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A Guide To What A Manager Should and Should Not Say At A Board Meeting

HindmanSanchez P.C. *Attorneys at Law • Denver & Fort Collins*

5610 Ward Road., Suite 300, Arvada, Colorado 80002-1310 **Tel** 303.432.9999 **Free** 800.809.5242 **Fax** 303.432.0999 www.hindmansanchez.com



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Introduction

The starting point of understanding what an association manager should and should not say at a board meeting is to know what role the manager plays in the community association. Thus, the threshold question is: why is the manager at the board meeting?

One way to answer this question is to identify what the manager is not. The manager is not:

- A legal advisor—the association has (or should have) an attorney.
- An accountant—the association has (or should have) an independent certified public accountant.
- A member of the board—the members of the association did not elect the manager to serve as a director. Rather, the manager fulfills the following functions:
- The administrative or operational arm of the board—to carry out the directives of the board.
- A policy advisor to the board—to give advice and recommendations to the board as it deliberates on matters.

The “Should List” for Association Managers

1. Offer input on the implementation of board decisions. This is one of the most important aspects of the manager’s function. Speak up on the “mechanics” of getting the job done so the board understands what is involved, both in terms of time and cost.
2. Offer the wealth and wisdom of your professional experience (but observe the caveats listed below in the “Shouldn’t List”). The manager is hired because of his or her expertise, and it is a disservice to allow the board to flounder with issues you have previously experienced. Offer your professional managerial opinion when the board seeks it. Of course, be certain of the accuracy of your advice. There may be occasions when you should document your advice in writing to avoid “selective recall” problems in the future.
3. Go on record if an important decision is being made that you believe is illegal or unethical. While you need to consider the points made in the “Shouldn’t List” below, letting the board know it has crossed the line is not only the manager’s job, but may also avoid future civil and even criminal liability. Depending upon the circumstances, going “on record” may include a notation in the minutes, the manager’s report, or simply speaking up at the meeting.
4. Speak freely and thoroughly when the board is meeting in closed session. It is vital to good decision-making that the board have a complete understanding of all the relevant facts. If another is presenting the information and you know that key elements are omitted, you have a duty to supplement the presentation. For your own protection, know that it is not a defense to claim that you were not the person who presented the information to the board. Again, however, be mindful of the limitations presented in the “Shouldn’t List.”

5. Encourage education of the board. Managers should not only offer their experience and expertise, but should also serve as an educational resource by suggesting seminars, workshops, publications and other educational opportunities to board members, and by encouraging associations to join the Community Associations Institute (CAI). By providing your boards with the proper tools to do their jobs, you will gain increased respect and credibility with your clients. Additionally, the association will benefit, including better decision-making by board members who enjoy their service to the community because they better understand the issues.
6. Protect the board from engaging in discussions that lead to personality conflicts and prejudices by cautioning against any discussion of characteristics or stereotypes of individuals or classes of people. As discussed below, discrimination and civil rights are hot beds for litigation and the easiest thing for a disappointed homeowner, vendor or engineer to latch onto is "The board conspired against me because I am ." If the conversation in a board meeting turns to discussing a situation in terms of a person's age, race, gender, religious beliefs, disability status or the like, you should speak out against it immediately.
7. Protect the manager's "jurisdiction" by cautioning the board against "micromanaging." The board's role is to set policies; the manager's role is to implement policies. While the manager is, of course, required to report on the status of projects initiated by the board, it's important to keep everyone focused on their own role and to keep people from getting involved in issues or problems that are outside the scope of their responsibilities. This is a delicate balance, especially when the board creates small committees to work on specific tasks.

The "Shouldn't List" for Association Managers

1. Avoid offering legal advice even if the board requests it. If there is a legal issue or concern, the manager is obligated to speak up and identify that concern to the board, but you should not offer a legal opinion. Rather, the manager should make a recommendation that the question be referred to the association's attorney for legal review and recommendation. This is done for the protection of both the board and manager. Granted, it's sometimes a fine line between giving legal advice and offering one's professional advice based on years and years of experience managing associations. As a general rule, you should seek the counsel of an attorney in the following situations:

- Identification of potential legal problems or issues
- Interpretation of ambiguous or confusing provisions in governing documents
- Review of proposed amendments to governing documents
- Interpretation of case law and proposed or existing statutes that affect the association
- Review of insurance policies

Depending upon the risks involved and the significance of the issue, the association may also wish to seek legal advice under the following circumstances:

- Review of proposed policy resolutions
- Review of contracts before they are signed
- Review of proposed rules before they are adopted
- Review of personnel policies and procedures

2. Avoid engaging in the internal politics of the association. If the manager is "political" it is not only a disservice to your client, but will likely result in an early demise of the manager's contract with the association. Remember: "He who lives by the sword, dies by the sword."
3. Avoid being heavy handed or running the meeting. While the manager has knowledge and experience that the board doesn't have, this should be tempered by an

understanding of the relationship between the manager and the board. The manager is a resource but not the paragon of wisdom; the board has the final word and bears the responsibility on all matters. Your job is to advise but not dictate. The manager is expected to offer opinions, but be careful of the delivery. Provide the board with the information needed to understand the issues surrounding a decision and allow them the opportunity to render their own decision. Avoid the perception that the board is the manager's "rubber stamp."

4. Resist the temptation to discount what the "village idiot" has to say. Every organization seems to have someone who lacks basic "people skills" and rubs us the wrong way. Homeowner associations are no exception to this rule and, in fact, on occasion, some of these people manage to become board members. While it is human nature to ignore what such people have to say, it is a mistake and disservice to the association to do so. Avoid confusing the message with the messenger. Treat everyone with courtesy and listen to the ideas presented.
5. Do not share confidential matters about one association with another association. The more communities you manage, the more you see common issues among them. It is acceptable to share the knowledge and experience gained from other clients, but avoid telling "war stories" or exposing skeletons in the closet that give away the identity of the other communities you represent. You can never be sure where that information will travel. It may end up in the hands of someone who can harm the other community.
6. Do not share confidential information with persons who do not owe a fiduciary duty to the association. There is sometimes a temptation to explain or justify a board decision to outsiders, but managers should avoid engaging in these conversations. It is appropriate to have free and open discussions with the attorney, auditor and the board, because they are required to keep confidences. However, others such as members of the association, contractors and regulators have no such commitment and are thus free to use information against the organization. Be careful how much you say to them.
7. Avoid speaking about members in terms of gender, age, religion, disability, weight, sexual preference, national origin, or any other protected class. This is more than a matter of being "politically correct," it is a matter of avoiding lawsuits. Decisions based on any of these factors are the basis for discrimination claims.

Conclusion

While the "Shoulds" and "Shouldn'ts" listed above may provide some guidance, real leadership will come from the manager who understands the role that he or she occupies in the association: that of a policy advisor and the chief administrative or operations officer of the association. Understanding this is the key to effectively performing an integral function at board meetings.