

By Tom Soter

## The State Is on the Prowl

### To avoid fines and audits, boards should treat independent contractors as employees

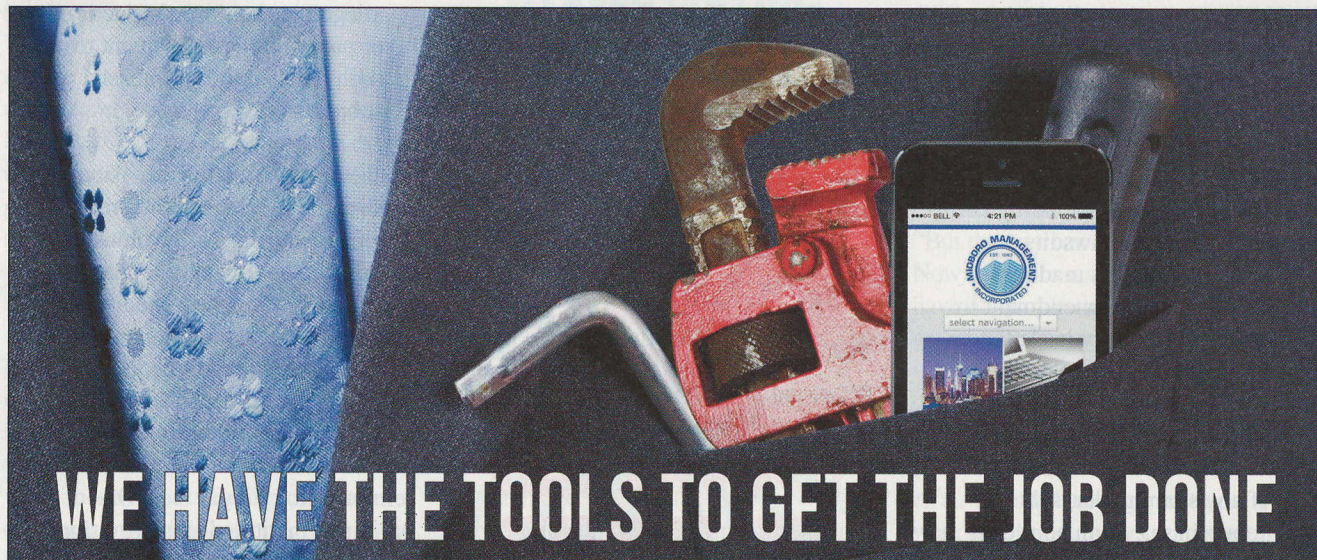
**T**he state may be checking your books. And if your co-op or condo comes up short, you could end up paying back taxes – and thousands of dollars in fines as well. Although some accountants and insurance brokers say they haven't seen anything unusual, others say the New York State Department of Labor is on the prowl.

"After I saw the same auditor at my buildings for the third time in six

months," recalls Stuart Halper, vice president and a principal at Impact Management, "I said, 'So are we targeting this type of business now?' He said, 'I don't know.' But it just seemed to be too coincidental that I hadn't had any of these audits in 20 years of managing all of these buildings, and all of a sudden, we're getting these audits. There's nothing official. It just seems as though, they might be targeting the industry."

The issue that trips up many buildings, especially among smaller self-managed properties, is worker's compensation for independent contractors. Except they're not really independent contractors; they're employees of the building.

What often happens is that self-managed buildings will have a part-time worker who takes out the garbage and cleans the halls. To save on payroll taxes, the board pays him as



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an independent contractor. "They call them independent contractors, and give them 1099s," says Barbara Strauss, a vice president at York International, an insurance brokerage. "But they're really supers from nearby buildings, and they don't have their own insurance."

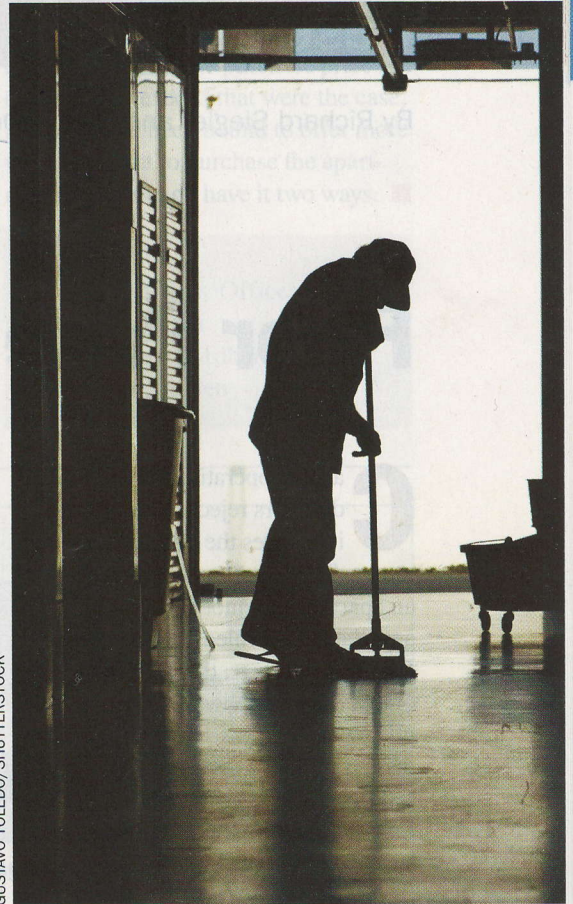
This can come back to bite a board if the "contractor" has an accident on the job. "He says he's independent up until the point he gets hurt," says CPA Jay Menachem. "Then, of course, he's suddenly an employee. He's going to sue you as an employee."

That brings him to the attention of the state. "He's now held to be an employee, and he doesn't have insurance," says Halper. "Then you're going to catch a situation from the New York State Insurance Department and the Workers' Compensation Board for not having adequate insurance." If it is decided that the worker should be on the payroll, then you have to pay all his back taxes, including payroll and penalties.

"They're going to come after you with all kinds of ridiculous fines," says Halper. "One of my properties got hit with a fine for \$65,000." Adds Strauss: "The penalties will keep accruing until you pay. It's \$200 every 10 days."

Halper suggests that, at a minimum, even if you're not paying the worker as a salaried employee, you should have him covered under a worker's compensation and disability policy, at a cost of about \$1,000 a year. "You could pay a lot more than that in penalties," says Halper.

"That's why, if there's a question about whether somebody's an independent contractor or an employee, I recommend they be listed as an employee," says Menachem. "In the event boards don't want to do that, I tell them they should at least have workers' compensation and disability insurance coverage in place. Without that, you have a problem."



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