

## SMITH BUSS & JACOBS

**ISSUE** Is it important to have a complete and accurate alteration agreement?

**BACKSTORY** Shareholders and unit-owners who make alterations to their apartments are usually required to sign an alteration agreement with their buildings, detailing what they intend to do, how long they will take, how they will conduct their work, and who will be responsible for the alteration after it is completed. Unfortunately, some buildings fail to insist on complete and accurate alteration agreements. Other buildings have not reviewed these agreements for many years to see if what is signed matches the policies that they have in place.

We were recently consulted by a condominium seeking to collect fines from a unit-owner for performing work beyond its deadline. When we asked for the alteration agreement, we found that (rather than using the form we had recommended to them when we were engaged), the managing agent has been using a “standard form” agreement for cooperatives. Several portions in the standard form, including the one specifying the “outside date” for completion of construction, were blank. The building was seeking to collect the fine based on a separate letter from the board specifying an outside date and unilaterally imposing a daily fine if work went beyond it. The letter was not made part of the alteration agreement or acknowledged by the unit-owner.

In another building, the board and managing agent were allowing the owner to make changes to the alterations that were not reflected in the plans attached to the alteration agreement. When the building sought to stop work for an unauthorized enclosure, the owner argued that it had been agreed to by a board member and an agent at an earlier meeting to review shop drawings that were never made part of the plans.

In a third condominium, the alteration agreement was missing from the files. A portion of the alteration was located in the common elements and would ordinarily be the responsibility of the building to maintain. When the alteration leaked, the new owner (who had bought the apartment after the alteration had been made) denied liability and challenged the condominium to prove that the work had been done.



Partner Kenneth R. Jacobs (left), Associate Emanuela Lupu

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**COMMENT** Buildings need to make sure that the alteration agreement includes all the “business terms” like the start and stop dates; relevant fees; security deposit; and up-to-date, as-built plans. The agreement has to clearly outline all the remedies of the building in case of a breach, including fines, stopping work, and payment of legal fees. Owners must be told that they will be responsible for repairing and maintaining the improvement even after work has been completed, and successor owners must be made aware of these responsibilities as well. We recommend that condominiums record their alteration agreements so that new owners have legal notice of the work. This option is not available to cooperatives, so more care must be taken to maintain accurate cooperative records. (One purchaser found out about a prior alteration only by reviewing the corporation’s minutes.)

We also suggest that you allow your counsel to review your current form of alteration agreement. Sometimes it has been “inherited” from a prior managing agent, or has not been updated to deal with changing building policies or environmental hazards. The building and the owner will have to live with the alteration agreement for decades; make sure that you start with the correct form and that it is properly filled out and signed when you need it.

— *Kenneth R. Jacobs*