standpoint is there a silver lining to any of this? "Because we are living in a fraught environment fear can be used in a good way. Meaning it's important to be afraid of something that can harm your body, harm your business, your company's reputation, your data or most importantly the safety of your building's occupants and employees".

Excellent, thank you Mardi! We will harness this power for the better good and one way to learn how to prepare is sending building staff to FEMA CERT training. One such Community Emergency Response Team Training is offered by the Battery Park City Authority, Parks Dept. With an emphasis on Leadership Skills it is geared to high-rise buildings, focusing on preparation for, and response to, sudden overwhelming disasters. • Battery Park City CERT http://www.bpccert.org/Home_Page.html • Videos: CERT Hands on Drill Part 1 http://youtu.be/1jEoesHQhd0?t=1s Wrap up Discussion Part 2 http://youtu.be/Z_fuGjIHXmc?t=7m17s.

I also recommend to vendors and service providers that this training is something you should seriously consider. By sending your service and sales force, while it certainly is good business, more importantly, it makes your field staff much more sensitive to the needs of your customers, and the community your company serves.

Margie Russell, executive director of the NY Association of Realty Managers (NYARM) has a wealth of experience from a real estate career began 30 years ago. Formerly a property manager of some of the city's largest multifaceted cooperative and condominium apartment and mixed-use buildings, she increased the market value of stagnant buildings through innovative problem solving, project management and staff retraining. She coordinates, plans and conducts the NY Accredited Realty Manager Certification program and educational/networking events for building management and industry professionals in the Greater NY Area. mrussell@nyarm.com 212.216.0654 http://www.nyarm.com/contact.htm www.nyarm.com and view her educational seminars http://www.youtube.com/results?search_query=margie+russell

Mardi-Ellen Hill is a recognized member of the Wall Street Journal Women of Note network. She works as a Thought Leader Consultant, Speaker and Writer, bringing new knowledge based platforms to business and educational venues world wide. She is also the Creator/CEO of a new global entertainment enterprise. Formally the head go MEH Mulimedia LLC, Ms. Hill is forming a new company with her dynamic multifaceted team. Read about her Feb 2015 event included in the Composers Now festival held in the five boroughs of New York City. Log on to her site. www.menduniversebuzz.wordpress.com

Don't be a Target . . . or a JP Morgan Chase, or a Sony.

It's not only big companies that have data security breach obligations.

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

Article Based on 2014 NYARM Seminar

Hackers throughout the world are after companies large and small, trying to steal personal information that they have on their computer networks. When Target or Home Depot gets hacked, it's a boon only to the US Post Office - millions of warning notices are sent to customers whose information was stolen and millions of new credit cards are mailed.

If you think this is not your problem and it can't happen to you, you're wrong. If your real estate company has sensitive personal information on your computers, you are subject to the New York State Information Security Breach and Notification Act. The real estate industry is governed by that law just as much as banks and major retailers. If your system is infiltrated, then you have to notify everyone whose data was compromised and send notice to government officials. Even if your company does not have data that the law requires you to protect, exposure of even unprotected data could damage your reputation and generate private lawsuits.

You should do your best to eliminate the risks of exposing that data. Consider each of the issues below. Experts say that it is not a matter of whether a computer connected to the Internet will be infiltrated; it is only a matter of when. You can't hide from the hackers and no management company is too small. Google has software that searches the Internet to find public information. Hackers have similar software that automatically goes from one Internet-accessible location to another, looking for vulnerable systems that they can infiltrate. When they find a vulnerable site, they attempt a quick smash and grab. If they find name and social security number data, they sell it to criminal syndicates that use it for identity theft.

As I said in recent presentations to both the banking industry and the real estate industry, you lock your car when you park on the street. Even though a thief can smash your car window and get inside, it is easier for the thief to steal from an unlocked car than to break your window. Your job, as a real estate professional, is to lock your car as best you can and let the criminals go somewhere else.

