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Association Must Pay \$1.2 Million for Discrimination

A civil rights trial against an association in Plymouth County, Mass., accused of discriminating against three Jewish members has ended in a settlement. A jury awarded the members \$600,000 for the violation of their civil rights and an additional \$150,000 for nuisance. Together, with interest, the judgment is in excess of \$1.2 million. The families claimed they were subjected to anti-Semitic acts, including hate mail and the painting of Swastikas on their garages. Also, the deeds to some association properties say that they shouldn't be sold to a "member of the Hebrew race." And, shortly after a member said, "someone is going to burn him out," a Jewish member's home was torched and burned to the ground, according to the plaintiffs' lawyer.

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FEATURE

How to Tell if Your Condo Building Needs Repointing Work

With ice, rain, snow, and plunging temperatures, winter is clearly the season that hits a brick façade the hardest. Problems already present in the façade are sure to grow as moisture in cracks and cavities expands in freezing temperatures. To the association manager, this means summer is the best time to gather contractor bids and to catch up on needed masonry repairs before late fall, when demand for repointing work is highest, and before the onset of winter.

Repointing—the chiseling out of old, worn mortar between bricks and having it replaced with fresh mortar—is undoubtedly one of the most common maintenance procedures a brick building will undergo. Unfortunately, it's also one of the most expensive. The following is a complete guide to what repointing is exactly, why it's necessary, and how to tell whether your building needs it. In an upcoming issue, we will also tell you how to get the most for your association's money once a repointing project is underway.

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REGULATIONS UPDATE

Final Amendments to EPA's Lead-Based Paint RRP Rule Go into Effect

On July 6, the final amendments to the U.S. Environmental Protection Agency's (EPA) Renovation, Repair, and Painting (RRP) rule went into effect. These amendments added new requirements to the relatively new rules that went into effect in April of this year and were discussed in detail in the May 2010 issue of the *Insider*.

The purpose of the RRP rules is to protect children from lead-based paint hazards in places they frequent. The rules apply to renovators and maintenance professionals that work in residential buildings built before 1978. The RRP rules require contractors and maintenance professionals to be certified; that their employees be trained; and that they follow protective work practice standards. These standards prohibit certain dangerous practices, such as open-flame burning or torching of lead-based paint.

The required work practices also include posting warning signs, restricting occupants from work areas, containing work areas to

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Repointing (continued from p. 1)

What Is Pointing?

In a masonry building such as a brick, stone, or concrete building, pointing is the mortar that holds the pieces together. These areas between the bricks and stones are called “mortar joints,” and they glue all the different parts of the façade into a whole.

Besides binding the bricks, pointing also forms a watertight seal between these pieces of the building. As soon as this seal is violated, you can expect the mortar or pointing to deteriorate rapidly—and your masonry to follow soon after. Initially, water causes damage by making the lime, the mortar’s binding agent, disintegrate. As the defective mortar joints steadily loosen, they become more vulnerable to snow, wind, and acid rain, which threaten the stability of the building.

Risks When Pointing Breaks Down

The most dangerous result of letting your building’s pointing disintegrate is the destructive effect it will have on bricks. If the mortar between bricks falls apart, water can seep behind the face of the wall, soaking the bricks and destroying the walls of the building.

In winter, the effect is even worse, because moisture will freeze up and expand, pushing the bricks outward. This is how “bulges” appear on building walls. Even more ominous for the association is when the invading water soaks into the metal girders and supports of the building. The resulting rust expands the metal, wrecking havoc with a building’s superstructure.

So when you have a repointing job done, you are taking a preventive maintenance measure to preserve the outside walls of your building. And you are preventing water from leaking in and destroying interior supports.

Fundamentals of Repointing

Here is how the repointing process works: A contractor cuts out the old, decaying mortar using a mechanical grinder and hand-cutting tools. Building inspector Richard Madigan recommends that the cut into the old mortar be a solid inch deep, enough to make sure all the bad mortar is extracted, but not enough to threaten the stability of the bricks while the work is going on. Then fresh mortar is applied to these new gaps, to roughly the level of the face of the bricks.

Finally, these damp joints should be “tooled” or pressed compact. This last step, frequently ignored by contractors who want to cut costs with less labor, will assure a good new watertight seal.

