

Memorandum

To: Cooperative and Condominium Directors and Managers

From: BPBMV Cooperative/Condominium Practice Group

Subject: Protecting Against Theft of Building Funds

Date: November 7, 2005

In the wake of recent news reports about a cooperative's board member and treasurer who allegedly embezzled over \$4.7 million, a number of our clients have asked what they should be doing to prevent similar cases in their cooperatives or condominiums.

It is impossible to prevent all thefts under all circumstances, and the methods of financial control and supervision may vary from building to building or managing agent to managing agent. In most cases, though, some basic steps may be followed without much difficulty:

1. Boards should confer with the building's accountant to confirm that conventional financial controls are in place concerning the building's accounts and disbursements and that those controls are being followed.
2. There should be clear and appropriate procedures for authorizing the disbursement of building funds, whether by the managing agent or the board directly.
3. All direct disbursements by the board, and all disbursements from reserve accounts, whether controlled by the board directly or by the managing agent, should require authorizing signatures from two board members. In addition, the board might consider a separate rule that no disbursement over a certain amount can be made unless approved by a third board member (if paid by the managing agent) or the managing agent (if paid from funds not under the control of the managing agent).
4. All bank and other financial account statements should be sent to, and reviewed by, both a board member, presumably the treasurer, and the managing agent, who should then send copies to a board member who is not an account signatory or payment approver. This is particularly important if the reserve fund accounts are controlled by the board and not the managing agent.
5. All managing agent's reports and supporting invoices should be carefully reviewed by a board member.

Finally, the cooperative or condominium should have sufficient fidelity insurance in place, covering both the building's officers and the managing agent.

Serving on a cooperative or condominium board is time consuming and often difficult, but all board members must remember that they have a fiduciary duty to the tenant-shareholders and unit owners. Such duty includes the obligation to review financial matters carefully and to question immediately any irregularities or suspicious activity. This is especially true for board members who have been designated as payment approvers, check signers, or statement reviewers.

Please call us if you would like to discuss specific precautionary procedures for your cooperative or condominium.

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