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Amenities are a big draw in co-ops and condos, but in some buildings they are enjoyed by only a select few. This situation can create problems, and you're dealing with one, correct?

I represent a 60-unit condominium on the water with 20 boat slips that only certain unit-owners have access to. What's interesting here is that they have a proprietary lease – which is typical for a co-op but not a condo – that governs the relationship between the unit-owner and the boat slip.

What's the problem?

The boat slips are considered common elements, and Hurricane Sandy and other weather events have damaged the breakwater protecting the slips. It was in danger of falling apart and posed a serious safety hazard.

The owners have to repair the breakwater, which is going to cost over \$100,000, and there was a lot of fighting about how that would be paid for.

Which is where you came in.

We reviewed their documents and found that the boat slips are a common element. The condo's declaration provides that repairs to common elements costing over \$2,000 require approval from two-thirds of the unit-owners and 75 percent of the lenders who have made loans to the condominium units, which is an impossibly high bar.

It was time to go to Plan B.

Correct. We looked at the proprietary lease, which provides that the boat-slip owners are also responsible for repairs and maintenance to the slips as well. The board felt it would be



burdensome for those 20 owners to cover all the costs themselves, so they were looking for a way to assess the whole condominium.

And the non-boat owners weren't happy about that.

Much to their displeasure, we found out that the building's reserve funds could be utilized to pay for these repairs and that the condominium had the right to assess all unit-owners to replenish the reserves without having to get the supermajority they would have needed if they were repairing only the boat slips and not the breakwater as well.

So, the board was able to do a workaround.

The problem is resolved, but with a lot of unhappiness. I attended an informational meeting one night to explain to everyone what the board was doing. It probably went on for three hours, and you could feel the tension and hostility in the room. Our recommendation to the board was to do a comprehensive review of the proprietary lease for the boat slips and the condo's declaration and make changes so that going forward, things are more equitable and that those who have the boat slips should bear the burden for their repairs.

Did that settle everything?

There are still issues about who pays for insurance for the boat slips, so we're looking at those documents as well with the idea of revising them. That will require a vote of the majority of unit-owners. So we're not quite done yet. ■