Tell-Tale Signs of Need to Repoint

Finding out you need to repoint should never be as dramatic as having a brick fall out of the façade with its possible legal consequences or seeing a wall begin to bulge. Here are some tests you can perform—without calling in an engineer or architect—to see whether repointing is necessary.

Check roof. Go to your roof and look for loose masonry and coping, the top layer of masonry on a parapet wall. Loose coping stones mean, almost for sure, there will be water seeping into the structure, says Madigan. Check for cracks and stains on the roof of the building, where it meets the wall. This is a tipoff that water may have seeped into the façade because of holes, cracks, or leaks in the bricks, masonry, or coping stones.

Check mortar of parapet. While on the roof, check the mortar of the parapet, the portion of the wall that extends above the level of the roof. To do a mortar check, try to poke out the mortar in the joints between the masonry using a pencil or even just your finger. If the mortar is solid and cannot be penetrated or scraped away, then you are probably fine. But if you can

poke into or scrape out the mortar between the masonry, or if there are spaces between stones where the mortar has completely flaked away, chances are your building needs repointing.

Check mortar in upper stories. As best you can, using windows, balconies, or fire escapes, check some of the mortar in the upper stories of your buildings. These are the sections where you can expect problems to arise first, according to information gathered from Culbertson Restoration, a Philadelphia-based contractor.

The upper floors are more likely to need repointing because they get more exposure to the elements than the lower, and generally, are not as well maintained. If you are reluctant to probe a patch of masonry because it is hard to reach, at least check visually for

white stains called efflorescence, which bleeding, water-damaged mortar will form on the bricks as another sign of trouble.

In an upcoming issue, we will go over your options once you have decided you need to repoint. We will also cover the basic points that should be included in your repointing contract.

Insider Sources

Melissa Alleman: Marketing Director, Culbertson Restoration Ltd., 590 Snyder Ave., West Chester, PA 13982; www.culbertson-restoration.com.

Richard Madigan: The Building Inspection Group/Christopher Compton Architects, 4000 W. Riverside Dr., Burbank, CA 91505; www.christophercompton.com.

www.communityassociationinsider.com

Search Our Web Site by Key Words: pointing; repointing; façade; maintenance

Regulations Update (continued from p. 1)

prevent dust and debris from spreading, conducting a thorough cleanup, and verifying that cleanup was effective.

The amendments of most interest to associations and managers largely apply to the areas of record keeping and reporting.

Member Notification

Renovation companies—including property maintenance staff—are now required to provide associations and the occupants of a building being renovated with a copy of their records demonstrating compliance with the RRP training and work practice requirements.

This information must be delivered along with the final invoice for the renovation, or within 30 days of the completion of the renovation,

whichever is earlier. This notification can be accomplished through the use of a checklist. For an example, see our Model Form: Use Checklist to Document Lead Paint Work Practice Compliance.

This form is just an example. You are allowed to develop your own forms or checklists as long as they include all of the required information. For common area renovations, the renovation firm or property maintenance staff must provide the residents “of the affected housing units” with instructions on how to review or obtain this information from the renovation firm at no charge. These instructions must be included in the notice provided to each affected apartment or on signs posted in the common areas. The EPA further requires that this

“information should be provided in a short, easily read checklist or other form.”

Cleaning Verification vs. Clearance Testing

The RRP rule does not require clearance testing, but it does require cleaning verification once the work area has been cleaned up. Cleaning verification involves wiping horizontal surfaces with a disposable moist cleaning cloth and comparing it to the EPA Cleaning Verification card.

The wet cleaning cloth is then visually evaluated in comparison to an EPA-provided color sheet to determine whether the work area is clean. Under the revised RRP rule, if a renovation firm or prop-

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MODEL FORM

Use Checklist to Document Lead Paint Work Practice Compliance

If you are having your trained and certified maintenance staff perform renovation work that disturbs lead paint, be sure to have them fill out the checklist below and distribute copies of it to the residents of the building being renovated. This checklist demonstrates compliance with

the EPA's Renovation, Repair, and Painting rule training and work practice requirements. The information in this checklist must be distributed with the final invoice for the renovation, or within 30 days of the completion of the renovation, whichever is earlier.

