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The difficult undertaking of bringing a building from TCO to final C of O

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With the advent of new procedures, the enhancement of the BIS System and the ever-changing regulatory environment, nothing has become more difficult than the task of bringing a building from TCO to final C of O.

The new building code sets a limit of two years for a TCO. One positive step is the DOB is now making an enforcement push to force professionals to close (sign off) their applications with possible consequences of certification privilege revocation, possible state Department of Education sanctions, loss of DOB filing privileges and ultimately potential criminal prosecution. The necessity of updated inspections, audit and re-audit of projects already TCO'd, the requirement to remove and comply all violations and the closeout of all open applications combine to make the process incredibly complicated if not nearly impossible in some cases.

The final C of O is the final bite at the apple for the regulatory agencies, thus getting there is usually quite cumbersome with new requirements and objections inevitably popping up along the way. Usually this is complicated by the urgency imposed by the time frames set by a lending institution or a prospective buyer.

It is further complicated by the initial TCO "push" a construction project goes through in order to occupy. Many times requirements are waived, agreements made and certain items obviated that come back to haunt the owner in the final C of O process.

Another complication to the process over the last decade has been the explosion of the condo market where ultimately the FCO becomes a moving target. The sponsor is trying to bring the project to FCO as required by his AG submission as new condo owners are filing applications on their own putting the sponsor's actions in a catch 22.

The DOB does not distinguish between owners (the sponsor/condo association) thus the distinction of responsibility becomes inconsequential to the regulatory agency inevitably leading to litigation, arbitration or downright disharmony between project parties.

The DOB does have a program where some non-life safety applications can be "waived" from the C of O closeout requirement but it requires an analysis of applications and presentation of a game plan to the responsible agency personnel.

The closeout of open application can be a quite costly and involved process. Although the owner can allow and authorize the replacement of "professionals" as applicant or TR-1/Controlled inspections professional the process is tedious.

In addition, the finding of plans to inspect and perform the proper professional due diligence is tough.

Violation resolution can also be costly with many local law violations (particularly boiler and elevator) carrying substantial fine payment requirements. The Certificate of Correction process is also quite

bureaucratic and can also be financially burdensome.

In some cases a project will be audited and new "design" related objections pop up on a project where construction is completeâ€”leading to the impossible task of resolving construction related issues in units that are sold and are no longer under the sponsor's control.

Finally issues may also be raised when inspections already completed by the department are updated and new, complicated objections are identified and have to be resolved.

There are also a host of ancillary department/agency signoffs which are not required for TCO but may also pose a problem for final. Landmarks, builders paving plan, sewer connection, fire alarm, DEP hazmat letters of satisfaction are to name a few. Sprinkle these complications into the process with plumbing, sprinkler, standpipe, permits, and signoff troubles you have a recipe for disaster.

The best solution is to control the project from the beginning. The owner should ensure all violations, open applications issues are abated going into a construction job before the CM or GC starts work. It is then the job of the consultant/expeditor on the project to control all activity applications, permits, signoffs, inspections, violations during construction to mitigate any issues that my impact the C of O process.

For existing buildings it is best that the owner do an initial paperwork cleanup (violations, open applications) and a yearly "maintenance" of paperwork issues. Also existing buildings should have one compliance consultant and all tenant paperwork should come through that central entity to ensure coordination and close out.

Cumbersome regulation and procedure, split responsibilities, uncoordinated TCO pushes and no ongoing paperwork maintenance all contribute to making the process for the final a FC-OOOOOOOOH one.

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