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That's Criminal

How Should Boards Deal With Potentially Volatile Situations

By Greg Olear

Mention “problem residents” in the context of a co-op or condo building, and chances are most people will think about the noisy kids upstairs, the perpetually grumpy /litigious guy on the third floor, or the lady down the hall with 12 cats.

These characters can be irritating, certainly—but dealing with them can pale in comparison with the challenge of handling some of the more serious security and legal situations that occasionally arise in multifamily buildings. What happens when a messy divorce bars a resident from the building? When a shareholder or unit owner is arrested for embezzlement, or rape, or murder? When an owner is a scandal-prone celebrity? These situations, while relatively uncommon, pose very real challenges for the boards, managers, building attorneys, and residents who find themselves embroiled in them.



One challenge relates to communication: how does the board find out? Should key details be disseminated, or kept hush-hush? Others relate to how disruptions of a possibly criminal nature between residents affects others in the building. And then there’s the publicity angle, where a situation involves a celebrity, or, in the case of Bernie Madoff, a non-celebrity whose crimes are so heinous that he is thrust into the public eye.

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Finding Out

It's so obvious as to be easily overlooked, but legal issues for residents in a building only become an issue for their neighbors when everyone knows about them. How do these situations come to the attention of the board in the first place? Human nature being what it is, word does have a way of getting out.

“The doorman certainly knows about it,” says Martin Kera, a partner at the law firm of Kera & Graubard in Manhattan. Indeed, if there is a distinction among these situations, it is not between co-op and condo, but between doorman and non-doorman buildings. “It’s different if you have a doorman or a live-in super,” he says. “Especially the doormen—they know everything about everybody.”

From there, word spreads quickly up the administrative ladder. “Usually the managing agent would hear about it from their attorney,” he says, “You have your share of people in the building who have been through it themselves. You have incidents where residents call the police. It gets known fairly quickly, provided the board members are interested in hearing what’s going on.”

Dennis Greenstein, a partner at the Manhattan-based law firm of Seyfarth Shaw, agrees. “The boards are very aware, especially if there’s police involved. The first thing they do is ask the doorman. The doorman calls the managing agent and the board members.”

There are other occasions, especially when the resident in question has incentive to be tight-lipped, that private business is kept private. “Unless there is a requirement by one side to exclude another,” such as in an acrimonious divorce, the board won’t find out, says David Berkey, a partner at the Manhattan law firm of Gallet Dreyer & Berkey LLP. “Most individuals keep their personal business private. They don’t go sharing it with the managing agent and the board.”

Word travels fast in buildings—“Did you hear? So-and-so in 14B embezzled millions of dollars from the bank where he works!”—and while there is nothing a board member or anyone else can do to stem the flow of gossip, one must take care, especially when issuing official co-op or condo communications, not to slander the resident in question. “If it’s public record, you can talk about it, but you can’t defame somebody,” Greenstein

explains. A wrong statement might lead the aggrieved party to sue for damages.

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“Boards can be accused of defamation if they publish information that isn’t 100% accurate,” Berkey says.

On the Rocks

A married couple own an apartment in a building. The couple suffer through a rocky break-up, and one of the two—usually but not always the man—is barred from entering the building. The exiled party decides he does not want to be denied entry to an apartment he owns, and walks in. A scene ensues.

That sort of scenario can be a nightmare for boards, managing agents, doormen, and other residents of the building. “We get people who say, ‘I don’t want so-and-so to have access to the apartment,’ but that person is listed as a shareholder,” says Greenstein. “That’s problematic. We don’t have a legal basis for denying entry.”

“We get requests from spouses: keep him off the grounds, don’t let him in,” Berkey says. “When there is not a court order, a board is not empowered to keep a unit owner out of the building.”

If a judge does get involved, that makes the role of the board and management easier, at least from a legal standpoint. “We have had instances where there has been an order of the court, and what they would do is leave a copy with the managing agent,” says Greenstein. The role of the attorney is to advise the managing agent and the board members.

Another problem—and one more common than one might imagine—is when a feud between two neighbors escalates to the point where the law must intervene. “There are instances where there are verbal or physical altercations,” Greenstein says. He noted that with a restraining order, a person could be prohibited from being within a certain number of feet of the other person. “They could be barred from banging on the door.” This sort of thing can wreak havoc on a building’s harmony. “It can become tense and unpleasant.”

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Once the courts get involved, the ability of the board, the managing agent, or the attorney to mediate is compromised. “They can’t interfere with that if they are,” Greenstein says. How these cases are resolved varies greatly. “Every situation is different,” he says. “It depends on how crazy the parties are.”

With regard to cases of a more criminal nature, the board cannot do much until a shareholder is convicted, even if the charges are potentially damning. “Anything in the courts is public record,” Greenstein says, “but until someone is found guilty, it is an allegation, not a fact.”

But if the worst case scenario does come to pass, the board does have some arrows in its quiver. “If there is a breach of bylaws or a violation of the terms of the proprietary lease, the board has an ability to take action,” Greenstein says.

“The stickiest part,” Greenstein says, are when altercations happen involving two residents, when there are no witnesses to confirm what actually transpired. “One says they did something, the other says it’s not true. In many instances, we have witnesses, but not always.” When these unfortunate situations develop, the board might be pressed into action. “There’s a lot of mediation that the board and the managing agent do, to try and calm people down.”

Celebrity Sanctum

In New York, of course, some criminal cases take on larger-than-life proportions, especially when celebrities are involved. When a Bernie Madoff is found to be the biggest thief of his age, when a Dominique Strauss-Khan finds himself accused of horrible crimes, and, to a lesser degree, when a Katie Holmes leaves her marriage, the buildings where they live become backdrops on the nightly news. “It’s a privacy issue for the whole building,” Greenstein says. “It could be intrusive and disruptive,” having to go through a throng of media members every time you enter or leave the building. “It’s a quality of life issue.”

Kera agrees. “It’s a horror,” he says. “You get a lot of high profile people in New York. You get newspaper reporters outside.” It’s a mess—and not just for the residents. The celebrities at the eye of the storm are adversely impacted, too (although some would argue that they deserve it). If Madoff suddenly brings scandal and shame to himself, “people might start acting nasty to Bernie Madoff and his wife,” Kera says.

Berkey views it in economic terms. “What happens if you have a notorious person in a building is, the publicity can be adverse.” And not just with respect to quality of life. “The property value of the share and what you might charge for rent is affected.”

Fortunately, the public are fickle when it comes to these situations. The first few days of a Bernie Madoff arrest, when the subject is still literally news, bring reporters and cameras and questions. But interest in the story fades as new subjects emerge—how long will people really care about a

celebrity divorce? The best course a board can take, then, is to wait out the storm.

Greg Olear is a freelance writer and a frequent contributor to The Cooperator.

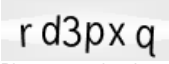
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