

Q&A: Power Grab

BY STEPHEN M. LASSER, ESQ. 2012 FEBRUARY

Q&A



Q I am a co-op owner. A renovation plan for my apartment was approved by the building, the board and the city. Con Edison added a new power line to the building at no cost because the building was at its capacity for the existing electrical load. It cost the building \$150,000 to meter the new power line and also to complete other renovations in the building to facilitate the installation. The building board decided that the cost should be borne by the first shareholders who need to add the extra power. This decision was made after my renovation plan was accepted by the building board and, for that reason, is retroactive to my project. But the addition was made to the common area, which should be the responsibility of the entire cooperative. How can I prove that I am not liable for the \$15,000 charged to my co-op unit (\$150,000 divided by 10)?

—*Unfairly Charged*

A "The issues raised here are governed by contract law," says partner Stephen M. Lasser of New York-based Barton LLP. "Co-op proprietary leases are contracts between the co-op corporation and its shareholders, which allocate building repair and replacement responsibilities, including costs, between them. Standard proprietary leases provide that shareholders are responsible for

making repairs in the area bounded by the four walls and the floor and ceiling of their apartments, and that all other repairs and replacements are the responsibility of the co-op corporation. Accordingly, the installation of a new meter contained in a common area and related renovation work would appear to be the responsibility of the co-op corporation to complete. "The costs of renovations and repairs in common areas like the one described here should be borne by all shareholders as a common expense and paid for by maintenance and assessment payments collected from the shareholders. Standard proprietary leases provide that maintenance and assessments be collected from shareholders on a pro-rata basis, based on the number of shares owned by each shareholder. As a result, it appears that the allocation of the meter installation expense here to certain shareholders based on the needs of their apartments rather than to all shareholders on a pro-rata basis would be a breach of the contractual obligations contained in standard proprietary leases. Therefore, if the letter writer has a standard proprietary lease, he could withhold the maintenance payments allocated by the co-op corporation for the meter installation and raise the defense that the co-op corporation lacked contractual authority to collect it."