

Finding the Right Attorney

Next to selecting a manager, probably the most important decision an association can make is selecting legal counsel. The community association field is complex and ever-changing, and boards have a responsibility to find a legal expert with diverse talents and capabilities who will provide the best council for the association.

Community association law is not simply a specialized area of real estate law. At one time or another during its existence, a community association is likely to encounter issues involving nearly every field of legal practice: real estate, contracts, premises liability, director's liability, construction warranty, architectural and design review, insurance, contracts, environmental and water regulations, collection and foreclosure, employment and taxation issues. Being an integral part of the association's professional team, the attorney must be intimately familiar with the community as well as all these aspects of community association law.

It's almost never advisable to hire a member of the association to be the association attorney, whether compensated or on a volunteer basis—there is an inherent possibility of a conflict of interest. Also, the volunteer homeowner attorney may give greater priority and more attention to the work of his or her paying clients than to the association, and substandard legal work could be disastrous for an association if a serious issue arises.

Also, associations should never hire an attorney solely on the basis of rates. An attorney with lower rates may end up costing the association more money in the long run if he or she lacks experience and expertise.

It's also important to remember that a developer's interests don't always match a new association's best interests. Therefore, associations that have recently assumed control from a developer should hire their own attorney rather than continue with the developer's attorney. This is especially true as long as a possibility remains for warranty or construction defect claims against the developer—an attorney cannot represent both the developer and the association without facing a serious conflict of interest.

The association manager can be very helpful when searching for an attorney and should be involved in each step of the search process. As the person most familiar with the daily operations of the association, the manager is likely in the best position to know its legal needs.

Attorneys expect potential clients to ask for detailed information about fees and billing practices during the selection process. Once the selection is made, the board should designate one association representative (usually the president or manager) to communicate with the attorney.

The association's attorney doesn't represent the board or individual board members. Nor does he represent any particular officer, individual homeowner, group of owners or the manager. The attorney is legal counsel only to the association.

Like much of association work, the process of hiring an attorney can be a daunting task for volunteers. If it's handled properly, however, and the community is placed in good legal hands, the resulting benefits for the association and members can be significant.