



INSURANCE/INDEMNIFICATION CHECKLIST FOR BUILDING AND UNIT OWNER/SHAREHOLDER PROJECTS

In New York, condominium boards, cooperatives, and their managing agents are often financially responsible for accidents in their buildings involving employees of contractors, subcontractors, vendors, and moving companies. This is true even if the work was arranged by a unit owner/shareholder, and even when the building had no involvement with the work. These personal injury claims routinely reach millions of dollars. Even when the buildings are insured, these claims ultimately cost the condominium and cooperative a significant amount of money in increased insurance premiums.

If boards and their property managers take a proactive and diligent approach, they can almost always pass the responsibility for these claims to the insurers of the companies that employ these injured workers. This bulletin outlines a proactive approach to eliminate this risk through enforceable indemnification and additional insurance agreements by any contractor or service company in your building, regardless of who retained that contractor or service company. Simply obtaining a certificate of insurance is not sufficient, because the certificate is not legally binding, and because contractors' or vendors' insurance policies often exclude coverage for the accident and the certificates rarely reference those exclusions. The one or two page invoices that many smaller contractors use, without more, typically provide no protection to the building or its managing agent.

It is critical to remember that any work in your building, regardless of how small, can result in a potential multi-million-dollar loss. A minor painting job in a unit owner's or shareholder's closet can create as much exposure as an expansive façade repair or roof replacement project. The guidelines should be used even for the smallest project.

THE BUILDING'S CONTRACTORS/VENDORS/SERVICE PROVIDERS

- 1. Review contract and ensure that it includes the following:
 - a. Indemnity provision requiring the contractor/subcontractor/vendor to defend and indemnify the condominium/cooperative, its board of managers/directors, all unit owners/shareholders, and the property management company for all bodily injury and property damage claims, accidents or injuries arising out of the work or operations being performed under the contract.

- b. It is important that the building ensure that these provisions are also in subcontracts, even where the building is otherwise not involved with retaining those subcontractors. Relying on the general contractor to ensure subcontractor compliance often leaves the building and managing agent unprotected.
 - c. Additional insurance coverage:
 - i. An explicit agreement that the contractor/subcontractor/vendor will procure additional insured coverage on its primary and umbrella liability policies for the condominium/cooperative, its board of managers/directors, all individual unit owners/shareholders and the property management company, on a primary, non-contributory basis.
 - d. Minimum coverage requirements:
 - i. Insurance policies must provide commercial general liability coverage with minimum limits of \$1 million per occurrence, \$2 million general aggregate and \$10 million in excess coverage. Remember that \$1 million in primary coverage is not sufficient to protect the building or the managing agent.
2. The contractor's/vendor's insurance policy shall not include any type of employee or worker bodily injury exclusion, any exclusion for work performed in the building's city or county (i.e., a New York City work exclusion).
- a. Note that smaller contractors/subcontractors/vendors/service companies typically will buy the least expensive insurance policy they can find, but those policies are inexpensive in part because of these types of exclusions, which effectively remove protections for the building and its property manager.
3. Obtain a copy of the contractor's insurance policies for review. This is as important as having the proper language in the contracts. There are often exclusions in the policies that are not listed on the certificate of insurance that exclude coverage for worker accidents. Berkley Luxury Group strongly recommends that you email contracts and policies to its legal team at LegalReview@berkleyluxurygroup.com for review before you retain any contractor or vendor or allow any contractor/subcontractors/service company or vendor into your building.
4. Note the coverage period for each policy and ensure the contractor/subcontractor/service company/vendor provides its renewal policy or new policy to the extent the project is ongoing beyond the initial policy period.
5. Contracts must be signed by all parties, and contracts and insurance policies must be submitted to property management **before retention, and before the project starts at the latest.**

UNIT OWNERS/SHAREHOLDERS/TENANTS RETENTION OF CONTRACTORS/VENDORS/SERVICE COMPANIES

- 1. Unit owner/shareholder/tenant should submit an alteration agreement or similar agreement, and should submit all contracts (every contractor, subcontractor, vendor, etc.) to managing agent or board of managers/directors for review and approval for every project, service contractor, or mover, no matter the size of the job and regardless of whether the job involves structural alterations.

- 2. Review the alteration agreement and contracts to ensure the agreements include the following language, in favor of the condominium/cooperative, its board of managers/directors, all unit owners/shareholders, and the property management company:
 - a. Indemnity provision requiring the unit owner/shareholder/tenant and each of their contractors/subcontractors/vendors to defend and indemnify the condominium/cooperative, its board of managers/directors, all unit owners/shareholders, and the property management company for claims arising out of or in connection with the work or operations being performed under the contract, **to the fullest extent permitted by law**. The absence of this last phrase in the indemnity agreement may render the agreement unenforceable in New York.

 - b. Additional insurance provisions:
 - i. Requiring the unit owner/shareholder and any contractors/subcontractors/vendors/service providers to procure primary and umbrella liability insurance on which the condominium/cooperative, its board of managers/directors, all unit owners/shareholders, and the property management company are additional insureds on a primary and noncontributory basis in the contract documents.

 - ii. Many buildings do not require their unit owners or shareholders to have homeowners/renters insurance with personal liability protection. We strongly recommend, however, that buildings require this coverage for specific projects, no matter how small, through an alteration agreement, even if there is no such requirement in the building's bylaws or proprietary lease.

 - iii. Require unit owners/shareholders and their contractors/subcontractors/vendors to provide their contracts and insurance policies for review. Berkley Luxury Group recommends that you email contracts and policies to its legal team at

LegalReview@berkleyluxurygroup.com for review before you retain any contractor or vendor or allow any contractor or vendor into your building. Our legal team will review for additional insurance coverage and any problematic exclusions.

c. Minimum coverage requirements:

- i. Insurance policies must provide commercial general liability coverage with minimum limits of \$1 million per occurrence, and \$2 million general aggregate and \$10 million in excess coverage.
- 3. The contractor's/vendor's insurance policy shall not include any employee or worker bodily injury exclusion or any exclusion for work performed in the building's city or county (i.e., a New York City work exclusion).
 - 4. The alteration agreement must include an exhibit that each contractor/vendor signs agreeing to abide by the terms of the alteration agreement, defend and indemnify the condominium/cooperative, its board of managers/directors, all unit owners/shareholders, and the property management company, and name them as additional insureds on its insurance policies on a primary and non-contributory basis.
 - 5. Contracts must be signed by all parties, and contracts and policies must be submitted to property management **before retention, and before the project starts at the latest**. It is important that the property manager obtain and save a copy of the alteration agreement that is signed by both the building and the unit owner/shareholder. Copies without both signatures may be deemed unenforceable in New York.

DOCUMENT RETENTION

- 1. The property manager should retain a job file with all contracts (including all exhibits, riders, etc.), alteration agreements, insurance policies, permits and photographs.
- 2. To the extent that a building and its managing agent separate, the building should ensure that it obtains and saves the complete job file, as lawsuits can be filed years after the actual accident or incident and access to those documents is essential to a proper defense of the building.
- 3. Retain all communication with contractors and vendors in the specific job file.