

Condo Co-Op Help Line: *Failed Project*

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Co-op and condo boards perform significant amounts of construction work annually in New York City including, without limitation: façade inspection and rehabilitation (Local Law 11), boiler replacements, roof replacements, window replacements, and steam and hot water valve replacements. From time to time, these projects do not go well, and boards and managing agents are left to pick up the pieces.

The process of dealing with a failed or failing project begins with an investigation of the facts. That includes gathering all the project documentation and having a thorough, competent analysis of the conditions performed by an experienced, licensed design professional.

Some investigations are ineffective due to the selection of a person with the wrong expertise to conduct the investigation. Therefore, you may want to retain an architect-engineer firm that has all the specialties that may be required. Investigations may also be ineffective if the investigator is asked to assign fault to a particular party at the start of the process.

Investigations need to be comprehensive, so destructive testing or probing may be necessary. Always photograph and video these tests and prepare all required documentation to ensure that you are able to prove the original condition later. Having the project team present for destructive testing may be a good idea.

Once the investigation is complete, the board and the managing agent have choices: correcting the problems and assigning responsibility for the problems. For many reasons, most of them arising out of the board's obligation to maintain the building and provide a certain level of service to unit owners or lease holders, correction of the problems is generally the first set of actions. In making that choice, however, it is useful to have counsel for the board reach out to the project team and give them an opportunity to inspect the work before the corrective work begins. That will avoid any claim of spoliation of the evidence in any subsequent litigation.

The last part of the process is seeking damages. Frequently, the design team will have malpractice insurance, while the contractor will not. Typically, contractor insurance will usually cover accidents, but poor workmanship does not qualify as an "accident."

The design team malpractice insurance will generally cover only damages arising out of negligence in the design. Installation errors are generally not addressed. To minimize exposure, architects and engineers will leave parts of the design to be completed in the shop drawing process, which serves to limit designer liability. To further minimize liability, architects and engineers will eschew any responsibility for inspecting work, using words like "monitor" or "observe" to describe their level of responsibility on site visits. Another technique used is to require the trades to comply with the local building codes in any work.

Moreover, by contract, architects and engineers often limit their liability to the amount of their fee or similarly limit recoveries.

Contractors may have more exposure on failed projects, due to the warranties that are often involved and because the design professionals have shifted so much code compliance and design detail on to contractors.

Before making decisions, have the investigators review all the project documentation to ensure that the paperwork supports any claim that you may choose to make. The more complete and careful the investigation, the better your chances of recovery in a timely manner.

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