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Legal Counsel: The When and Why of Engaging an Attorney for Association Business

Boards across the country are once again asking essential questions about COVID precautions, opening amenities, and whether the association has protection against claims relating to the pandemic. As many associations in northern states prepare to open their pools (and with many in the south already open), boards must seek the proper counsel of the association's attorney to understand the ongoing threats of liability and any precautions recommended given the current state of the pandemic.



In discussing this matter again recently, the realization became clear that many boards don't always know when and why they should reach out to legal counsel for guidance. The following is a brief summarization of the most common events which require the involvement of the association's attorney.

Associations and the board of directors that govern them are formed to benefit residents in planned communities (condominiums, townhomes, villas, etc.) so that a community can function in peace and harmony. Having an association attorney well-versed in community association law and whom you can trust can take a tremendous burden off the board when challenges arise that are not easily solved. The following are four examples in which engaging an association attorney can make a difference.

Helping to prepare and review governing documents

Of primary importance for an association to properly function is the need to have governing documents – these include Covenants, Conditions, Restrictions (CC&Rs), Declarations and

By-Laws, Rules and Regulations. These documents are crucial in maintaining peace and order in any association. A board may have difficulty preparing or amending these governing documents without adequate knowledge of community association and housing laws. An association attorney can help the board to prepare and review these documents.

Resolving community disputes

While governing documents should be clear and comprehensive, they can often be lengthy and detailed, making interpretation difficult. The association is legally bound by these documents, which provide guidance on handling difficult situations such as interpreting owner responsibility vs. association responsibilities. When these situations arise, a board may not know how to manage them. Consulting an association attorney can help guide the board in the enforcement of the governing documents. With proper legal advice, the board will be in a better position to resolve community-related disputes.

Interpreting fiduciary responsibilities of the board

Governing documents also detail the fiduciary responsibilities of the board. Suppose the board or a board member is unfairly or incorrectly challenged regarding their duties. In that case, an association attorney can weigh in with their expert opinion and knowledge of best practices to limit potential liability.

When legal action threatens the association

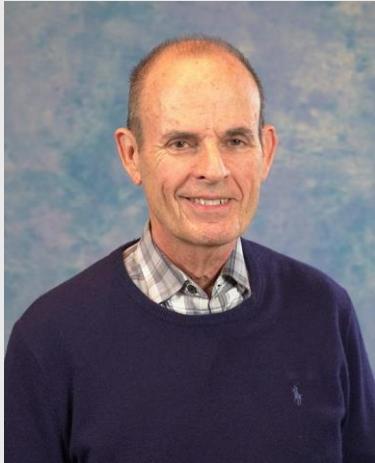
It is also essential for the association to have protection and legal representation if a homeowner seeks legal action against the association. An association attorney can act as a legal representative for the association when dealing with disputes between homeowners or negligent vendors or contractors. Association problems and lawsuits are unfortunate but something that the board should always anticipate in advance. When conflicts arise, an association attorney can act as a buffer between the board and its residents or service providers and help reduce tensions within the community and homeowners.

When collections efforts have stalled

An association attorney can assist with various collection efforts after the assessment management policy's actions are exhausted. If friendly reminders, late notices, and lien placement have not caused a homeowner to correct their delinquency status, engaging the attorney to send a demand letter and discuss other available actions may be just what is needed. In some cases, dependent upon the governing documents and state laws, the cost of collections may be billed back to the homeowner. This means that the attorney's fees to pursue aggressive collections will not always be borne solely by the association.

The association attorney can be a responsive partner who understands your associations' needs and can work with you to create practical, cost-effective solutions to your legal challenges. The cost to retain an association attorney to protect the organization can be a wise investment and ultimately save the association money and unnecessary stress. Sentry Management encourages each community to maintain a close relationship with a trusted attorney specializing in planned community management.

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