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Policing the Alteration Agreement

By Jonathan Leaf

➤ **THE CITYWIDE FRENZY** to alter, renovate and combine apartments shows no signs of abating. While an iron-clad alteration agreement usually provides adequate protection for boards and their buildings during these construction projects, there are times when a board needs an extra pair of eyes.

"I tend to inspect work in progress when people are not being transparent," says Oswald Bertolini, principal at Bertolini Architectural Works, who has plied both sides of the street - designing apartment alterations for owners, and working for boards to make sure the work is done in compliance with the alteration agreement.

A key tool for a board's architect is the power to stop work if he or she is convinced something is amiss. "I always recommend including this power in the alteration agreement," Bertolini says. "Boards that I've worked with have, in fact, stopped work if things were going badly or needed clarification, or if a subcontractor was doing something stupid or crazy or wrong. It's a good tool. But you need to use it carefully because it costs a lot of money for the contractor and the unit-owner."

Likewise inspections of work in mid-project.

"You don't want to do too many," Bertolini says, "because people feel you're imposing on them. The contractor feels I'm slowing him down or wasting his time, and he'll transfer those feelings to the apartment owner." Bertolini estimates that he conducts mid-job inspections on



behalf of boards in about 10 percent of the jobs he oversees. Though he bills the board, his services are paid for by the person altering the apartment.

Just as the architect can be an extra pair of eyes for a board, the building's super can be an extra pair of eyes for the architect. "Supers are vital," Bertolini says. "A lot of them have a background in construction, and they know where every pipe is. They look at the workers and they can tell if they're properly trained. The super will notice if they're careful about protecting hallways and elevators. If the contractor is supposed to knock down a wall and they take out two tons of debris, the super will know that something is suspicious."

While inspection of renovation jobs can be critical, perhaps even more important is what happens before the first sledgehammer blow. "It's very simple," says Adam Leitman Bailey, principal in his eponymous law firm. "An owner or shareholder signs the alteration application, obtains insurance, follows the list of rules provided by the board and writes a check for the necessary fees, including

the building's engineer. If it's not signed, then you don't do the alterations. There is no negotiation in this. I have never seen anyone debate signing it. They follow the rules because if they don't, the board won't allow the alteration."

Ideally, the shareholder's or unit-owner's architect will plan for contingencies. Howard L. Zimmerman, head of his eponymous architectural firm, cites two jobs where he did just that in an effort to avoid disputes. In the first, where a record executive was combining two units, Zimmerman arranged for special sound insulation to avoid noise complaints. In the second, he was combining two units set above an art collector with \$100 million in paintings. To prevent flooding, Zimmerman turned the new combined unit into a virtual swimming pool. It can hold six inches of water and has a system of pumps. If the pipes burst, the system prevents flooding - and the inevitable lawsuits when a \$100 million art collection gets waterlogged.

Sometimes, an ounce of prevention can be worth \$100 million. ■