Therefore, we recommend that you consider the following action items to reduce your risk of future liability.

a. Encryption – Is the data on your computer encrypted so that it can't be read even if someone "hacks" into your system? If not, implement encryption.

b. Vendor Management – Make sure that any vendor who has your data has procedures to protect confidentiality of data you give them and be sure to include appropriate clauses in all vendor contracts.

c. Limit "Toxic" Data – If you don't really need a social security number or a driver's license number, don't ask for it. Never collect passwords or PINs belonging to other people. Once you have the data, keep it only for as long as you need it and then dispose of it properly.

d. Viruses and Malware – Make sure that you have software to protect your computers from damage by viruses, spyware, and other malicious code. Update the "virus definitions" on your anti-virus software regularly to protect against newly discovered malicious programs. Consider restricting the receipt of high risk file types (such as .zip files).

e. Cyber Insurance – Does your liability insurance cover loss from cyber-attacks? If not, consider buying a policy or rider. Read exclusions carefully to make sure that the policy does not contain loopholes.

f. Employee Training – Train your employees to be careful with the computer system and computer data. One common method of infiltration is to send a sophisticated email to an employee that looks like it comes from someone else in the company. Clicking on a link in the email inserts a virus into the network. In a recent test, 50% of all bank employees who got an email that looked like it came from the head of the IT Department replied by sending their password when they were told it was needed for a system update.

g. Board Training – Managing agents need to take the lead in training board members and officers to be vigilant. This is especially true of coop building directors who often receive personal information about prospective purchasers and subtenants. Directors should not download or keep "toxic" information unless it is essential for them to do so.

h. Access Limits – Not everyone needs access to your most sensitive data. If it is password protected, don't leave passwords where every employee can get to it.

i. Secure Internet Connections – Consider firewall protection. Be especially careful with Wifi connections. Always use password protected Wifi. Change passwords regularly so that "guests" with passwords can't use them once they leave. If possible, separate the network where confidential data is kept from any public Wifi you make available to guests.

j. Update Software – Install all patches issued by your software vendors. Patches correct system vulnerabilities. Avoid software that is no longer being maintained by the manufacturer, such as Windows XP.

k. Physical Access Limits – If avoidable, do not leave computers and network components in public areas.

l. Personal Web Browsing – Employees who want to browse the web should do so at home, especially if you do not have vigorous anti-virus software. Don't try to prohibit access to dangerous sites; you will never find them all. Instead, "white list" acceptable sites and limit access to other sites.

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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NYARM

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Thursday, May 14th

HONOREE AWARDS GALA

On Friday, April 24th NYARM Honors stellar management teams, individuals and companies who have excelled in their professions while believing in giving back to the community. Among them is …

… Peter M. Finn, Esq. whose whose retirement from RAB, The Realty Advisory Board, we will be celebrated at the Gala. He has dedicated the past 38 years advising real estate owners & managers on labor relations representing employers in contractual grievances and arbitrations.

Peter will be awarded the "JAMES F. BERG PEACE PRIZE" named after his friend and mentor.

For information to attend or to place a congratulatory message or ad in the keepsake program journal book, all our contact information is below.

Property Management Networking Gala Friday 04-24-15 7:30pm to 12:30 at Leonard's in Great Neck Elegant Festive Dress

CALL Margie Russell Executive Director For all the details

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May 14

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- Noon - **Mechanical & Safety Issues** Part 2: **PRECAUTIONS, Musts & Must-Nots**

When… Thursday, May 14, 2015
8:30 am ... Breakfast, Registration, Networking
9:30 to 11:30 Gas Seminar 1) Legal & Insurance Matters
11:30 to 12:30 ... Brunch/Lunch, Networking, Meet the Speakers
12:30 to 1:30 Gas Seminar 2) Mechanical & Safety Issues
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Margie Russell
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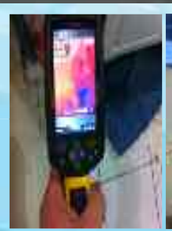

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Loss Experience Management

Excerpts From Steve Cangelosi's NYARM Presentation Moderated by Margie Russell

Several years ago I asked Steve Cangelosi, who is now retired as Vice President of Claims for Greater New York Insurance in NY State, to provide us with real live examples of claims that NYARM members could learn from. This became a lesson in Loss-Experience-Management, and he explained how a concerted effort in addressing this will reduce or control your premiums with your carrier.

Following are excerpts (and paraphrasing) from Mr. Cangelosi's 2007 presentation at Tavern on the Green. You can listen to the entire audio recorded presentation on YouTube at http://youtu.be/zNBNryC_H-8?t=2s .

"Avoid claim payments that could be covered by others or avoided entirely. As someone who sees every claim and lawsuit in the state of New York that comes into the GNY office, I'm drawing upon examples of the cases and the lawsuits we see, in an effort to illustrate basic premises in protecting your building and yourself in site management.

Give your insurance company a chance to defend you properly.

