Contract changes could undermine proposed elevator-repair legislation

As property management professionals may know, Bill 109, the Reliable Elevators Act, passed its second reading, meaning that the proposed legislation is moving closer to becoming law.

BY RAY ELEID

The act states that in most buildings, if an elevator breaks down it must be repaired within 14 days after the day the contractor first learns of the problem. This is unless the regulations allow otherwise, a provision likely reserved for fire, flood or other acts of God.

If the elevator company fails to repair the elevator within the proposed time frame, then a financial penalty can be imposed on the offending contractor.

What MPP Han Dong, who introduced the act, may not know is that the elevator industry is moving away from all-inclusive maintenance agreements. These agreements cover all work not related to force majeure. Instead, the industry is moving toward contracts focusing on minor parts and expert labour maintenance. This is a significant issue that has the potential to undermine the act and turn the table on elevator owners and managers.

Today, for the most part, when building owners and managers sign an elevator service agreement, they enter into an all-inclusive agreement with the elevator contractor. This agreement covers callbacks (elevator breakdowns), maintenance repairs, maintenance tasks required to maintain the equipment under the code, as well as major parts such as ropes, sheaves, bearings, motors, etc. This is provided the failure did not occur under conditions beyond the elevator company's control, such as flood, fire, or any act of God.

But some contractors are excluding all or most major parts from their agreements. They don't explicitly indicate in their agreement that the part is not excluded, they just don't mention the part in the inclusion list. So, the typical property manager may not know what parts are included or excluded, and sign the agreement as they have done many times before. Only this time, they may be surprised by what happens when the major parts require replacement.

If the act becomes law, elevator consultants and industry insiders strongly believe that elevator contractors will unload the cost of the major elevator parts onto building owners and managers. Long-lead repair items, such as obsolete parts, ropes, motors, drives and valves, are likely to be added to the list of items not covered under the contracts, or that the elevator contractor cannot be fined for (or, as previously stated, they will just not be mentioned at all).

Elevator consultants and industry insiders also believe that contractors will shift the blame to the elevator owner and the fines will be levied on the building owner and managers, not the contractors.

When the long-lead major parts are not part of the elevator maintenance program, then the

contractor is not responsible for it. How can a company be fined if it is not responsible for the product? And since the material is not part of the contract and purchasing the parts will require lead times and payment, the contractor cannot be blamed or levied with the responsibility.

Most responsible business entities, such condos, require multiple proposals for costs exceeding a certain amount. Anyone who is familiar with the elevator business can appreciate the cost of parts and labour is not cheap. The elevator trade is one of the top three highest paid trades and the barriers to entry are high. Therefore, this act may preclude the building owner from performing due diligence, driving up prices and the cost for failure. That's because the owner is left with one of two options: price check and face hefty fines, or pay now and get the work done as soon as possible.

What if the act calls for fully inclusive maintenance agreements and requires contracts to include major parts? If an elevator contractor that installs proprietary equipment refuses to sign the agreement, the result is no elevator maintenance. Proprietary elevators cannot function without the support of the elevator industry and the original equipment manufacturers. There is also the issue of obsolescence, which could force the building owners and managers to modernize their elevator equipment, as elevator contractors will not agree to fully inclusive contracts on outdated equipment.

Another unintended outcome of this act could be safety. The "penalty clock" starts after the day the contractor first learns of the problem. So in some cases the property owner or manager could demand to delay the shutdown until the part is ordered. This could also happen if the elevator contractor responsible for the part does not have access to the part and decides to order the part before shutting the elevators down. The unintended consequence of such a request is the possibility of elevators operating in an unsafe or unreliable condition in violation of other, safety regulations.

What can building owners and managers do?

1. Install truly non-proprietary third-party controllers;
2. Sign contracts designed by elevator consultants or owner advocates — and know what is being signed;
3. Ensure annual inspections are being performed on the elevators and the contractor is recording the deficiencies;
4. Have a plan to order long-lead items;
5. Modernize elevators older than 25 years; and
6. Ensure that, on a monthly basis, a building's elevators are getting a sufficient number of maintenance hours. (The recommendation for roped elevators is two to four hours; for hydraulic elevators, it's one to two hours.) □

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