

Ask the Experts - Litigation

Cell towers can generate revenue for a condo or co-op, but if not done right, they can generate lawsuits

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Some call them ugly. Some call them dangerous. Others see the revenue potential of having a cellular telecommunications tower installed on their property.

When the property in question is a condo or co-op community, there are bound to be differing opinions about whether the installation of a cellular

tower and related facilities is a smart move. Since the project will involve the building management agent, the condo or co-op board and unit owners alike, all must be consulted in the decision-making process – no matter how much it may slow things down or even prevent the project from getting off the ground. Failure to do so could wind up costing the property more than the revenue it would have received from leasing space for the cell tower.

As an attorney involved in cell tower litigation and lease negotiation, I have witnessed first-hand the pitfalls of not consulting all the interested parties up-front. There have been occasions when the co-op or condo board

did not communicate to unit owners its decision to lease space to a cellular carrier. In some cases, residents' first inkling that a cell tower would rise on their property was when they saw the construction trucks arrive.

While these boards may have been well-meaning – they were looking to generate revenue for the property and the unit owners – their failure to communicate their plans up-front opened the property up to potential costly lawsuits. In some instances, residents have gone to court to get an injunction to stop installation of a cell tower after work has begun, causing the property to incur the unnecessary costs associated with an incomplete project.

While cell towers can provide significant revenue, many homeowners are more concerned with the health risks and the potential decrease in property value associated with having a cell tower on the premises than they are with making some quick bucks. Residents may also charge that the tower is interfering with their usage of the property.

Recently, I handled a case in which a telecom carrier entered into a lease agreement with a condo board to construct its cellular facilities on the roof and other areas of the building. Since neither the condo board nor the telecom carrier informed the occupants about the deal, imagine the occupants' surprise when con-

struction on the facilities began on the roof, which was a common area utilized as a sundeck. As it turned out, the facilities would also be within feet of the outdoor terraces of the condo complex's penthouse units.

A few days after the condo owners retained my services, and a day before the cranes were scheduled to arrive, we were able to obtain a temporary restraining order to halt construction.

At the very least, condo or co-op boards should review the property's governing documents to determine whether unit owners are entitled to vote on the issue, or if the installation would otherwise violate the governing documents.

There is potential for other types of lawsuits involving cell towers, as well. Faulty design and construction could result in damage to the building, which may lead to a lawsuit against the telecom company. Since lawsuits can be prohibitively expensive for both sides, it's vital that the board and management agent check out the credentials and get references from the telecom company. It is also important to have an independent engineer inspect the cellular facilities to ensure they are properly designed and installed.

With cell towers, as with many other matters, taking a few preventive measures can keep you out of court – and keep money in your pocket.

I recently represented a building owner in an action against a telecom carrier. After entering into a rooftop lease with the building owner, the carrier constructed a rooftop tower and facilities that were unsafe and did not comply with the plans it had submitted to the municipality. At a hearing, the court found the carrier's facilities to be unsafe and illegal, and the carrier was ordered to remove its rooftop tower and equipment and permanently vacate the building.

Keep in mind that damage claims could involve litigation with your insurance carrier. Upon observing any damage from construction, immediately put your insurance carrier on notice and consult your attorney. Document the building's condition before construction begins and afterward, in case an issue arises.

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