- There was a woman who fell out of a loft on our insured premises and became a quadriplegic and the insured decided not to report it. A year later, the lawsuit comes in and by that time they changed the loft, they changed the railing, they disposed of the bottles of vodka that were found there at the time.
- We had a stove in one of our insured buildings that malfunctioned. It was old and there was something wrong with the product. It cost several hundred thousand dollars' worth of damage and the injury to the occupant of the building was in the millions. The insured took it upon themselves to take that stove and put it on the sidewalk and it was taken away three days after it happened.

We could have gone after the manufacturer if we had been able to inspect the stove. We would have had our experts show it was a malfunctioning product and the manufacturers would have been brought into the suit. They would've had to pay out, and the building owner would've paid nothing.

- You will be liable if you destroy what we need to defend you, in fact the plaintiff will charge you with spoliation of evidence, which means that they are accusing you of intentionally getting rid of the evidence.

Use your surveillance cameras to your advantage.

- A woman going down the stairs talking on a cell phone with a cup of coffee in her hand and she falls down and breaks her leg. Prior to her fall, 30 to 40 people had already walked down those same stairs without falling.

If you have your surveillance camera showing this woman walking down the stairs, talking on her cell phone, holding onto a cup of coffee in the other hand, and looking up in the air, when that is shown to the jury, that multimillion dollar lawsuit will go right out the door.

Negligible hiring and negligible supervision.

When you hire someone and you don't know what their background is you open yourself up to a host of problems.

- We had a case where two doormen let someone in the building without verifying who that person was. We had this on tape. They say to perpetrator, "you must be with a construction company on the 9th floor," so the perpetrator walks up to the 9th floor and tries to get into the

continued next page

apartments. Residents on the 9th floor call the two doormen but they do nothing. When the perpetrator breaks into a woman's apartment and rapes and assaults her, and the residents who can hear the woman screaming for help start calling downstairs asking the doormen to call 911, they still do nothing.

Now what do you think the insurance company is going to have to pay on that case when it is discovered that you did not train your doorman in security?

- We need a background check on employees because you will be liable if that employee is the person who causes a situation, steals, or assaults someone on your premises.
- The lawsuit against you will say it's you who failed to hire and supervise.
- As your insured we need to say you did everything reasonable that any prudent building owner would do, and they found no record on this person, and we don't know what happened after that.

I think if you follow some of these things, you will have a direct impact on reducing or controlling your premiums, and more importantly, people won't get hurt unnecessarily."

The above excerpts (and paraphrasing) are taken from Mr. Cangelosi's 2007 NYARM presentation moderated by Margie Russell. Listen to it on YouTube.

Margie Russell, executive director of the NY Association of Realty Managers (NYARM) has a wealth of experience from a real estate career that began 30 years ago. Formerly a property manager of some of the city's largest multifaceted cooperative and condominium apartment and mixed-use buildings, she increased the market value of stagnant buildings through innovative problem solving, project management and staff retraining. Among her real estate related endeavors she coordinates, plans and conducts: the NY Accredited Realty Manager Certification program and educational/networking events for building management and industry professionals.
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Your Construction Project is Running Very Late. Who Pays?

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

I am always surprised when a client tells me that a construction project in his or her building finished on time and on budget. In my role as a construction lawyer and litigator, I usually get called in once a job goes south. From where I sit, all construction projects would appear to run late.

But when they do, who has to absorb all the additional costs which accompany a delayed project? Who pays for the Contractor's extended labor and supervision costs? Who pays for the Owner's carrying costs and lost rent? The answer is usually determined by the contract between the parties—and the party who drafts the contract often has a major influence over how those questions are answered. Here's why.

Most people in real estate are familiar with "time of the essence" clauses. They eventually rear their head in every contract of sale for real property. Basically, it means that the closing date is etched in stone. Miss it even by one day, and you are in material breach and liable for damages.

What many people do not understand is that one can make any date in a contract "time of the essence." And in construction contracts, an Owner is foolish not to. That is, the substantial completion date (at the least, and sometimes other milestone dates) should be made "time of the essence" in the written contract. Then, as with contracts of sale, if the Contractor doesn't finish by that date, it will be in material breach and subject to damages. Those damages could be "liquidated damages" (that's those pre-established amounts you like to think of as penalties, like $1,000 per day), or they could be actual damages (like the cost of extended fire watch services, or temporary heat or scaffold rental, or lost rent). But whether they are actual or liquidated damages, if the Contractor runs past a "time of the essence" deadline, it can be liable to the Owner for those damages.

