

**COMMENTARY ON**  
**THE MODEL FORM OF**  
**ALTERATION AGREEMENT**  
**FOR RESIDENTIAL COOPERATIVES**

**Introduction**

Shareholders of cooperative corporations, like other homeowners, frequently desire to make alterations. Under the proprietary leases used in most New York City cooperative buildings, the consent of the cooperative corporation is required. As a condition of its consent, most, if not all, cooperative corporations require the shareholder to enter into an alteration agreement designed primarily to protect the interest of the corporation and hence the other shareholders. However, by also outlining basic good construction practices, it also protects the shareholder renovating his or her apartment.

In recent years, many different forms of alteration agreement have come into use and the Committee on Cooperatives and Condominiums of the Association of the Bar of the City of New York (the “**Committee**”) concluded that it would be useful to develop a model form of alterations agreement (the “**Model Form**”) as a guide to cooperative corporations and their managing agents and counsel. The Model Form deals with many issues that are not dealt with in the traditional form (Blumberg Form No. 1978) but avoids the length and complexity of some of the forms more recently developed by various managing agents and counsel.

On most issues the Model Form is favorable to the cooperative corporation, in keeping with the basic purpose of alterations agreements and industry practice. The Model Form requires the shareholder to submit detailed plans, drawings and specifications for review and approval by the cooperative corporation and its professional engineer and, if approval of the work is given, the Model Form attempts to allocate all risks and costs incident to the alterations to the shareholder making the alterations, so as to avoid their being borne by the corporation.

The Residential Management Council of the Real Estate Board of New York (the “**Council**”) had also concluded that the preparation of a Model Form would be a useful service to the industry and this Model Form is the joint product of both the Council and the Committee.

Users of the Model Form are encouraged to adapt it to the particular policies and physical conditions of their buildings and to attach riders as appropriate.

## **Commentary on the Model Form**

A summary and discussion of the Model Form is set forth below.

### Section 1: Shareholder's Submissions.

This Section sets forth the documents that the shareholder (the "**Shareholder**") is required to submit to the cooperative corporation (the "**Corporation**") together with the alteration agreement (the "**Agreement**"). In addition to the checks for the required security deposit and the processing fee, the Shareholder is required to submit detailed plans, drawings and specifications which, if required by the Corporation, must be prepared by a licensed architect or an engineer.

### Section 2: Review of Plans.

This Section provides that the plans, drawings and specifications submitted by the Shareholder will be subject to the review and approval of the Corporation and its architect or engineer (the "**Corporation's Designated Engineer**"), that the Shareholder shall make such revisions as are required to obtain such approvals, and that the Shareholder shall not thereafter modify the plans, drawings and specifications.

The Section defines the term "**Plans**" to mean the plans, specifications and drawings as approved by the Corporation and the Corporation's Designated Engineer and defines the term "**Work**" to include all work called for by the Plans and any other work performed by or on behalf of the Shareholder. The purpose of the second part of the definition of the term "Work" is to insure that if, despite the provisions in the Agreement to the contrary, the Shareholder performs any work not called for by the Plans the various protective provisions of the Agreement will nonetheless apply thereto.

This Section also provides that, notwithstanding approval of the Plans by the Corporation and the Corporation's Designated Engineer, the Shareholder shall be solely responsible for the Plans, for insuring compatibility with Building systems and for compliance with applicable laws.

Finally, because the Agreement is designed to permit it to be executed and delivered before the Plans are approved, this Section also confirms that the Corporation's execution of the Agreement does not constitute consent to the Work.

### Section 3: Pre-Conditions to Commencement of Work by Shareholder.

This Section lists the pre-conditions to the commencement of the Work, as follows:

The Corporation and the Corporation's Designated Engineer shall have approved the Plans.

The Shareholder shall have submitted to the Corporation a list of all contractors, subcontractors and suppliers and copies of all agreements entered into for the Work.

The Shareholder shall have made all required filings with, and received all required permits, approvals, licenses and consents from, all governmental agencies having jurisdiction, and the Shareholder shall have furnished copies thereof to the Corporation.

The Shareholder shall have caused each of its contractors to furnish the required certificates of insurance as detailed on Exhibit A.

Section 4: Shareholder to Give Notice Prior to Commencement of the Work.

This Section requires that the Shareholder give not less than five (5) days prior written notice of the commencement of the Work to the Corporation's Designated Engineer, the superintendent of the Building and the Building's managing agent.

Section 5: Performance of the Work.

This Section sets forth various requirements pertaining to the performance of the Work, as follows:

The Work must be performed strictly in accordance with the Plans and no work not called for by the Plans may be performed.

In performing the Work, the Shareholder must comply with (i) all applicable laws, (ii) the requirements of all insurance policies covering the Work, the apartment or the Building, (iii) the Agreement, (iv) the proprietary lease, (v) the House Rules, (vi) the requirements of the Corporation, and (vii) any directions given by the Building's managing agent or superintendent.

The Work must be performed diligently and in a manner so as not to disturb other residents. The Work must be performed only during the hours specified in the Agreement. No Work shall be performed on weekends or holidays.

The Shareholder shall cause its contractors and subcontractors not to employ any labor which causes disharmony with any building service union.

The Shareholder shall cause the Work to be completed within the time period set forth in the Agreement and, if the Work is not completed within that period, the Shareholder shall pay a per diem charge until the Work is completed. Decorative work such as painting, wallpapering and carpeting is excluded from these provisions.

Upon completion of the Work, the Shareholder shall submit to the Corporation (i) a certificate from the Shareholder's architect or engineer that the Work has been completed in accordance with the Plans and all applicable laws, and (ii) all required final governmental signoffs and approvals, including, if required by the Corporation, a certificate from the Board of Fire Underwriters and an amended certificate of occupancy.

