

Welcome to the

WASHINGTON STATE CHAPTER
of
Community Associations Institute

*The leading professional organization providing education,
resources, and advocacy for community association living.*



COMMUNITY ASSOCIATION MANAGER: CAN THEY SUE ME?

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Presented by:

Amy Clements
ARM, CIRMS
CAU, Inc.

Whitney Smith
Esq.
Wilson Smith, et al.

Dan Zimberoff
Esq.
Barker Martin, P.S.

Overview

- Liability is an ugly word
- Contractual scope of duty
- Agency
- Exposure/risks
- Common misperceptions
- D&O versus E&O
- Logistics/administration of litigation
- Attorney-client privilege
- Q & A

Liability is an Ugly Word

- Legal liability
- Insurance claim
- Tender and notice
- Conflict of interest

Contractual Scope of Duty

- Manager's obligations versus discretion
- Board's versus manager's roles
- Negotiating and signing contracts
- Involving consultants/professionals
- Unauthorized practice of law

Agency

- Actual / Implied Authority
- Contract
- Acting outside the contract - inferred

What Exposure Do I Have Anyway?

- Managers tend to be “Jacks of all Trades”
- Managers have to delegate
- Managers deal daily with a changing industry



What Exposure Do I Have Anyway?

Some examples of a Manager's exposure:

- Poor recordkeeping of the Association assets
- Failure to properly vet business partners for Association maintenance (landscapers, contractors, etc.)
- Inadequate budgeting
- Personal injury including libel, slander and invasion of property
- Failure to promptly report insurance claims

Common Misconceptions

- The management agreement with my community association requires the association includes a “hold harmless” provision and “indemnity agreement”
- The Community Association’s D&O policy will protect me as the Association Manager



ARE YOU SURE?

The Issues

- An Indemnity Agreement doesn't necessarily provide the Association Manager a defense. The manager/management company would have to hire their own legal counsel to defend them and once all is said and done they would have to look to the association for reimbursement.
- "I'm covered under the Association's D&O coverage"... Until you are not. There may be a gap in coverage should the Association sue you as the Manager. **WARNING:** There may be an *Insured vs. Insured Exclusion* under the Association's D&O coverage.

What Coverage Do I Need?

Coverage for claims brought against the manager/management company for perceived wrongful acts arising out of the management services provided.

Okay, Give Me An Example...

- Management company retained by master association and several sub-associations
- Owner in sub-association sues master association, sub-association and management company for failure to disclose rental restriction in master association's CC&Rs
- Who defends who?

Do I Have Any Other Options?

PROTECT YOURSELF AND YOUR COMPANY:

- Make certain you/your company has Errors & Omissions coverage in place including coverage for managers while acting on behalf of the association



Do I Have Any Other Options?

PROTECT YOURSELF AND YOUR COMPANY:

- Have each Association you manage name your management company as an additional insured including coverage for Directors and Officers Liability
- Employee/Dishonesty (Fidelity) Coverage – Does the definition of a “Covered Employee” on the Association’s policy include employees of the management company (i.e. managers)?

Ask your Association's Agent:



If you don't already have a procedure in place, ask your Association's agent for proof of coverage for the manager. In the long run, it could save you time and money (and lots of grief)...

Logistics/Administration of Litigation

- Notice / tender of a claim
- Service of process
- If sued, now what?
 - Cooperation or adversarial?
- Handling subpoenas
- Depositions
- Cost of discovery
- Countersuits

Attorney-Client Privilege

- Manager involvement with opinions/communications
- Participate in litigation decisions

Questions & Answers



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425-778-6378

www.caionline.org

1-888-224-4321

