

MANAGER LIABILITY

Presented By:

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BARKER · MARTIN
CONSTRUCTION DEFECT
AND
HOMEOWNER ASSOCIATION ATTORNEYS

A BAD DAY IS JUST A PHONE CALL AWAY

LaGoye owned a two-bedroom unit in the Victoria Wood Condominium Project. The homeowners' association, Victoria Wood Condominium Association (the "Homeowners' Association") contracted with a management company, Genesis Property Management, to manage the building.

In February 2001, LaGoye's condominium sustained water damage, apparently as a result of a hot water pipe breaking. The damage included a caved-in ceiling, warped floors and cabinets, and waterlogged sheetrock.

As a result of the accident, LaGoye and his son were forced to move out of their home. LaGoye claimed a subsequent inspection uncovered toxic mold.

LaGoye filed suit, pro se, against the Homeowners' Association and three members of its Board of Directors.

LaGoye also asserted claims against Genesis Property Management and its on-site property manager, Terry H. Sears (the "On-Site Manager"), for breach of a contract to maintain the common area, fraud due to alleged misrepresentations, breach of a fiduciary duty to expend the Homeowners' Association's assessed maintenance fee in maintaining the property, and alleged violations of the Real Estate Licensing Act.

LaGoye later filed an amended petition in which he joined Migura Insurance Agency and Genesis Community Management as defendants, and added a breach-of-duty-of-good faith-and-fair-dealing claim, a breach-of-duty-to-fairly-settle claim, and an unfair-claims-settlement action.



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WHY DO MANAGERS GET SUED?

- Perceived/Actual Conflict of Interest
- Mishandling of Funds
- Records Mismanagement
- Contract Duties not Fulfilled
- Unlawful Practice of Law
- Disclosure Failures
- Negligence
- Libel/Slander
- Vicarious liability for acts of the Board
- Other?



OVERVIEW

- Agency Law and the Manager
- Contract Obligations
- Tort Claims
 - Negligence
 - Intentional Torts
- Regulatory Obligations and Claims
- Avoiding Problems
- Q & A



AGENCY LAW AND THE MANAGER

- Manager is an Agent
 - Duty of Loyalty
 - Duty of Care
- Third-party Issues
 - Express and Implied Authority
 - Making representations to 3rd parties
- Breach of Duties and the Association



CONTRACTUAL OBLIGATIONS

- Express and Implied Obligations
- Limitations on Liability
- Indemnity and Third-Parties
- Remedies



TORT CLAIMS AGAINST THE MANAGER

- Negligence
 - Ordinary Negligence
 - Negligent Breach of Agent's Duties
- Intentional Torts
 - Libel/Slander
 - Fraud
 - Conflicts
 - Other



REGULATORY ISSUES

- Licensing
 - On the Horizon?
 - Implications
- Violation of Community Association Acts
- Unlawful Practice of Law
 - Lien Claims



AVOIDING PROBLEMS

- Use vendors for 'cover'
 - Tax advice
 - Accounting Advice
 - Legal
 - Construction/Maintenance/etc.
- Conflicts - disclose, disclose, disclose!
- Proper insurance
- The Golden Rule



Q&A

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