



The Co-op & Condo Learning Center

Apartment Alterations, Combinations and Expansions

Dale Degenshein

Howard Schechter

Eric Wohl



Welcome and thank you for joining us for today's Co-op & Condo Webinar Series. Our topic is **“Apartment Alterations, Combinations and Expansions.”** We have just a few announcements before we get started.

Please note that this presentation and all the accompanying materials are protected by copyright, and that the entire presentation is being recorded. Also, please note the material presented by our speakers has been gathered for general informational purposes only.

No information presented in this presentation constitutes legal advice nor is it intended to be fact-specific. As there may be occasions where Fox Rothschild represents clients who may be adverse to your interests, discussion at this program cannot touch upon any fact-specific matters. Attendees should consult with knowledgeable legal counsel to determine how applicable laws pertain to specific facts and situations. These materials are based on the most current information available. Since it is possible laws or other circumstances may have changed since this presentation, please consult with legal counsel to discuss any action you may be considering as a result of attending this program or reading these materials.

Attendance at this program and/or receipt of these materials is not intended to create, nor does it establish, an attorney-client relationship.



Governing Documents

- Governing Document Provisions
 - Structural and Building Systems
 - Deadline to respond
- Alteration vs. Decoration
- Prepared by Counsel, Managing Agent, Board, Resident Manager, Architect and Insurance Professional
- Possible Pre-Alteration Review

Alteration Agreements

- Submissions
 - Detailed Plans and Drawings – review by building professional
- Pre-Conditions to Starting Work
 - Notify Neighbors
 - Contractor Agreement – Indemnification and Insurance
 - Permits
 - Unit Owner Insurance
 - Security Deposit
 - Requirement for Pre-Work Inspection

Alteration Agreements (cont.)

- Terms to be Included
 - Work Rules
 - Hours of Work
 - Access to Building
 - Specifics for Each Trade
 - Specific Needs of the Building, e.g., Windows, Pipes (Branch Lines), Flues
 - Prohibited Construction Measures
 - Access Valves
 - DOB Filings

Alteration Agreements (cont.)

- Subcontractor Provisions
- Arrears
- Required Completion Date
 - Demolition vs. Other Work
 - Fees for Extension
- Evidence of Completion
- Inspection – Monitor
- Indemnification, including for Future Damage
- Assignment and Assumption by New Owner

Alteration Agreements (cont.)

- Fees
 - Facility Fee
 - Shut Down Fees
 - Electrical Fees
- Terrace Installations

Apartment Expansions – General

- Typical Locations
 - Hallways
 - Roof
 - Garden/yard
 - Terrace enclosure
- Authorizations and Restrictions
 - Co-op owns all common areas
 - Board can determine to allocate and sell shares
- Shareholder/unit owner to pay co-op or condo expenses
- Restoration obligations

Apartment Expansions – General (cont.)

- Condo common elements are owned in common by the unit owners, not by the condo
 - Board may be entitled to license use of the common space, but subject to more stringent restrictions than in a co-op
 - Use for “intended purpose”
 - No division of common elements
 - Common elements may not be sold
 - But license fee may be available
 - Limited common element designation may already give rights to unit owner
 - Review organizational docs

Apartment Expansions – Technical Issues

- Evaluate Technical Feasibility
- Common Issues in co-ops and condos
 - Unit owner/shareholder should submit a sketch
 - Consider impact on utilities and building facilities
 - Outlets, ducts, conduits, etc. used in operation of common areas may be affected
 - Will ability to provide building services be affected, need to be relocated?
 - Access to stairs, compactor room, other hallway facilities
 - If apartments are being combined, ownership must be the same
 - If the apartment or shares are security for a loan, lender consent is likely required
 - Maintenance and Repair responsibility
 - Sale/license not consent to alteration

Apartment Expansions – Co-op Issues

- Shares to be assigned and selling price must be determined
 - Under Internal Revenue Code §216, the number of shares assigned to the combined apartment(s) and hallway must bear a reasonable relationship to the portion of the value of the corporation's equity in the building and the land on which it stands which is attributable to the expanded apartment.
 - This may be determined by appraisal.
 - A formula established by the Board may also be acceptable provided a “reasonable relationship” letter can be obtained from a qualified real estate professional.
- It must be determined that the corporation has a sufficient number of authorized but unissued shares
 - If not, shareholders must approve an increase

Apartment Expansions – Condo Issues

- License Fee
 - Up front
 - IRC 216 not an issue
 - Since the licensing is expected to be long term, value is generally established at fair market value for purchase of the space, were the space part of a unit.
 - Many Boards require an appraisal of value to inform the pricing. Some Boards simply accept the appraised value, others establish a price through negotiation
 - Many Boards use the average selling price per square foot for the prior year
 - Monthly
 - Typically tied to common charges per square foot
- Term (duration) of License and Renewals
 - Ability to terminate – it's a license
- Transferability

Apartment Expansions – Condo Issues (cont.)

- Is it a limited common element?
 - By-laws may provide that an owner of multiple units may incorporate into the units hallway space that services only those units. Where such a provision exists, there may be no basis for the Board to insist that fees be paid.
- Intended use of space
 - If the space in question has a use other than providing access to and egress from the unit(s) owned by the unit owner, the alternate use must be evaluated and addressed
- Recording unit combos – record license?

Avoiding Breach of Alteration Agreement

- Alteration Agreement
 - Ensure Alteration Agreement is comprehensive
- Pre-Approval of Vendors and Plans
 - Contractor Reputation
 - Building approved Contractors
- Inspections and Communications
 - Perform Regular inspections of the work
 - Maintain open line of communications with owner

Addressing a Breach of Alteration Agreement

- Assessment of Breach
 - Evaluate nature and extent of the breach
- Physical Inspection and Report of Breach
 - Inspect the Site
 - Photographs
- Consult with Professionals
 - Technical aspects of remediation work
 - What are legal rights/obligations
- Engage with Owner

Remedies for Breach

- Stop the Work versus Financial Penalties
 - What is the scope of breach
 - Structural Building Safety Issue?
 - Taking too long
 - Unauthorized Subcontractor?
 - What is the more effective remedy
 - Want work done fast versus want work done effectively
 - Depends on scope of breach
- Remedies if No Alteration Agreement
 - Breach of governing documents

Remedies for Breach (cont.)

- Liquidated Damages
 - Pre-determined damages agreed upon in case of certain breaches
 - Must be reasonable and proportionate
 - As consideration for additional time
- Stop Work
 - Unauthorized Work
 - Property Damage
 - Violations
- Restoration

Completion of Alterations

- Inspections and Approvals
 - Conduct final inspection to ensure all work complies with approved plans
 - Obtain all necessary DOB sign offs and completion certificates
 - Obtain all final as-built drawings
- Assumption by Purchaser of Unit
 - All future owners must assume to be responsible for alterations performed
 - Assumption Agreement executed at closing
 - Issues from failing to assume properly.

Conclusion and Best Practices

- Proactive Management
 - Regularly review and update alteration agreements to reflect current building standards and legal requirements.
 - Learn from past breaches to improve process and prevent future issues
- Education and Training
 - Provide ongoing education for board members and managing agents on managing alteration agreements effectively.

Save the Date

Co-op & Condo Learning Center

Advice for the New (and Old) Board Member

May 20, 2025 | 9:00 – 10 am ET

Summer Break



Thank You!



Dale Degenshein
(212) 450-9858
ddegenshein@foxrothschild.com



Howard Schechter
(212) 878-1423
hschechter@foxrothschild.com



Eric Wohl
(212) 878-1421
ewohl@foxrothschild.com