

**MANAGEMENT YOU CAN TRUST**

Click To Learn More...

[www.metpacproperties.com](http://www.metpacproperties.com)

Honesty.  
Integrity.  
Professionalism.

[Home](#) | [Q&A](#) | [Q&A: Irresponsible Board President](#)  
[Home](#) | [2009](#) | [2009 Oct](#) | [Q&A: Irresponsible Board President](#)

## Q&A: Irresponsible Board President

By Martin Kera

**Q** The board of our HDFC co-op is not fulfilling the needs of the building or maintaining its upkeep. The building structure is deteriorating, and the intercom system has not been working for over a year. Since the death of our last board president (who was allegedly stealing money), a new president has taken over, and conditions have gotten even worse. The new president refuses to fix up the building or hire a super or managing agent. The building's appearance is now dreadful, and residents with small children are concerned for their safety after syringe needles have been found in the hallways. What can we as residents do to turn things around and take back our building?

—Bronx Shareholder



**A** “The writer has problems that are common to all co-ops, say Martin S. Kera, a property manager with Bren Management Corp. and a principal attorney with the Manhattan-based law offices of Kera & Graubard. The possible solutions are as follows.

**Corporate—**Co-ops are a corporation. Co-ops have bylaws that specify how the co-op is to be run. The bylaws state that the shareholders elect a board of directors, specify how many directors are to be elected and state that there must be an annual meeting of shareholders. Your co-op should have such a document. The board of directors manages the corporation's affairs, including building condition. The board of directors is usually authorized to elect the officers. If not, the shareholders are authorized to elect the officers. The bylaws also provide for special meetings of shareholders. One approach might be to organize the other shareholders, demand that an annual meeting be scheduled or call a special meeting for the express purpose of electing a new board of directors and discussing building maintenance issues. The shareholders would then elect a new board of directors who would elect new officers. This approach would enable you to elect a new president with your views.

**Building Standards—**the board of directors of a co-op is given wide discretion by the law on how it runs the building. This is known as the business judgment rule. The courts do not want to be involved in managing a building or second guessing the board of directors. This means that the president could contend that the board of directors is governing the co-op and maintaining the building in accordance with the discretion granted by the business judgment rule. On the other hand, there are certain minimum housing standards required by the Multiple Dwelling Law and the Housing Maintenance Code of New York City. There is also a concept under the New York Real Property Law known as the warranty of habitability.

“Co-ops are considered the same as rental buildings for purposes of the warranty of habitability. The shareholder has a proprietary lease or equivalent occupancy agreement for a subsidized project. A tenant can stop paying the rent if the landlord, here the board of directors or the president, does not properly maintain the building. If the co-op started a non-payment proceeding against the tenant-shareholder in housing court, the tenant-shareholder could defend by alleging a breach of the warranty of habitability. The court would then order an inspection by HPD. If the inspection showed that repairs were needed in the building or the tenant-shareholder's apartment, the court could do one or more of the following: order the landlord to make repairs; abate the rent by stating that the tenant is entitled to a rent reduction of 10 percent or more of the monthly rent; or order emergency repairs. The court will order repair of the intercom or installation of a new lock on the front door of the building. Typically these proceedings are settled by court ordered stipulation with the tenant agreeing to pay the back rent according to a schedule and the landlord agreeing to make repairs set forth in the stipulation. Money for repairs is often a major concern. If the building has no reserve fund, the money has to be raised by assessment or maintenance increase. HDFC co-ops are often co-ops where the city sells the apartments to the shareholders at a bargain price. Money is a real issue in these buildings.

### [Bargold Storage Systems](#)

Sponsor Ad

Bargold custom builds and installs your Tenant Storage System at No Cost To You while remitting 25% of the gross monthly rental income. Bargold handles all administration services and maintenance.

41-41 38th St., Long Island City NY 718-247-7000 X 111  
[www.bargoldstorage.net](http://www.bargoldstorage.net)

**HP Proceeding—**another alternative, that can also be done in connection with non-payment of rent, is to start a tenant HP Proceeding in housing court. There is a clerk known as the HP clerk who will give the tenant the forms necessary to start the proceeding. The petition will state the repairs

that are needed. The court will order an inspection and attorneys on the New York City HPD Code Enforcement staff will represent the tenant in court at no charge. The HPD attorney will secure an order directing the landlord to make specified repairs that are needed according to the inspection.

Legal Counsel—it is common for the tenants to form a tenants association and hire an attorney to represent their interests. The attorney can coordinate a rent strike or guide the shareholders through the process of holding a meeting or electing a new board of directors. Money is a factor here.

Political Action—most New York City Council members and state representatives have someone on their staff who acts as a community liaison and is familiar with the housing and building maintenance laws. Contact the local office of your council member or state representative. These people will guide you through the process at no charge.

Meet with the Agency – there is a government agency that issued the mortgage or bonds connected with your development. You can file a complaint and hopefully they will meet with you and help to resolve your complaints. They do not like to see their assets deteriorate. I have successfully used this strategy with the New York City Housing Development Corporation (HDC).”

### Comments

**Ms. Moore**

I am a renter in an HDFC in Manhattan. I believe that the HFDC Board is illegal. It is incomplete. There is only a President and a Treasurer. No secretary or Vice President. I also want to know is if a Board Member can also be the super of the same building. This seems like a conflict to me. Please help

Write your comment

Your name (optional):

Your Comment (required):

Verification (required): **ff et 7z**

Please copy the characters from the image above into the text field below. Doing this helps us prevent automated submissions.

Please allow up to 1 business day for your comment to be approved.

#### Newspapers

- [The Cooperator](#) (NY)
- [The New Jersey Cooperator](#)
- [New England Condominium](#)
- [The Chicagoland Cooperator](#)
- [The South Florida Cooperator](#)
- [The Western & Central Florida Cooperator](#)

#### Expos

- [The Cooperator's Co-op, Condo & Apt. Expo](#)
- [The New Jersey Cooperator's Condo, HOA, Co-op & Apt. Expo](#)
- [New England Condominium's Condo & Apt. Expo](#)
- [The Chicagoland Condo, HOA, Co-op & Apt. Expo](#)
- [The South Florida Condo, HOA, Co-op & Apt. Expo](#)
- [The Western & Central Florida Cooperator's Condo, HOA & Co-op Expo](#)

Use of this site is subject to the terms of [user agreement](#) ©2014 Yale Robbins, Inc. [Office Space in Manhattan](#) [Syndicate](#) 