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Real Estate

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Q. & A.

Offering Plan and Disclosures

Q Our co-op was originally part of a commercial building next door. The fire escape for the commercial building is attached to the wall of our building. Before the conversion, the owner of our building signed an agreement with the owner of the commercial building about the maintenance of the fire escape, committing our building to 50 percent of its upkeep. This agreement was not disclosed in the offering plan or inscribed in the city records. The fire escape now needs major repairs, and the owner of the commercial building is trying to collect from our co-op. While we are willing to contribute to the upkeep of the fire escape, we feel that 50 percent is unjust because our building would require a much smaller fire escape. Are we liable for an agreement signed without our knowledge or permission? ... Jeff Whisenant, Brooklyn.

A Eric P. Gonchar, a Manhattan real estate lawyer, said that a sponsor converting a building to a co-op must submit a detailed offering plan to the New York State Department of Law. That plan, Mr. Gonchar said, must not omit any material fact and may not contain any fraud, deception or concealment.

"If the plan indeed failed to disclose an obligation imposed upon the cooperative corporation," Mr. Gonchar said, "then the sponsor has not met the minimum requirements of the law."

Under current law, he said, a sponsor may be subject to criminal and civil penalties for making false certifications.

Accordingly, Mr. Gonchar said, the co-op corporation should file a complaint with the State Department of Law regarding the omission of the fire escape agreement from the offering plan. If the department determines that the sponsor omitted essential information, he said, it could require the sponsor to reimburse the co-op for any damages that result from that omission.

The co-op should also try to determine whether the agreement is truly binding on the co-op. It is possible, Mr. Gonchar said, that the sponsor may be personally liable for the upkeep of the fire escape.

He added that the co-op could also attempt to renegotiate the agreement with the owner of the commercial building, who may be inclined to cooperate to avoid being dragged into a legal battle between the sponsor and the co-op.