

Expertise

ASK HABITAT

Who Pays For Repairs?

BY KATHRYN FARRELL

➤ **A SMALL MANHATTAN** co-op was struggling with a question: “Who’s responsible for replacing an air-conditioner sleeve? The sleeve was in place when the unit was sold by the sponsor to the current owner. The owner is happy to split the replacement cost with the board, but the board wants the owner to pay the entire amount.”

How do you resolve this issue? A number of professionals who were not involved with this project offered opinions on how to proceed.

Cost is always an issue. “We would estimate a cost of \$2,500 to \$3,000 to replacing the sleeve, install new flashing, and repair/replace associated masonry,” says Kevin Saumell, senior project manager at Howard L. Zimmerman Architects. “If rigging is required to access the work location, another \$4,500 to \$6,500 per drop would need to be budgeted. The combined cost of such a repair is generally in the \$7,000 to \$9,500 range.” Such a price tag explains why the shareholder and the board are at odds.

Whenever there’s a dispute about who is responsible for a repair, the first response from many professionals is to check your governing documents. Is the issue mentioned in your bylaws, house rules, or proprietary lease? Often the answer will be language that backs up the common “inside/outside” rule – that the board is

responsible for any repairs that need to be made inside the wall, and the shareholder is responsible for repairs outside the wall.

Air-conditioner sleeves are often considered part of the building envelope that individual shareholders cannot alter – unless the bylaws state otherwise. Attorney Dean M. Roberts, a partner at Norris, McLaughlin & Marcus, adds a caveat: “If all the apartments have air-conditioning sleeves, it is logical that the co-op is responsible for them and that the shareholder is responsible for any specific damage. This ensures the uniformity of the air-conditioning sleeves and their maintenance. However, in cases where only certain apartments have sleeves, including those rare cases where the sleeve has been installed by the shareholder, co-ops place the obligation to maintain the air-conditioning sleeve on the shareholder.”

Attorney Ken Jacobs, a partner at Smith Buss & Jacobs, adds a wrinkle. “Sometimes, connections or housings for appliances are considered ‘fixtures,’ which are deemed to be a part of the apartment,” he says. “The test is whether they can be removed without material damage to the rest of the building. Many types of AC sleeves are sold separately from the air conditioners themselves and are intended to be removable from the wall or window in which they are inserted. Those types of sleeves would not be considered fixtures, and replacement is the responsibility of the shareholder.”



Pam DeLorme, president of Delkap Management, adds a wrinkle to the wrinkle. “Many cooperatives and condominiums have the air-conditioner sleeves listed in the bylaws as belonging to the building,” says DeLorme. “Since the exterior facade belongs to the building and the sleeve would be permanently attached to the building, I see this as a building expense.”

The fact that the sleeve was already in place when the apartment was sold is irrelevant. Other appliances, such as the stove and the sink, were also in place when the apartment was sold, and they’re the shareholder’s responsibility, according to Jacobs.

If the governing documents fail to address who’s responsible for replacing an air-conditioner sleeve or any other building element, don’t take chances. Contact an attorney.