



Top Ten Ways to Avoid Getting Sued

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The volunteers who are willing to serve on the Board of Directors on community associations undertake a difficult and often times thankless job. The following are some steps directors may consider to guide them in fulfilling their duties.

1. Do not become a director unless you have and are willing to spend the time required to do the job.

Directors are often running multi-million dollar organizations. Boards are tasked with running the executive, legislative and judicial branches. To do a good job to fulfill the many demands on Boards takes time and commitment. If you do not have the time or are unwilling to devote the time to fulfill the foregoing duties, you should not agree to serve on the Board.

2. Be involved in the operation of the Association and treat its operation as the operation of a business.

It is important for directors to remember that each community association is a business and should be run as a business. The budget of community associations often exceeds a million dollars. For a business to operate efficiently, it must make prudent financial decisions.

3. Be familiar with the project documents and understand the Association's responsibilities, authority and limitations.

Although reading the project's Declaration, Bylaws and House Rules is boring and often a cure for insomnia, it is something that all directors should do.

Example: A common problem arises when a Board adopts a House Rule, which has no basis in either the Declaration or Bylaws. In one case, a Board adopted a House Rule that prohibited rentals for less than 6 months. The Bylaws and Declaration were silent on the length that owners could rent their units. An owner challenged the validity of the House Rule and prevailed.

4. When making decisions, carefully review the information provided before proceeding. Do not blindly accept information provided. If necessary, the Board should do independent investigations.

At each Board meeting, the Board is tasked with making a myriad of decisions. If there is any doubt as to the accuracy of the information provided, the Board should ask to see how the information was gathered and if necessary, independently confirm the information provided.

5. When appropriate, seek the advice of professionals.

We live in a highly technical society that evolves rapidly. It is virtually impossible for any director to be competent in the engineering, architectural or legal fields. When appropriate, the Board should consult experts before proceeding on making any decisions.

Example: One property had experienced numerous problems with the roofs in their project. One of the Board members, with no experience in roofing, went on the internet and extracted specifications he thought would be appropriate for the job and used that to obtain bids from contractors. The proper way of proceeding was

to have a roofing consultant inspect the existing roofing problems and to then prepare the specifications and to administer the bidding process. When a Board attempts to "save" the Association money by venturing into areas they are not equipped to handle, they expose themselves to personal liability.

6. Decisions should be based on what is in the best interest of the Association, not what is "popular," nor what is best for you.

In making any decisions, Boards must put aside personal interests and do what is in the best interest of the Association. This will often require Boards to make "unpopular" decisions, such as increasing the maintenance fees or terminating the beloved resident manager, who is no longer fulfilling his responsibilities. Many Boards are reluctant to increase maintenance fees, because the directors know that it will be unpopular with the owners. When insurance premiums, fuel costs and labor costs are all escalating, Boards have no choice but to increase maintenance fees in order to have an appropriate budget. It is far better to have some owners unhappy with a reasonable maintenance fee increase than to have most owners unhappy with an under funded budget, which exposes them to special assessments.

7. Select and then support good management.

Selecting good management to assist the Board in fulfilling all of its obligations in operating the Association is a crucial step. When interviewing management companies, the Board should have a list of questions for them before they commence the interview process and each candidate should be asked the same questions.

Secondly, after the Board has selected good management, they should support them. The Board and the managing agent should work as a team to operate the Association as efficiently and economically as possible.

8. Do not accept nor expect special treatment.

It is important for directors to remember that they were elected, not anointed. Directors should not accept any special treatment from the Association's staff, and in particular, should not accept any gifts from contractors the Association has a business relationship with.

9. Avoid even the appearance of impropriety.

Directors should hold themselves to high standards of conduct. They should set the example for the other members of the Association to follow. If a director has any potential conflict on any issue, he should fully disclose the potential conflict and refrain from participating on any Board action on the issue.

10. Do not serve as a director unless the project documents have adequate indemnification language and Directors' and Officers' liability coverage and has it in place.

Directors serve as volunteers. In order to attract the best qualified owners to serve as directors, it is important that the project documents provide adequate protection for them. Secondly, it is important that the Association has a good Directors' and Officers' liability policy in place. ☺