

# Veneruso, Curto, Schwartz & Curto, LLP

## Co-op & Condo Newsletter

FALL 2011

### SPECIAL INTEREST ARTICLES:

#### • PROTECTING FINANCES

#### • SURVEILLANCE SYSTEMS

#### • NEW EPA RULES REGARDING LEAD PAINT

#### • RECORD RETENTION TIPS

*Using electronic systems to monitor common areas has proven to be a cost-effective means of helping to keep the residents and the property safe.*

We are pleased to present to our valued clients and associated real estate professionals the second issue of our Newsletter. We welcome any comments or suggestions that you may have. We hope you find the information helpful. Thank you!

## PROTECTING FINANCES

In April, 2010 the treasurer of a co-op complex located in Westchester County was arrested on charges of embezzling over \$181,000.00 from the co-op. The treasurer, a non-resident of the co-op, was accused of making unauthorized withdrawals from the co-op's bank account over a four month period from December 2007 until April 2008. The co-op did not realize or begin to investigate the occurrence until over a year later and only after a new management company was hired and a complaint received. The failure on the part of the co-op and the lapse in the time it took for the co-op to realize what occurred provided a

basis for allegations of impropriety on the part of the co-op.

This local case speaks to the importance of board supervision and the need for the responsible monitoring of finances.

When a question of wrongdoing



arises, boards must take immediate responsive action to investigate the claim and remediate any problems or issues uncovered during the investigation. Below are some suggested safeguards co-ops and condos should im-

plement to help prevent financial wrongdoing and minimize any adverse impact to their finances.

Co-op/Condo Safeguards to consider:

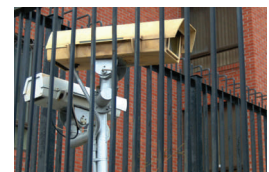
1. Financial statements should be reviewed by the board on a monthly basis;
2. Keep shareholders and unit owners informed—transparency is essential;
3. If there is a suspicion of impropriety, an investigation into the allegations should begin immediately; and
4. Periodically review with your accountant financial policies and procedures and have systems in place designed to keep the board informed and to minimize fraud.

## SURVEILLANCE SYSTEMS

The installation of surveillance systems is becoming more prevalent in co-op and condo buildings. Using electronic systems to monitor common areas has proven to be a cost-effective means of helping to keep the residents

and property safe.

A decision to install and maintain a surveillance system designed to protect the safety of residents and the property is clearly within the scope of the board's authority. So long as a board approaches the decision with the best



interest of the co-op and condo in mind the decision will be deemed to have been made in good faith and will be granted deference by any judicial review under the Business Judgment Rule.

Doormen and security guards are a large expense



*The new EPA rules affect residences, child care facilities and schools built before 1978.*

*A Board's failure to comply with RRP has resulted in fines of up to \$37,500 per incident per day.*

*The installation of surveillance systems is often used as a means of helping to achieve safety without incurring major overhead costs.*

## NEW EPA RULES REGARDING LEAD PAINT

In 2008, the EPA passed the Renovation, Repair and Painting Program ("RRP") which became effective April, 2010. The new EPA rules affect residences, child care facilities and schools built before 1978 ("Premises".) Under the RRP, any hired professional or handyman (together "Providers") is required to have EPA lead-based-paint removal training and certification prior to commencing work on a Premises. However if an owner is personally doing the work or if the repairs or maintenance are being completed due to an emergency, the restrictions do not apply. The new rules apply to alterations which disturb six square feet of interior or twenty square feet of exterior lead-based paint, including the replacement of windows.

The EPA points out three important areas that are essential to compli-

ance with the RRP: (i) work areas should be contained (rooms/areas should be sealed off, floors and immovable furniture should be covered); (ii) lead-contaminated dust should be limited (HEPA vacuums should be used when sanding and grinding, water should be used to mist areas before sanding and scraping); and (iii) clean up should be thorough (daily clean up of the area should occur, and at the conclusion of the project, special cleaning methods should be used).

RRP certifications are person-specific and are valid for five years. A certification must remain on site during a subject project. Furthermore, if a unit owner informs the board of repairs or maintenance being performed on their unit, the board must inquire into the status of certification. If the owner hired service Provider is not certified, the

board can appoint their certified superintendent (who is certified) to oversee the repairs or maintenance to assure that the work is being performed in accordance with RRP. If a board requires an alteration agreement prior to the commencement of work, the board may be liable if there is a violation of the rules. Alteration agreements should be updated in pre-1978 buildings to add the requirement that any repairs or maintenance must be performed in compliance with RRP and should specify that all workers must submit a copy of their license and proof that they are certified under RRP. A board's failure to comply with RRP has resulted in fines of up to \$37,500.00 per incident per day.

## SURVEILLANCE SYSTEM (cont'd)

that smaller buildings often times can not afford or justify. The installation of surveillance systems is often used as a means of helping to achieve safety without incurring major overhead costs.

### Surveillance System Fine Points:

1. Surveillance systems

should only be installed in common areas and elevators.

2. Audio surveillance is prohibited under the Federal Wiretap Act.
3. Surveillance of employee personal areas is prohibited under labor law.
4. Surveillance of union employee work areas is a subject for collective

bargaining.

5. Tape and data should be kept in accordance with set rules and should only be made available to residents for good written cause.

# RETAIN OR NOT TO RETAIN...



**E**stablishing and implementing an effective document retention policy can enhance prudent governance and risk management for co-ops and condos. The following guidelines establishing minimum time periods should be followed:

**Permanently keep the following:**

- Annual tax letters;
- Appraisals by outside appraisers
- Audit reports
- Banking signature cards
- Blueprints and plans
- Bylaws
- Capital stock and bonds records
- Cash books
- Charts of accounts
- Cancelled checks for:
  - important payments
  - taxes, special contracts
- Closing Statements:
  - acquisitions
  - refinances
  - line of credit

- Contracts
- Deeds, mortgages, mortgage notes, bills of sale
- Depreciation schedules
- Financial statements
- General ledgers, year-end
  - trial balance
  - current accident reports, claims, policies
- Insurance records
- Internal control reports
- Leases
- Minute books of directors, stockholders, meetings
- Offering plan amendments
- Organizational documents
- Purchase applications (approved)
- Shareholder/Unit Owner files
- Tax returns and related worksheets and examinations
- Training manuals
- Union agreements
- Vouchers/payment to employees, vendors

**Keep the following for 7 years:**

Accident reports/claims

- (settled cases)
- Accounts payable ledgers and schedules
- Bank reconciliations
- Cancelled checks (see exceptions above)
- Expense analyses/expense distributions
- Expired contracts
- Garnishments
- Inventories of products, materials, supplies
- Invoices
- Management reports
- Notes receivable ledgers and schedules
- Payroll records
- Personnel files (terminated)
- Purchase orders
- Requisitions
- Stock and Bond certificates (cancelled)
- Time books/cards
- Voucher registers and schedules
- Withholding tax schedules

**Keep the following for 3 years:**

- Bank statements
- Employment applications
- Insurance policies

- (expired)
- Internal audit and reports (miscellaneous)
- Petty cash vouchers
- Purchase applications (denied)
- Sales Commission Reports
- Magnetic tape and tab cards
- General correspondence
- Deposit Slips

Special treatment should be afforded to Purchase Applications given the type of information contained therein, prevalence of identity theft and rights to privacy. Accordingly, once a decision has been made with respect to a particular applicant, the co-op, or its managing agent, should be responsible for maintaining one copy of the package and all other sets should be collected and destroyed.

Also, documentation related to any accounts receivable should be maintained for at least the term of the obligation.

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