Before either party executes the Agreement, the following blanks should be completed in this Section.

The permitted working hours (Section 5.b).

The period within which the Work is to be completed (Section 5.d).

The per diem charge for non-completion (Section 5.d).

#### Section 6 Inspection and Correction of the Work.

This Section provides that the Corporation shall have the right from time to time to inspect or observe the Work, and that the Shareholder shall make all corrections required by the Corporation in order to conform to the Plans or the requirements of the Agreement. This Section also provides that the Corporation's failure to inspect does not constitute a waiver of any of its rights.

#### Section 7 Damages or Adverse Effect Caused by the Work.

This Section provides that the Shareholder is responsible for any damage to or other adverse effect upon the apartment or the building caused by or resulting from the Work, regardless of when such damage or adverse effect becomes apparent. This Section also requires the Shareholder to submit (and to cause its contractors to submit) an insurance claim but also provides that its doing so shall not limit the Shareholder's liability under this Section.

#### Section 8 Indemnification by Shareholder.

This Section requires the Shareholder to indemnify the Corporation, its officers, directors and other shareholders, the Corporation's Designated Engineer, the managing agent of the building and the other residents of the building against any loss, cost, claim, damage or expense arising out of or related to the Work or any act or omission of the Shareholder or any of its contractors, subcontractors, architects, engineers or consultants.

#### Section 9 Shareholder to Bear All Costs Associated with Work

This Section provides that the Shareholder shall bear all costs incurred by the Shareholder or the Corporation in connection with the Work or the Agreement including the fees of the Corporation's Designated Engineer and any other architect, engineer, attorney or consultant retained by the Corporation. The Shareholder's liability specifically includes the charges of the Corporation's Designated Engineer for review of the plans, drawings and specifications submitted by the Shareholder and for inspection of the Work.

#### Section 10 Additional Requirements

This Section contains various additional requirements relating to (i) the Building's heating and air-conditioning systems, (ii) certain prohibited construction methods, (iii) the accessibility of valves, (iv) the use of public and common areas during the Work, (v) various safety precautions, including fire extinguishers, smoke alarms, fire exits and window guards, (vi) control of dirt, dust and rubbish, (vii) lead-based paint, and (viii) the Corporation's right to remove air conditioning units, terrace plantings and other structures installed by the Shareholder.

#### Section 11 Shareholder to Comply with Laws, etc.

This Section confirms that the Shareholder shall comply with all applicable laws and the requirements of all liability, casualty or other insurance carried by the Shareholder or for the Shareholder's benefit.

## Section 12 Maintenance and Repair of the Work

This Section provides that the Shareholder shall be responsible for the maintenance, repair and replacement of the Work and any portion of the apartment affected by the Work, and for all costs incurred by the Corporation or the Shareholder in connection therewith. This Section also provides that the Shareholder releases the Corporation and others from any liability for damage to the Work or any portion of the apartment affected by the Work. This provision can have the effect of reducing the Corporation's maintenance and repair obligations and increasing the Shareholder's maintenance and repair obligations, as compared to that provided in the proprietary lease.

## Section 13 Shareholder's Security Deposit; Additional Rent Under Lease

This Section requires the Shareholder to post a security deposit (in the amount set forth in Section 1) in order to secure its obligations under the Agreement and to replenish the security deposit whenever the Corporation has applied one-half of the required amount. This Section also provides that any amounts due under the Agreement and not recovered by application of the security deposit shall constitute additional rent under the proprietary lease, thus entitling the Corporation to exercise the remedies provided by law or in the proprietary lease for non-payment of rent.

## Section 14 Assumption by Purchaser

This Section requires the Shareholder to cause the person to whom the Shareholder sells or otherwise transfers the apartment (the "**Purchaser**") to assume the Shareholder's obligations under the Agreement and for that purpose to execute and deliver a formal assumption agreement in the form attached to the Agreement. This is necessary so that the Corporation will have the ability to continue to enforce the Agreement after the apartment is sold or otherwise transferred. When selling the apartment, the Shareholder or the Shareholder's lawyer should remember to include a provision in the contract of sale requiring the Purchaser to execute and deliver the required assumption agreement. The required assumption agreement refers specifically to this Section 14 and thus each successive Purchaser will be required to execute and deliver an assumption agreement. As a practical matter, the responsibility for enforcement of this requirement will fall on the Building's managing agent or attorney (when acting as transfer agent for the Corporation's stock).

## Section 15 Miscellaneous

This Section provides, among other things, that the Agreement is the complete agreement between the parties relative to its subject matter and may not be changed orally and that the parties waive trial by jury.

## Section 16 Shareholder's Breach and Corporation's Remedies

This Section provides that a breach of this agreement is also deemed to be a breach of the proprietary lease. In case of a breach of the Agreement the Corporation shall have all the remedies provided for in the proprietary lease and in addition shall have the right to require that the Work be stopped and to prevent workers from entering the apartment.

## **Conclusion**

The Committee hopes that the Model Form will be useful to cooperative corporations and their managing agents and counsel and will reduce the time and expense incurred in the preparation and negotiation of alterations agreements. The Committee thanks the Council for their co-equal participation in the preparation of the Model Form and hopes that the joint sponsorship of the Model Form will lead to its adoption by many cooperative corporations.

While many members of the Committee were involved in this project, the brunt of the Committee's work was done by Marcia Helbling and she deserves special recognition for her contribution. Thanks are also due to Ray Mellon and Stan Towne for their assistance.