Presidential Perspectives:

The Importance of Proper Communication Processes between Boards of Directors and Property Managers

By Carmelo Milio, President, Builders Institute (BI)/Building and Realty Institute (BRI)

ARMONK

Team and communication are two "almost-coexistent" words.

A team can hardly attain its success without communication. It is crucial in any type of organization. When it comes to achieving success in any endeavor, communication is the most vital aspect. A team, when you think about it, cannot perform as a successful unit unless there is candid, in-depth communication. It is crucial in any organization or association.

In an association, a group of people are elected and their major roles are to manage the physical, financial, and legal matters within the organization. Because of the extent of the role of the Board of Directors, some associations hire a property management company to effectively implement policy and procedures. The major roles delegated to them are to maintain the property and to ensure that it is up to current standards, communicate with homeowners about non-compliance, manage finances, and handle the questions and the concerns of the homeowners.

The role of the board that cannot be delegated to the property management company is creating policy. This is the responsibility of the board, along with enforcing the policies. The nature of the communication between boards and management becomes critical. Each side must be vigilant in their understanding of what the policy is and how it will be "managed."

Translating the communication mechanisms into reality would seem easy enough – meetings, emails, phone calls, etc. There has to be written - and verbal - back and forth processes of dialogue.

This kind of communication is essential to the relaying of information in the decision-making process. It helps identify problems - and quickly resolving them with alternative actions.

For instance, property managers may come up with some suggestions that, in their opinion, would be helpful for the well-being of the property. However, the board may have different priorities. If both sides are speaking and writing to one another often, communication is open and ongoing, and effective plans can be created.

Both verbal and follow-up written communication keeps all parties apprised and on the same page. It helps promote an environment of harmony, understanding, and peace. When conducted properly, it also helps resolve any differences between residents and the board.

Most importantly, when communication is valued, it is key to achieving common goals by giving clarity to what should be done by the property manager, how it should be done, when it should be done, and whether the property manager is performing its task, according to the standards of the community. In short, peace can reign.

Editor's Note: Carmelo Milio is in his second term as President of The Builders Institute (BI)/Building and Realty Institute (BRI) of Westchester and The Mid-Hudson Region. He is also President and Director of Property Management for Trion Real Estate Management. Milio will contribute his perspectives on issues affecting the building, realty and construction industry in this new feature of Impact, "Presidential Perspectives."

Ralph D. Amicucci

Amicucci Associates P.C. Announces Its Formation

By Jeff Hanley, Impact Editor

PLEASANTVILLE

Veteran building and realty industry member Ralph D. Amicucci, Esq. recently announced the formation of Amicucci Associates P.C., a firm concentrating in real estate law.

The Pleasantville-based firm will specialize in Landlord-Tenant Law, Commercial Leasing, Commercial and Residential Closings, Commercial and Residential Bank Closings and Construction Law. Spokesmen said the firm will be active in Westchester, Rockland, Putnam and Orange counties, as well as the Bronx, Manhattan, Brooklyn and Queens.

Owners and Managers of Emergency Tenant Protection Act (ETPA) and Rent-Controlled properties will be able to seek assistance from the firm on all matters associated with those laws. Those matters include representation before the Division of Housing and Community Renewal (DHCR)/New York State Homes and Community Renewal Agency (HCR), spokesmen said.

Amicucci was an Owners' Representative on The Westchester County Rent Guidelines Board in the 1990's. The board annually sets rent increases for ETPA properties. He also served as president of Amicucci Management, a company that owns and operates multi-family buildings in Westchester County, officials said.

Amicucci has more than 35 years of experience in the New York commercial real estate and construction sector, including consulting, leasing, sales, property management, project management and financial analysis.

Prior to forming Amicucci Management, Amicucci provided property management, project management, financial analysis, accounting and leasing services for a series of building, realty and construction industry companies. Those companies include Bovis Lend Lease, LMB Inc., New York Presbyterian Hospital, FMB Asset Management, Cushman and Wakefield Inc., Mack-Cali Realty, Arthur Anderson and Turner Construction Company, spokesmen said.

Amicucci is a member of the Institute of Real Estate Management (IREM), The Commercial Investment Real Estate Institute, The Appraisal Institute and The Apartment Owners Advisory Council (AOAC) of The Building and Realty Institute (BRI). Amicucci is also a member of the New York State Bar. He is a Certified Property Manager (CPM), a Certified Commercial Investment Member (CCIM) and a licensed real estate broker in New York State.

Spokesmen for the firm said that Amicucci Associates P.C. is strong in the construction lending sector for both the residential and commercial arenas. Officials said the firm can review contracts and arrange for construction financing on behalf of its clients.

