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Repair Responsibility in HOAs

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ASK REAL ESTATE

My Home Community Is Forcing Inspections. Can They Do That?



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Q: In my townhome community on Long Island, the board is mandating that we submit to inspections of the exteriors and windows of our homes by an outside company. If the inspectors find deficiencies, we will be given time to correct them, or face escalating fines if we do not. Based on our experience, we expect that deficiencies will be highly discretionary. Residents own their homes and the small plots of land on which they sit, meaning we must grant the inspectors permission to enter our properties. Our governing documents already provide a mechanism to deal with obvious signs of neglect in isolated cases, but not these mass forced inspections. We keep our homes in generally excellent shape. Must we comply, and is this even legal in New York?

A: The articles of declaration and bylaws for your townhome community will state which actions are within the board's power.

Homeowners' associations have elected boards that have a fiduciary duty to members and are charged with putting members' interests first and acting in good faith. Boards often have wide authority to carry out their duties, depending on what is contained in the community's documents.

In many homeowners associations, the bylaws state that exterior maintenance, including window repair and replacement and weatherproofing, is the responsibility of each homeowner.

Under New York law, a board's decision to conduct a communitywide exterior inspection, and to hire an outside vendor to conduct it, will be protected by the "business judgment rule," as long as the decision to inspect was made for legitimate corporate purposes, was authorized by the bylaws, was applied to all homeowners, and was made in good faith, said Nancy Kourland, a partner with Lasser Law Group, which practices in Long Island, Westchester and New York City.

"Here, it appears that the board is well within its authority to hire a professional inspection company to assist it in performing communitywide inspections of all exteriors," Ms. Kourland said.

If you dispute the inspector's findings, you could hire your own inspector and use that report as a negotiating tool with the board over the scope of the repairs.

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