



HindmanSanchez

Manager Liability

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Managers: 5 Ways To Avoid Liability

Experience has proven that a manager who takes the effort to avoid the five practices listed below benefits both from reduced liability and the increased professionalism that he/she exhibits in dealing with boards, vendors, and developers.

1. Do not exceed documented authority to act

The contract between the manager and the association and the minutes/resolution of the Board create the primary sources of authority to act as the association's agent. When taking action that could bind or impute liability to the Association, make sure the action is duly authorized in writing. Failure to ensure that a Board's directive to the manager is documented in writing could, at best, lead to confusion between the Board and the manager as to the action to be taken and, at worst, expose the manager to liability for taking unauthorized action.

2. Do not become the expert because the Board fails to consult a "true" expert in a particular field

When a Board is trying to control costs during a major expenditure, such as a roof replacement, it may try to rely upon the manager to prepare project specifications, inspect for quality control, and monitor completion for progress payments. Depending on the project, these duties may be beyond the manager's level of expertise and should be more properly performed by a project manager with expertise in that field. The manager does not do himself or the association a favor by undertaking duties outside the manager's area of expertise and could open himself to additional liability if the project goes sour.

3. Do not sign on the association's behalf without reflecting the agency status

Vendors frequently direct proposals to the management company and prepare contracts in the name of the management company, or even the individual manager, as opposed to the proper party - the association. If the manager signs a contract that is not in the association's name, and does not clearly indicate the manager's representative capacity, the manager could be held liable as the contracting party.

4. Do not give preferential treatment to the developer

Since newly created associations are generally controlled by the developer, the developer usually hires the manager. Although the developer may be able to ensure that the manager is hired to manage other associations, it is vital to remember the manager's duty is to the association with which it has a contract. Therefore, the developer should be treated in the same manner as other owners with respect to the lots or units it owns. Even if preferential treatment does not ultimately result in liability, it does result in suspicion as to the managers' loyalty after the developer turns over control of the association to the owners.

5. Do not base the annual budget on someone else's faulty proposal

The manager usually prepares a draft budget for Board review and approval. This draft should be based upon the figures that the manager truly believes will be necessary for the Association to fulfill its financial obligations in the next fiscal year. This is true even if the Board, formally or informally, suggests assessments should not be increased. If the Board chooses to modify the proposed budget, there will be a clear record of the manager's recommendation. Without that record, the manager could face blame for inadequate operating and reserve funds.