

ASK REAL ESTATE

Co-op Assessments: Do You Have to Pay What They Say?

Courts allow co-op boards significant power over building finances, including assessments — if the fees are in ‘good faith.’

By Jill Terrerri Ramos

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Q: I am a shareholder in a Riverdale co-op, and the board recently announced a \$500,000 assessment that must be paid over the next three years. Based on my calculation, on average, each shareholder will be charged \$5,000. The board said the assessments were needed to cover repairs and new city mandates, but was vague about how the \$500,000 figure was calculated. The proprietary lease and bylaws don't give the board specific authority to impose assessments, but they do allow the board to set maintenance payments and cash requirements. Is there any way to challenge this assessment?

A: You were right to look at your co-op's documents regarding the board's authority over assessments. But you might be out of luck.

Courts allow co-op boards significant power to manage a building's finances, especially when it comes to maintenance and compliance with city codes, through a legal principle called the business judgment rule.

Even if the governing documents don't use the word "assessments," the board still has the right to raise money to keep the building in proper order, as long as it is acting in good faith, said Joseph Colbert, a real estate lawyer at Colbert Law L.L.C. in New York and Connecticut.

"Courts are unlikely to overturn a decision solely based on terminology," Mr. Colbert said. "They prioritize the board's underlying authority and the purpose of the charge."

In any event, an open dialogue between shareholders and the board is preferable to a costly legal conflict that would create tension in the building. "If there is a basis for a challenge, it is best to aim for an amicable resolution rather than running into court to embark on a protracted and costly legal battle," said Debra J. Guzov, a real estate lawyer in Manhattan.

Start by approaching the managing agent to request the minutes from the board meeting in which the assessment was discussed and adopted. The minutes can offer insight into why the board believes the assessment is necessary and how the \$500,000 sum was calculated, Ms. Guzov said.

If the minutes don't offer the clarity you seek, you can ask the managing agent for specifics on how the money will be spent. You can also ask to review contracts that were executed to complete the work, to see how much it will cost, though you might not automatically be entitled to see them. Check your bylaws for guidance.

If your neighbors are concerned, too, enlist them so you can make your inquiries as a group.

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