

## THE 2006 ATTORNEY SURVEY



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**The potential is great** for predicaments and legal challenges to arise when a building undertakes a capital improvement or construction project. From dishonest contractors and irate tenants to poorly renovated façades and cut gas lines, boards can have their hands full.

For our eleventh annual survey, we asked:

“What was the greatest, most interesting, most expensive, or most difficult dilemma/legal challenge that one of your co-op / condo clients faced over the past year that was caused by a capital improvement/construction project or contract?”

Twenty-nine attorneys from New York’s top law firms shared their wisdom and expertise, offering experiences that you may have encountered yourself or may (but hopefully won’t) run into in the future. Read on, for an ounce of prevention is worth tens of thousands of dollars in litigation...and many wasted hours.

The responses follow.

# HABITAT

Adam Leitman Bailey

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Newly constructed condominium buildings suffering from serious structural and nonstructural defects have infected my firm's litigation caseload. Because of a total disregard of New York City's fire and safety requirements, and the failure to provide insulation, a leak-free roof, a functioning HVAC system, and hundreds of other repairs, one of these buildings may need to be vacated and rebuilt. Three other cases – one condominium needing an entirely new sewer system, another needing a new roof, and still another a new ceiling (the one promised in the offering plan is significantly different from the ceiling delivered) – have made the premises difficult to occupy and/or greatly reduced the value of the units. Somehow, these buildings passed government inspections and the attorney general's due diligence process. Aggressive litigation has led to a favorable court victory in one case, a settlement in another, and lengthy discussions in a third. However, litigation is expensive. Many of these owners have their only investment and life savings on the line. Although fraudulent and reckless construction is extremely difficult to foresee, hiring a competent engineer to inspect the entire building before a closing may assist in recognizing potential problems. Second, negotiating a provision in the sale contract that permits the cancellation or delay of the closing date until the building has been rebuilt or repaired may prevent litigation and motivate the builder to remedy problems.