NEW YORK LABOR LAW

New York State's Labor Law (NYLL) represents an onerous burden for property owners and managing agents in New York, making them financially liable for virtually any work-related accident on their premises. So as building owners and managing agents routinely hire contractors to do work on their properties, they routinely face huge liability exposures. To insulate themselves from high-value lawsuits brought by injured workers, building owners and managing agents should enter into hold harmless *and* indemnification agreements*, backed up by the contractors' own insurance, which transfers liability for such injuries from themselves to the contractors and subcontractors whose negligence caused the injuries. Failure to do so can cost building owners millions of dollars.*

THREE KEY SECTIONS

1 **Section 200** requires building owners and managing agents to provide workers with safe places to work.

2 **Section 241(6)** makes building owners strictly and vicariously liable for worker injuries at their buildings if improper or inadequate safety equipment causes a worker's injury. Damages from resulting lawsuits can be reduced or eliminated if building owners can show that the injured worker was partially or fully responsible for his injuries.

3 **Section 240(1)**, commonly known as the *Scaffold Law*, makes the building owners as well as their contractors and project managers *"absolutely liable"* for all gravity-related construction accidents at their buildings, subject to a few hard-to-prove exceptions. The building owner is liable even if it did not hire the injured worker or his employer, even if it did not know that the worker or his employer was working at the building, and even if the worker is partially or fully responsible for his own injuries. These lawsuits often result in summary judgment for the plaintiff on the issue of liability, leaving only the damages portion of the lawsuit to be tried against the building owner and property manager. Because these lawsuits often present serious injuries, verdicts in such cases can be quite high.

A good safety record will not protect building owners, managing agents and construction contractors from liability under *any of these statutes*. In addition, litigation can become a part of your loss history, which may drive up your insurance rates. *Don't let this happen to you.*

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RECOMMENDED STEPS TO PROTECT YOUR BUILDING UNDER THESE STATUTES

1. KNOW YOUR CONTRACTOR

- *Verify* the contractor is properly licensed, insured and experienced in the type of work it is being hired to perform.
- *Verify* whether the general contractor uses subcontractors. If the general contractor uses subcontractors, find out how it screens its subcontractors and confirm with your contractors that its subcontractors are properly insured.
- *Verify* there are written agreements in place between the building owner and its general contractor, as well as between the general contractor and its subcontractors, with proper indemnification and insurance-procurement clauses. The contractor and subcontractors should name the building owner and the managing agent as additional insureds on their liability policies on a *primary and non-contributory basis*.
- *Verify* before entering into contracts with your contractors that the contracts make the contractors responsible for worksite safety and for having a safety-and-employee training program in place.
- *Verify* contractors have obtained all necessary permits before they begin their work.
- *Verify* your contractors and their subcontractors do not have a history of Occupational Safety and Health Administration Law violations.

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777 Westchester Ave,
Suite 206,
White Plains, NY 10604
Phone (914) 694-8550
Fax (914) 694-8552

2. USE RISK TRANSFER TACTICS

Using written contracts to transfer the risk of liability and damages from you to your contractors can protect you from claims of serious injury and potentially large damage awards. The following clauses have proven successful:

Hold Harmless and Indemnification Agreements

Every contract between you and your general contractors, as well every contract between your general contractors and their subcontractors, must contain a clause requiring the general contractors and their subcontractors to "defend," "indemnify," and "hold harmless" the building owner and the managing agent from liability, loss or other damages that arise because of any of the contractors' negligence. It is important that this agreement be properly worded, dated and executed before the work begins.

Insurance Procurement Requirement

Contractors and their subcontractors must agree to add building owners and their managing agents as additional insureds to their insurance policies for any liability arising out of their work. The limits of these policies should be at least $1 million for a primary commercial general liability (CGL) policy and $5 million for an umbrella policy. Also, the additional insured coverage should be written on a *"primary and non-contributory basis."*

Insurance Requirements and Certificates of Insurance

While it is common practice to request a Certificate of Insurance (COI) from contractors and subcontractors, the certificate alone does not confer or prove the existence of additional-insured coverage on your behalf. A proven "best practice" is to require your contractors to submit a copy of their primary liability and umbrella policies for review by an insurance professional. All COI's and insurance policies must be provided to the building owner or managing agent before the work begins. The COI and insurance policies should also show that the building owner and managing agent are named on the primary and umbrella policies as additional insureds.

SPECIAL CONSIDERATIONS FOR ...

COMMERCIAL PROPERTY OWNERS

NYLL's unfavorable liability provisions can adversely affect the owners of commercial buildings when tenants hire contractors to perform construction, alteration, repair or maintenance in their units, and those tenants are inadequately insured or indemnified by the contractors they hire.

As part of their commercial leases with tenants, building owners should use the same strategies suggested above for the transfer of risk from themselves to their contractors:

- Obtain copies of the CGL and umbrella policies and COI's from all commercial tenants and their contractors.
- Set up a notification system alerting you to renewal dates for these policies.
- Make sure tenants have sufficient CGL and umbrella policy limits.
- Require tenants and their contractors to name the building owner and the managing agent as additional insureds on their CGL policies on a *primary and non-contributory basis.*
- Require tenants to sign agreements indemnifying and holding the building owner and managing agent harmless for liability arising out any of the tenants' work in their units.
- Review your leases with an attorney to ensure these clauses have been included in the leases.

RESIDENTIAL CO-OPS

To protect the board, the shareholders and the co-op corporation, the same risk-transfer strategies mentioned above should be in place whenever a shareholder in a co-op has work done in his unit. This work ought to be done under an *Alteration Agreement*, which should require the shareholder's contractors to indemnify and hold harmless the shareholder, the co-op and the managing agent, and to name these entities as additional insureds on the contractors' general-liability policies on a *"primary and non-contributory" basis.*

The *Alteration Agreement* should also require the shareholder to indemnify the co-op and the managing agent and to have proper liability insurance in place to cover these exposures. The co-op must mandate, preferably in the lease agreement, that contractors cannot begin work in a unit until the shareholder submits to the co-op and the co-op approves all of these construction contracts and insurance policies.

Insurance companies insuring contractors have come up with broad exclusions and limitations designed to protect them from having to defend and indemnify you as additional insureds under their policies. This is very unfair to the co-op.

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777 Westchester Avenue,
Suite 206
White Plains, New York, 10604
Telephone: 914-694-8550