LEAD PAINT RENOVATION RECORD-KEEPING CHECKLIST

Date and Location of Renovation: _____

Brief Description of Renovation: _____

Name of Assigned Renovator: _____

Name(s) of Trained Workers, if used: _____

Name of Dust Sampling Technician, Inspector, or Risk Assessor, if used: _____

- | | |
|--|--|
| <ul style="list-style-type: none"> <input type="checkbox"/> Copies of renovator and dust sampling technician qualifications (training certificates, certifications) on file <input type="checkbox"/> Certified renovator provided training to workers on (check all that apply): <ul style="list-style-type: none"> <input type="checkbox"/> Posting warning signs <input type="checkbox"/> Setting up plastic containment barriers <input type="checkbox"/> Maintaining containment <input type="checkbox"/> Avoiding spread of dust to adjacent areas <input type="checkbox"/> Waste handling <input type="checkbox"/> Post-renovation cleaning <input type="checkbox"/> Test kits used by certified renovator to determine whether lead was present on components affected by renovation (identify kits used, describe sampling locations and results):

_____ <input type="checkbox"/> Warning signs posted at entrance to work area <input type="checkbox"/> Work area contained to prevent spread of dust and debris <ul style="list-style-type: none"> <input type="checkbox"/> All objects in the work area removed or covered (interiors) <input type="checkbox"/> HVAC ducts in the work area closed and covered (interiors) <input type="checkbox"/> Windows in the work area closed (interiors) <input type="checkbox"/> Windows in and within 20 feet of the work area closed (exteriors) <input type="checkbox"/> Doors in the work area closed and sealed (interiors) <input type="checkbox"/> Doors in and within 20 feet of the work area closed and sealed (exteriors) | <ul style="list-style-type: none"> <input type="checkbox"/> Doors that must be used in the work area covered to allow passage but prevent spread of dust <input type="checkbox"/> Floors in the work area covered with taped-down plastic (interiors) <input type="checkbox"/> Ground covered by plastic extending 10 feet from work area—plastic anchored to building and weighted down by heavy objects (exteriors) <input type="checkbox"/> If necessary, vertical containment installed to prevent migration of dust and debris to adjacent property (exteriors) <input type="checkbox"/> Waste contained on-site and while being transported off-site <input type="checkbox"/> Work site properly cleaned after renovation <ul style="list-style-type: none"> <input type="checkbox"/> All chips and debris picked up, protective sheeting misted, folded dirty side inward, and taped for removal <input type="checkbox"/> Work area surfaces and objects cleaned using HEPA vacuum and/or wet cloths or mops (interiors) <input type="checkbox"/> Certified renovator performed post-renovation cleaning verification (describe results, including the number of wet and dry cloths used):

_____ <ul style="list-style-type: none"> <input type="checkbox"/> If dust clearance testing was performed instead, attach a copy of report |
|--|--|

I certify under penalty of law that the above information is true and complete.

NAME: _____

TITLE: _____ DATE: _____

Regulations Update

(continued from p. 3)

erty maintenance staff elect to use a laboratory analysis of dust wipes such as dust clearance testing instead of using the simple cleaning verification test, then the lab test results must be provided to both the occupant of the unit that was tested and the association. Also, unit owners and associations must maintain these reports since they are required to be disclosed by law to future occupants of the specific unit and at the time of its sale.

Worker Training

The amendment makes minor modifications to the certification, accreditation, and state authorization process. Under the RRP rule, renovators are certified for a five-year period. Currently, training instructors complete a 16-hour course. The EPA now believes

that training instructors need only complete an eight-hour renovator or dust sampling technician training instead of a 16-hour or longer abatement course.

States seeking to develop their own worker certification program under the RRP rule have been granted an additional two years to demonstrate to the EPA that they meet the requirements of the RRP rule.

Note that because of concern that contractors in some areas may be having difficulty accessing training classes, the EPA recently announced that it is giving renovation firms and workers additional time to obtain training and certifications to comply with the new lead rules. The EPA will not take enforcement action for violations of the rule's firm certification requirement until Oct. 1, 2010, and will not enforce certification requirements against individual

renovation workers if they apply to enroll in certified renovator classes by Sept. 30, 2010, and complete the training by Dec. 31, 2010.

The EPA will continue to take enforcement actions against renovation firms and individuals who do not comply with the RRP work practices and associated record-keeping requirements. The lead-safe work practices include dust control, site cleanup, and work area containment. It is important that contractors take proactive steps to protect children, families, and themselves while they take the training and file the appropriate paperwork.

