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In the Scandalous Business of Bid Rigging, Reform Lies in the Hands of the Property Manager

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With the most recent wave of indictments by the Manhattan District Attorney's Office this June relating to managing agents and vendors in New York City and especially in Manhattan, questions center around how to obtain effective and lasting reform. How can co-op and condo owners keep from becoming victims of kickback and bid rigging scandals?

Schemes for paying kickbacks or rigging bids are almost without limit and extremely hard to detect, much less prevent. These methods include: the receipt of either a check or cash equivalent to 10% of the contractor's or vendor's price in return for the award (10% can be in the form of gifts, dinners, trips, or 'perks'); a contractor submitting a low bid and then making up the difference, in a prearranged fashion, in change orders that add significantly to the overall price; allowing the contractor to obtain a windfall on a job with the understanding that the property manager would be rewarded on another project; or allowing the property manager to set up a sham consulting company to whom the contractor would make payments to satisfy the obligation to the property manager.

The following are suggestions for the board of a co-op or condominium to guard against corruption.

First of all, choose management companies carefully. Property managers are generally not paid well, are not carefully selected, rank low in status and respectability and receive little in the way of specialized training. Select such personnel carefully, pay commensurate with the level of service you require and remember that the property manager is the go-between with the supplier of cleaning products, other vendors, architects, water-proofing contractors, roofing contractors and all others.

Make sure to implement an integrity program and ethics policy. It is important that those who are aware of an illegal practice and fail to report it are prosecuted equally with those who participate in and benefit from such illegal practices. Over a period of time, good employees who are frustrated by seeing others benefit from corruption with impunity are themselves eventually subverted. A clear line of communication that allows for the reporting of corruption goes a long way; therefore providing hotlines for reporting and appropriate contracts are essential.

Qualifying contractors at your property is another critical step in guarding against ineptitude. Make vendors and contractors affirmatively represent that they have not paid your employees or agents for obtaining contracts or purchase orders and require all vendors and contractors to provide detailed information about themselves and their companies. In addition, create an affidavit for each to sign, which affirms that if any of the information in the application is false, they are to forfeit the contract price.

Set up a clear procedure for procurement, bidding and change orders. Clearly defined protocols help eliminate some schemes. Especially in contracting for services such as waterproofing, the finished product often lacks clear definition. For example: was repointing of a brick facade done properly? Setting clear criteria for adding to the contract and for the contractor's work to be evaluated is extremely important. So is the selection of the design professional who will objectively evaluate the work. If the design professional 'looks the other way' when the waterproofer's performance falls short, the waterproofer's profitability is enhanced.

The co-op or condo needs to make sure that the design professional is not receiving a percentage of that added profit.

Set up strong, independent, external audit procedures. External audit procedures, independent of the procurement process and its participants, are essential. Next, establish an ongoing compliance program. Even if the program the co-op or condo administers is nominal (in terms of dollar amount), spot-checking is extremely valuable.

Budget analysis is essential as well. Independent of the procurement process, you must know, within range, what the price should be. Do not be confused by methods of pricing or project delivery-know the bottom line.

Once corruption has been isolated, take it seriously-recover your money and send a firm message.

Since the law has strengthened remedies in recent years, hire a knowledgeable law firm experienced in recovering your money. In some instances, corrupt parties are required to pay into a restitution fund. Check your entitlement to compensation.

Hold corrupt parties responsible for their criminal activities. If you catch a corrupt party, take your responsibility seriously: tell your story and be committed in helping prosecute the crime. Only self-policing by the entire industry can contain the growth of scandals.

Take practical steps. Common sense and paying close attention to details are a big help. Knowing that your managing agent is being driven home in a limousine; knowing that your apartment complex is the only customer receiving services from a waterproofing contractor or seeing a board member's apartment being lavishly renovated, may be tell-tale signs. Be aware, pay attention to details and remember to ask questions. If it doesn't look right, it probably isn't right.

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