

# Dealing With Conflict in Co-ops & Condos

Noise, Odors, & Leaks, Oh My!

BY KEITH LORIA 2022 JUNE

MANAGEMENT



Even before the pandemic and social unrest of the last few years, interpersonal conflict and outright hostility often surfaced in the co-op and condo environment, forcing boards and managers to deal with both legitimate grievances and conflicts that are sometimes less than rational. Whether a conflict arises between neighbors, between residents and management, or between tenants and the board, it's vital to address it swiftly and diplomatically to maintain a functioning, livable community.

## Sources of Problems

Michelle P. Quinn, a partner with Gallet Dreyer & Berkey, LLP in New York, says typically, the three main sources of conflict concern odors, noise, and leaks—and during the pandemic, when people were home so much more, these issues became even more prevalent.

“Odors could have to do with a building’s ventilation system, so that’s something that is fixable. But then there are odors that can range from someone not liking their neighbor’s cooking—but these people chose to live in a multiple dwelling and those are the functionalities of doing so—to the collection of smells that might come from hoarders or those with lots of animals,” she says.

Michael J. Ciarlo, a partner with Manhattan-based law firm Nadel & Ciarlo, P.C., notes that these are particularly difficult sources of conflict because they are usually between two neighbors, and it becomes a he said/she said situation.

"Sometimes it can be resolved by having the offending neighbor install carpeting in their apartment, which is usually already required by the co-op or condominium's documents," he says. "However, in the event this cannot solve the problem, it is difficult for the board and managing agents to resolve these disputes without having a third party corroborate the noise complaint. To do this, we have had success having our clients retain a sound engineer to come into the apartment and record the noise and see if it rises to the level that is prohibited by New York City noise code laws."

Daniel Wollman, CEO of Gumley Haft, which manages approximately 75 New York City co-ops and condos, notes in all instances of conflict, the first step should be to investigate the source of the problem. Make sure everything complies with the rules. For serious noise complaints, Gumley Haft has brought in sound engineers to measure the decibel level of the noise, such as a loud air conditioner; if necessary, the unit must be replaced or modified to reduce the offending noise.

"The best thing you can do is try to talk to the person who is having the problem and then talk to the neighbors and try to come up with a practical solution for trying to resolve things," Wollman says. "These should be delicate discussions and try to mediate a solution that will work."

The third major point of contention is leaks. The damage and disruption that they can cause a homeowner or shareholder can lead to some very serious acrimony if not addressed civilly.

## Managing Conflicts

Harold Coleman, Jr. is senior vice president of mediation for the American Arbitration Association and has also been president of three different association boards—so he has seen his share of conflicts throughout his career. "Any governing board or managing association that rules with an iron fist instead of dealing with issues with a 'velvet glove' really misses the point and escalates conflict that really could have been contained by being a bit more sensitive," he says.

"Communication is always the first step with any situation within the HOA as we encounter any form of dispute," says Joe Balzamo, chief operating officer for AR Management in Mount Arlington and Morristown, New Jersey. "It's important to have all parties understand what we are actually addressing or discussing."

Actively listening is just as—if not more—important as talking in these discussions, so all parties gain an grasp each other's specific point of view on the subject. "We have to ensure we have both parties unders

what is or could be the options surrounding the decisions each party will make," Balzamo says. "We always try to end with a solution that both parties are happy with. With all the specifics being addressed, it's always best in any negotiation or decision to have both parties feel like they have actually given up something to ensure a successful win-win scenario."

## Communication Counts

To deal with conflicts among unit owners, Ciarlo notes that the best practice is to try and create as much of a sense of community as possible. This can be in the form of a monthly newsletter that updates the unit owners on what is going on in the building. "The board can also have quarterly meetings with the unit owners to address any issues or questions they might have rather than only deal with this once a year at the annual meeting of unit owners," he continues. "Fostering this sense of community and providing regular updates can create an atmosphere where the unit owners realize they are all in this together and noise complaints or renovation issues can be dealt with in a rational and civilized manner."

In addition, the board and management company should try to be transparent and provide the unit owners with as much information as possible to keep them informed of the decisions being made and the reason for said decisions. If the unit owners know the reason for the board's decisions, they are less likely to challenge them.

Another source of conflict concerns renovations. This can be in-unit renovations that are causing noise or dust to enter into other units, or common area renovations that can have major disruptive effects on residents, such as façade work, hallway upgrades, or repairs to a building's mechanical systems or utilities.

"We often hear complaints that neither the board nor the management company involve the unit owners in decisions which affect the entire building, do not keep them updated, or are not forthcoming with respect to the building's finances," Ciarlo says. "Many boards can be secretive, not because they are trying to hide anything, but because they do not want their decisions second-guessed by everyone in the building."