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lead-based paint; EPA; RRP rule; renovation; lead safe work practices

RECENT COURT RULINGS

► Manager Not Considered Debt Collector Under FDCPA

Facts: According to the records of the association, a member was behind in his assessments. In July 2007, the manager sent the member a "Notice of Intent to File Lien." The notice included a statement of assessments owed to the association. The following month, the member demanded an explanation of the assessments and alleged that a portion of the assessments already had been paid. The manager then sent a "Notice of Lien," which included a statement of assessments owed. The statements sent to the member detailed the date, description, assessment amount, interest amount, and total amount due. Two months later, the association's attorney sent letters to the member stating an intent to foreclose. The letters included an amended claim of lien for past-due assessments, costs, and fees.

The member then sued the manager and the association for allegedly violating the Fair Debt Collection Practices Act (FDCPA). The Florida district

court granted a judgment without a trial in the association's favor. The court concluded that neither the association nor the manager acted as a "debt collector" under the law. The member appealed.

Ruling: The Eleventh Circuit federal appeals court agreed with the lower court's decision.

Reasoning: The association and its manager are not subject to the FDCPA because the association is not a debt collector—that is, someone who regularly collects debts owed or due another. Instead, the association was a creditor, an entity to which a debt is owed.

Even if the association and its manager were considered debt collectors, the court concluded that they would not have violated the FDCPA. The purpose of the FDCPA is to eliminate abusive debt collection practices by debt collectors. Under the act, if a consumer notifies the debt collector that the debt is disputed, the debt collector shall cease collection of the debt until the debt collector obtains verification of the debt. The manager sent the member verification of the debt

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Recent Court Rulings (continued from p. 5)

with its Notice of Intent to File Lien. Again after the member requested verification, the manager sent the member a current statement in verification of the debt.

■ *Madura v. Lakebridge Condominium Assoc.*, June 2010

► Member May Have to Provide Access for Balcony Repairs

Facts: A condo association sought a court order requiring a member to give it access to her condominium to perform repair work on her balcony. The association was concerned with the structural integrity of the concrete balconies on each of its units. The member's balcony was inspected and was found to have suffered moderate corrosion requiring repair.

The trial court found that the association did not meet its burden of showing irreparable harm if the member continued to deny balcony access for repairs. The association appealed.

Ruling: A Florida appeals court reversed the lower court's ruling and sent the case back for further trial.

Reasoning: The appeals court ruled that there was a question as to whether the excavation and rebar work was necessary. The association had the authority to repair the concrete on the member's balcony, which was a common element under the association's governing documents.

To access the condominium to perform the repairs, the association was obligated to show that such access was necessary. The court ruled that it had to give deference to a condominium association's decision if that decision was within the scope of its authority and was reasonable, meaning that it was not arbitrary or made in bad faith.

The appeals court said that the lower court had to perform that test and determine whether the association had the authority to access the owner's unit to repair her balcony, and, if so, whether it acted reasonably in choosing to perform the repair work from inside of the unit.

■ *Harrison v. Sierra Dawn Estates Homeowners' Assoc.*, June 2010

► Association May Be Liable for Discrimination

Facts: A member entered into a lease agreement for her condominium with an African-American woman. Shortly thereafter, the condominium members adopted amendments to the bylaws that included a restriction on members' ability to lease their property.

Comments were allegedly made by the president of the board of directors that the amendments were being proposed because the member leased to an African-American tenant. Prior to and during the annual association meeting, another member allegedly used racial epithets and stated that she did not want minorities living in the condominium building.

The member sued the association, claiming that the new leasing restrictions constituted racially discriminatory housing practices in violation of the state's fair housing law. A trial court granted a judgment without a trial in favor of the association. The member appealed.

Ruling: A Georgia appeals court reversed the lower court's decision and ordered further trial.

Reasoning: The appeals court ruled that the comments, combined with the timing of the amendments' adoption, was enough evidence to allow a trial to proceed. The association offered legitimate, nondiscriminatory reasons for the adoption of the amendments. However, the member provided evidence that the association's reasons were offered to conceal the discriminatory reasons for the restrictions. Therefore, there was a genuine factual question as to whether the amendments were discriminatory or not.

