

The COOPERATOR

The Co-op & Condo Monthly

The Criminal Liability Factor: A New Fear for Co-op Board Members

BY DIANA MOSHER

A Brooklyn criminal court judge sent shockwaves through the co-op and condo community when she rules that three board members at Premier House, a 185-unit co-op in Brooklyn, could face criminal charges in the death of a boy who fell out of a window that should have been protected by window guards. Although the building's superintendent accepted a plea bargain and the charges have been dropped against the board members, those who serve on boards throughout the region, as well as their managing agents, attorneys, and other professionals, are very concerned about the possibility of boards facing criminal charges and some predict long-term repercussions.

A Health Department Inspection

The window-guard law requires that the owner, lessee, agent or other person who manages or controls and multiple dwelling install approved window guards in any apartment inhabited by a child ten years old or younger. The charges against Premier House came as a result of a New York City Health Department Inspection—following the death of the child—in which Premier House was found to have improperly installed and/or maintained window guards in nine apartments. Two years

after the inspection, the Health Department filed a criminal information (similar to an indictment) against not only the co-op corporation, but also the management company and its agents as well as three of the co-op's officers.



"That's the last time I volunteer for anything!"

All were charged with violating the city's window guard law. This misdemeanor carries a one-year jail sentence and fines of up to \$5,000 for each violation. The window guard law holds those in control of a building responsible for carrying out the requirements. The city's policy for filing a complaint is to name all people and companies listed on the building's annual Multiple Dwelling Registration statement filed with the city.

The Premier House case is not the first of its kind. There have been numerous similar cases in which co-op boards were charged with window-guard violations, and paid the fines. In one case a child survived a fall out of a window from the apartment of the board president, who had requested no window guards. The co-op paid a fine of \$15,000. Rather than accepting a guilty plea and paying a fine, the board members at Premier House allowed the case to move into the realm of criminal charges. These charges have been subsequently dropped, and the super has agreed to a violation, which is not a crime. He will pay a fine of approximately \$2,000. The co-op corporation has pled guilty in a criminal misdemeanor and will pay a fine of \$18,000.

Avoiding Legal Liability

This decision is an ominous reminder that board membership is more than an honorary position. Individual co-op and condo board members are, by virtue of their official capacity, ultimately accountable. It is therefore incumbent upon board members to assume direct, active and personal oversight responsibility with respect to each aspect of the managing agent's performance.

(Condensed from original hardcopy 11/97)