## Play by the Rules

All co-ops and condos should have a clear set of rules and regulations to ensure that all tenants understand what's expected of them and act in a manner that's appropriate for their living situation. Strong communication of what's required is also vital.

"Having clear, concise rules helps set expectations for everyone," says Chip Hoever, vice president of operations for Matrix Property Management in North Brunswick, New Jersey. "Make sure rules resolve a problem and don't make them overly burdensome. Remember, this is someone's home and they have the right to peaceful enjoyment. Also—and this is very important—make sure the rules are distributed to the entire community."

Josh Koppel, CMP, president of HSC Management Corp. in Mount Vernon, New York, says when things get heated, management needs to turn to the bylaws and stick to the house rules and policies that have been established in ironing out the disagreements.

"Notifications and reminders about rules are a big help," he says. "Often when people do not realize there's a rule, it gets broken. Once management deals with the issue, people go on the defensive. If someone feels like they are being treated differently than others, they get angry. Examples of similar situations and how other shareholders or owners were dealt with sometimes makes someone understand that the rules are the rules for everyone and are enforced equally."

## When to Call the Lawyer

As a last resort and when all diplomatic efforts fail, it's probably time to bring in legal counsel. Or, as Coleman notes, if someone is threatening the safety of a resident or property, it's time to reach out to the legal team.

“When dealing with an irrational individual, sometimes getting a lawyer involved is an easier path forward and less stress on a board and management,” Koppel says. “When a board member gets cornered in a hallway and put on the spot, it’s always easiest to say, ‘sorry, but the co-op’s or condo’s legal counsel is dealing with this matter. I have no comment.’”

Ciarlo feels that the best time to bring in legal counsel is at the beginning—before there are any legal issues that need to be dealt with. Many of the issues his firm gets involved with could have been avoided if the board had retained legal counsel before problems began. “Many co-ops and condos are run for years very informally and they do not properly follow the rules and procedures set forth in their own documents,” he says. “This becomes problematic when issues arise. Having legal counsel come in and review the building’s documents to see if they need to be updated and make sure that the existing regulations and procedures are being followed will go a long way in avoiding issues before they even happen.”

## Mediation and ADR

Alternative Dispute Resolution (ADR) is a process that HOAs use to address a dispute where a neutral party helps the parties reach an agreement and avoid litigation.

“ADR is great because it puts [the conflict] before a truly impartial arbiter of facts,” Hoever says. “[However,] it’s a little harder to get things coordinated when you have another person involved. COVID was a double-edged sword because [in the beginning] it was still difficult to schedule, but Zoom meetings made it easier.”

There are two types of ADR. The first is mediation, where a neutral third party helps the parties come to a consensus on a settlement on their own. The second is arbitration, where a neutral third party acts like a judge and makes a decision, which resolves the parties’ dispute. In binding arbitration, the parties agree the decision of the arbitrator is final and enforceable in court and there is no right to an appeal. The problem with

this is that there is no real opportunity to challenge the decision of the arbitrator if one party believes it was granted in error.

AR Management often calls for a mediator to act as a neutral party to hear any issues between a member of the community and the HOA board of directors. This has proven to be highly successful in working out grievances.

But it's not for everyone.

"Generally, we do not recommend mediation to our clients, as in our experience, it usually does not lead to a successful result unless both parties are willing to compromise," Ciarlo says. "When we usually get involved in a dispute among neighbors or between unit owners and the board, things have escalated to a point where mediation will not work. There are also few cases we would recommend for arbitration as parties do not have the same protections and rules to follow as in litigation, and it can be difficult to predict the result."

One of the benefits of ADR is that it is quicker and less expensive than litigation; however, it only works if the parties are willing to participate and agree to binding arbitration. A limitation of ADR is that the matter cannot be guided by legal precedents or discovery rules, which are available in litigation, Ciarlo adds. "Also, many times, a party will use ADR as a stall tactic and will eventually decide to stop negotiating, which will lead to litigation anyway."

Hoever says that dealing with any conflict needs to be direct and to the point, and the quicker you handle things, the better.

"Keep in mind that the truth is probably somewhere in the middle of what the two sides are telling you," he says. "And above all, stay impartial and try to build consensus between the two sides."

*Keith Loria is a freelance writer and a contributor to CooperatorNews.*

## COMMENTS

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SUE SMITH on TUESDAY, MAY 31, 2022 8:43 AM

I find that if the management and board actually do their jobs and work in the best interests of the UNIT OWNERS then there are no conflicts. It is unfortunate that co-op boards are notorious for bad management, not remedying the correct physical structures or tenant situations, providing "amenities" and structures that no one normal wants or needs, not consulting with the unit owners before making decisions. My complex is a prime example. I have documented many instances of nonsense undertakings. The board members and property management staff never change. They have many personal issues that interfere with keeping good residents here. Hence, our unit values are lower than most others in this NY Tri State area.

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