Counsels' Corner

Addressing Issues Related to Vacancy Increases

Ken Finger

Carl Finger

Dan Finger

By Kenneth J. Finger, Esq., Carl L. Finger, Esq. and Daniel S. Finger, Esq.,Finger and Finger, A Professional Corporation, Chief Counsel, Builders Institute (BI)/Building and Realty Institute (BRI)

WHITE PLAINS

Last year, the Appellate Division in Manhattan sent shock waves through the real estate industry by holding that an Owner subject to the Rent Stabilization Law (RSL, only in New York City) could not effectuate a deregulation of an apartment by an increase in rent for the tenant following a vacancy, even if the increase was over the statutory threshold (at that time $2,000.)

In the Altman case, even though the tenant had agreed that the rent was over the $2,000, the Court said that the agreement was void as against public policy where the tenant had agreed to a rent over the $2,000. The Court held that the tenant was still subject to rent stabilization and was entitled to a refund of the rent overcharge.

The Rent Stabilization Statutes (RSL – New York City and the Emergency Tenant Protection Act (ETPA) – Westchester, Rockland and Nassau) provide that owners are entitled to increase the rents of their rent-regulated apartment units after they improve the units through a Major Capital Improvement (MCI) or Individual Apartment Improvement (IAI). (See RSL § 26-511(c)(13); ETPA § 8626(d)(1)-(3).).

Moreover, they are entitled to do so on top of the vacancy increase of 20 percent. Also, and more significantly for the purpose of this article, the Rent Stabilization Statutes, prior to the Altman case, permitted a Rent Regulated Owner to increase the rent of an apartment after it becomes vacant. (RSL § 26-511(c)(5-a); ETPA § 8630(a-1).).

A Rent Regulated Owner's right to a "Vacancy Increase" has long been honored, even when DHCR has served the Rent Regulated Owner with a "rent reduction order" (i.e., an order that requires the Rent Regulated Owner to decrease the rent due to a lapse in services).

In fact, the Division of Housing and Community Renewal (DHCR) itself previously admitted that its "prior position" - i.e., of allowing MCI and vacancy rent increases even if there was an outstanding service reduction - "was consistent with [DHCR's] understanding that a failure to otherwise comply with the RSL did not affect the ability to collect [vacancy, longevity and MCI] increases." This was the law, without question, until Altman.

In 2015, the Appellate Division in New York, by its Altman decision, appeared to overturn the above and held that a tenant was still subject to rent stabilization even if the rent increased as a result of the vacancy to above the statutory threshold. The essence of this decision was that an apartment could not become deregulated just by raising the rent after it was vacant, but it had to reach the threshold during a tenancy. Therefore, even though a Landlord could raise the rent to above the threshold after a vacancy, the next tenant was still protected by the various rent stabilization laws and there would have to be a second vacancy before the apartment could be decontrolled.

> "Therefore, we have the anomalous situation of two lower appellate courts specifically declining to follow a higher appellate court – a situation that hopefully would lead the higher appellate court, when lower court cases get to the higher appellate court, to take another, and hard look, at its Altman decision and decline to follow or expand it. We can only hope."

This decision, while only applicable in New York and Bronx counties, was a significant precedent for applicability in Westchester, Rockland and Nassau.

However, all was not lost for landlords seeking a way out of the Altman morass. First, shortly after Altman, in Aimco 322 East 61st Street, LLC v. Brosius, an intermediate appellate court in New York (a court lower than the Altman court) declined to follow Altman.

In that case the Appellate Term held that the tenant was not automatically entitled to rent stabilization coverage in a case with similar factual circumstances as Altman. The Court there pointed to language in the RSL that referenced high rent deregulation on another ground, as to "housing accommodation [that] is or becomes vacant." The court there specifically stated that increases in rent for post vacancy improvements count to bring the legal rent above the luxury decontrol threshold (citations omitted).

The Court distinguished Altman by stating that in Altman, the Court only relied on the first basis for decontrol, not the second.

Moreover, in a recent case (Dec.8, 2016), the Appellate Term again declined to follow Altman, holding that the subject apartment was deregulated before the tenant took occupancy and that the legal rent was established by the 20 percent vacancy increase allowance after the vacancy which brought the subject rent to over the $2,000 luxury decontrol threshold then in effect.

This court looked at the statutory interpretation (Governor's Bill Jacket, 1997 N.Y.Laws, ch.116) to support its finding and stated that the intent was to grant such increases when rents received the threshold, even if when post-vacancy.

Therefore, we have the anomalous situation of two lower appellate courts specifically declining to follow a higher appellate court – a situation that hopefully would lead the higher appellate court, when lower court cases get to the higher appellate court, to take another, and hard look, at its Altman decision and decline to follow or expand it. We can only hope.

Editor's Note: The authors are with Finger and Finger, A Professional Corporation. The firm, based in White Plains, is Chief Counsel to The Builders Institute (BI)/Building and Realty Institute (BRI) of Westchester and the Mid-Hudson Region.