■ *Bailey v. Stonecrest Condo Assoc.*, June 2010

► Association Must Assess Individual Members for Limited Common Element Replacement

Facts: A condominium community is comprised of a six-story building with 96 units and a 43-story building with 520 units. There is a common garage connecting the two buildings, and they share common heating, ventilation, and air conditioning systems.

In 2008, the association determined that the windows for the larger building needed to be replaced and proposed that the window replacement project be completed in 2009 or 2010 at an estimated cost of \$14 million. Four members from the smaller building filed a lawsuit asking the court to declare that the association lacked the authority to assess the cost of the window replacement project as a common expense.

The trial court granted the members' request and found that the larger building's windows were limited common elements and that any assessment for their improvement should be assessed solely to the members who benefit from the improvements. The trial court also stated that the association may use 83.3 percent of the existing reserve funds to finance or pay for the project. The association appealed.

Ruling: An Illinois appeals court agreed with the lower court's ruling.

Reasoning: The association's governing documents indicate that all costs for the maintenance, repair, and replacement of limited common elements such as shutters, windows, and balconies may be assessed to the unit owners who directly benefit from the improvements.

The percentage of the total monthly assessments

collected on behalf of the larger building's members is 83.3 percent. Since part of the monthly assessment goes into the association's reserve fund, the court concluded that the larger building's members also own 83.3 percent of the reserve fund. Therefore, the lower court correctly concluded that the association may use 83.3 percent of the reserves and future monthly assessments for the window project.

■ *McNamara v. Carl Sandburg Village*, May 2010

FIRE SAFETY

Fatal Fire Raises Concern about Antifreeze in Condominium Sprinklers

Automatic fire sprinkler systems with antifreeze solutions have had more than 60 years of successful use in residential and commercial buildings. However, a grease fire in a kitchen where a sprinkler system deployed with a reported 71.2 percent concentration of antifreeze raised concerns about the safety risk of antifreeze solutions in residential sprinkler systems.

Recently, the National Fire Protection Association (NFPA) issued a safety alert recommending that residential fire sprinkler systems containing antifreeze should be drained and the antifreeze replaced with water. While NFPA emphasizes that residential sprinklers are and remain reliable and effective, the fire raised concerns surrounding the combustibility of antifreeze solutions in residential sprinkler systems.

Continued Use of Fire Sprinklers

Residential buildings are the place where most fire fatalities occur, and when sprinklers are present, the risk of dying in a fire decreases by 83 percent. According to James M. Shannon, NFPA president, "Fire sprinklers are one of the most effective ways to save lives and property from fire. Until

we can provide further information based on additional research that is currently underway, we are urging the public to continue the use of sprinklers but to follow our interim safety guidelines by removing antifreeze if it is in their sprinkler systems."

Investigation and Key Findings

Following the grease fire incident, NFPA initiated a research project with the Fire Protection Research Foundation and an initial set of fire tests were also conducted.

Based on testing conducted, 70/30 percent glycerin and 60/40 percent propylene glycol antifreeze solutions may provide an unacceptable risk of harm to occupants in certain types of fire scenarios—in particular, kitchen grease fires. There were successful tests where kitchen grease fires were extinguished or contained with a 50/50 percent glycerin solution, but the NFPA feels there should be additional testing to more fully understand if there is a risk associated with the 50/50 percent glycerin solution.

Interim Guidance

Because fire sprinklers are extremely effective fire protection devices,

significantly reducing deaths, injuries, and property loss from fire, these systems should not be disconnected, says Shannon. "As soon as more information is available, we will update the public."

Here is the interim guidance on residential sprinklers provided by the NFPA based on current information. NFPA expects to provide additional guidance on antifreeze solutions before the cold weather months:

- If you have, or are responsible for, a residential occupancy with a fire sprinkler system, contact a sprinkler contractor to check and see if there is antifreeze in the system.
- If there is antifreeze in the system, as an interim measure, drain the system and replace it with water only. Problems associated with freezing of sprinkler pipes can be mitigated by alternative measures such as insulation.
- If you are putting in a new residential sprinkler system, design and install a system that does not require antifreeze.

Insider Source

James M. Shannon: President, National Fire Protection Association, 1 Batterymarch Park, Quincy, MA 02169; www.nfpa.org.

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