But what happens if the Contractor is delayed through no fault of its own as, say, by another contractor, or adverse weather, or a strike? Whether or not that is the Owner's problem, or the Contractor's problem, is largely up to you.

If your contract has what we call a "no damage for delay" clause, you can make it the Contractor's problem. A "no damage for delay" clause says that if the Contractor encounters any delays caused by third parties (or even by the Owner!) the Contractor is NOT entitled to recover any additional costs from the Owner. None. The Owner may have to give the Contractor an extension of contract time, so that the Contractor is not in material breach when it fails to finish by the substantial completion date (which is important, because the Contractor would otherwise be in breach for violating the "time of the essence" clause. But no money; no damages.

continued on next page

From an Owner's perspective, a "no damage for delay" clause is a pretty powerful weapon. And it's not in the standard AIA A101 or A107 form of contract or the A201 general conditions. So if you are using AIA documents, thinking them to be "standard" form contracts, you may be doing yourselves a major disservice.

Can a "no damage for delay" clause protect you even when you are the party which caused the Contractor to be delayed? Usually yes. Not if you have deliberately or willfully or maliciously taken action to delay the Contractor. But pretty much anything short of that – even an Owner's inept contract administration – is protected against the Contractor's claims for delay damages in the face of a strong "no damage for delay" clause . All the Contractor can get from the Owner is an extension of time. Not money.

So, to sum up: You can sometimes be the master of your own destiny.

- are you using a construction contract or a rider tailored to your individual needs, or just a form AIA you pulled out of your file cabinet; or worse yet, the contract which the Contractor pulled out of its file cabinet?
- if you are prescient enough to have consulted a lawyer to draft you a customized contract, does it include a time of the essence clause requiring the Contractor to complete by the substantial completion date (or achieve other milestones on time) under penalty of being in material breach of contract?
- and, most importantly, does your contract contain a "no damage for delay" clause which prevents the Contractor from collecting any compensation from you for delays caused by third parties, or even by you (short of your own malicious conduct)?

The most important thing you can do is consult a lawyer before the project begins to obtain a contract which protects your interests; not afterwards once your project becomes one more "problem job" which ran late.

Randy J. Heller, Esq. is a partner at the firm of Gallet, Dreyer & Berkey, LLP and is the chair of its construction law and litigation department. He has lectured widely on construction and bonding issues and on the New York Lien Law. He has been recognized by his peers as a Super Lawyer (among the top 5% of attorneys in his field) and as among the Best Lawyers of New York as recognized by New York Magazine and US News & World Report. 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. He can be reached at rjh@gdblaw.com .

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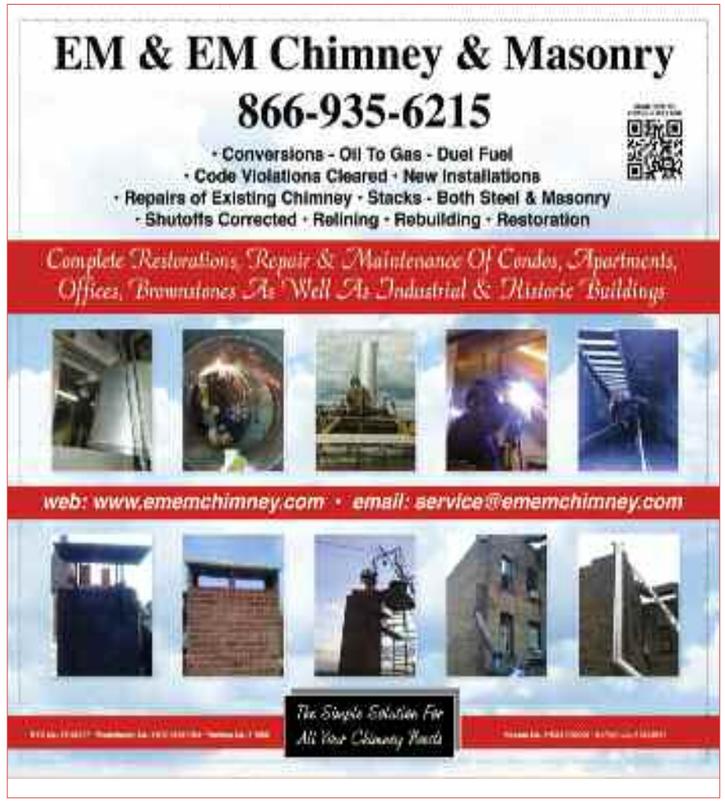

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