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Volunteer utilization guidance for condo & co-op boards

By Erica F. Buckley and Ruben Ravago

The coronavirus outbreak, along with the resulting sweeping and drastic measures being implemented to mitigate its effects, is disrupting seemingly every aspect of our lives. Fortunately, crises have a way of bringing out the best in us, even when social distancing protocols place limits on how we interact with each other.

In many cooperatives and condominiums, residents want to step up and offer volunteer assistance to management, both in helping vulnerable members of the community and in assisting with ordinary day-to-day tasks, which management may be unable to perform due to staffing issues or due to having to prioritize new coronavirus-related duties. As has been the case during staffing shortages due to union strikes in the past, many buildings are happy to accept all the help they can get. However, there are some key issues cooperatives and condominiums must bear in mind before bringing in volunteers generally, and specifically in the midst of a pandemic.

Each cooperative and condominium board should immediately familiarize itself with the insurance coverage it carries, including any exclusions, limitations of coverage, and deductibles. Volunteers, like anyone else, can be hurt while carrying out their volunteer activities and cause property damage, injuries, or even death to others. The board cannot assume that such risks are covered under their general liability policy, their directors' and officers' (D&O) liability policy, their workers' compensation policy, or other coverage. Even if a risk is covered, there may be important limitations on coverage or requirements to ensure a volunteer is covered (such as the need to designate the volunteers as members of a committee). It is also important to fully understand the coverage they have, so they can keep proper records of loss insurers and be prepared to pursue coverage. Furthermore, many experts recommend that all insurance carriers be notified now of coronavirus-related losses, even if the exact nature and extent of the losses are not yet known.¹

¹ In a related development, the New York State Department of Financial Services (DFS) on March 10, 2020 issued instructions to all issuers of commercial property insurance in New York to provide information regarding coverage available in connection with the coronavirus outbreak, including explanations for DFS and for policyholders. We are particularly interested in information regarding whether business interruption insurance carried by cooperatives and condominiums could potentially cover lost maintenance or common charges relating to the outbreak.

Volunteers must be fully informed regarding the fact that increased contact with people, common areas, and materials (including groceries, garbage, supplies, etc.) increases their risk of contracting coronavirus, which of course, could result in serious illness or death. They should be fully and specifically instructed on social distancing and other procedures to reduce their risk of contracting or spreading the virus. Specific written instructions should be given with respect to each type of activity a volunteer may wish to perform. Boards should require that volunteers (electronically) provide an acknowledgment of having received such information and instructions, and should consider having volunteers provide a release of liability in favor of the cooperative or condominium.

Volunteers should be appropriately screened and should be matched up to duties that make sense for them to perform. While circumstances may not allow for a full background check, a known bad actor should not be accepted as a volunteer. Volunteers should also only be matched to assignments they are suited to perform and should in all events, understand that they are not employees of the cooperative or condominium, or the managing agent.

In our view, Governor Cuomo's recent Executive Order 202.8, mandating the temporary suspension of the entire non-essential in-person workforce in New York, does not apply to either residential building service workers (such as superintendents, porters, handymen, etc., who are employed by the building), or to managing agents.² We view the services provided by such individuals as essential for the safe and sanitary operation of the building. However, just because such individuals provide essential services does not prevent them from falling ill, and, in any event, social distancing and other sanitary best practices may place meaningful limitations on their ability to carry out their normal duties and coronavirus-related duties. Therefore, buildings need to consider how they will operate in the event, normal management and staffing are not feasible, and if volunteers are part of the contingency plan, proceed with caution.

For more information on the content of this alert, please contact your Nixon Peabody attorney or:

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² We also note that, according to a [Q&A released by the New York Empire State Development Corporation](#) (ESD) regarding Executive Order 202.8, even for non-essential businesses, a single person attending a non-essential closed business temporarily to perform a specific task is permitted so long as they will not be in contact with other people.