

19
89 | **OVER**
TWENTY
FIVE
YEARS



Construction Law: An attorney discusses funding renovations in small buildings - by C. Jaye Berger

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Homeowners and small co-ops and condominiums are always trying to think of ways to come up with funds to finance work that needs to be done in their buildings. It is a common practice for such buildings to refinance the building's mortgage to create available funds for upcoming

projects Another method is to try to work with what you have to “monetize” it and accumulate funds. For example, some buildings have spare space which can be renovated and sold or space that can be turned into storage units and rented out.

At one of my recent real estate seminars, someone in the audience mentioned that in their building, an elderly lady who lived alone died and no relatives had contacted the building. They asked if the building can just “keep” the unit and sell it. I would hope the obvious answer is “No.” Even if someone does not appear to have relatives, they may well have some, who have an interest and “rights” to that apartment.

In another condominium building I represent, a lady died in a nursing home seemingly with no next of kin, except for a cousin who said she had no interest in the unit and never called back after taking some items from the unit. There was only a small remaining mortgage and a lot of equity. The relative did not want to hire an attorney or be bothered. It turns out that the mortgage bank’s attorneys located a number of relatives who they had to send notice to as part of the probate proceedings. As all of the probate issues fall into place, that might create an opportunity for the building to try to purchase the unit; however, the building could not just “keep it” and hope to never hear from anyone about it.

Small buildings in search of funds for renovations and repairs may be tempted to enter into agreements with contractors to have them provide the materials and perform the work in exchange for the contractor self-financing the work and having a security interest in the building, the same way that a bank would. While such relationships can work out, the potential for them not working out is great. There are too many eggs in one basket. The contractor is both performing and supervising the work. He may also have an architect who works for him design and file the plans, so it is like a design-build project. If the work is not satisfactory and the time for repaying the loan arrives, there can be a huge blowup. The contractor can be trying to foreclose on your building. The loan documents will probably say that the poor work claims are not a “defense:” to repayment of the loan.

It is best to have a separation between the parties and the work, so that there are more than one set of eyes and ears reviewing the work. Arguing against the merits of a mechanic’s lien by a traditional contractor is not the same as them having a security interest in the building. Always

have legal counsel review such plans and related documents before moving forward.

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