

Avoiding Litigation: A Common-Sense Approach to Keeping Your Community Out of the Courtroom

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It has been said that anyone can sue you for anything. No truer is that statement than in our community associations where emotions run high and conflicts are many. This should come as no surprise to anyone: people of diverse backgrounds thrown together in communities governed by covenants, codes, rules, and regulations developed with the underlying goal of uniformity and consistency. When we add to the mix violation letters, enforcement hearings and fines, it is no wonder that the threat of litigation is always on the horizon.

Differences, respectful disagreement and debate are healthy for any community and should not lead to litigation provided the community is transparent in its governance, reasonable in its rule enforcement, and provides its members a voice – an opportunity to be heard. While it is impossible to completely eliminate the risk of litigation, the following guidelines should help you bring more harmony to your community and perhaps keep your association out of the courtroom.

1. Transparency

When members feel that matters are decided behind closed doors (regardless of what the Open Meeting Act requires) they begin to distrust their community leaders and management and feel threatened by a perceived loss of liberties. But when matters are discussed and addressed openly, in open board meetings with proper agendas, town halls or community forums, members are less suspicious and are less threatened by rule enforcement and community governance. A board that is receptive to member input, airs community issues publicly and makes decisions openly is less likely to be challenged in court.

2. Policy, Procedure and Protocol

Uncertainty breeds hostility. Members need to know how a community's leadership will respond to a given situation. Whether reviewing an architectural application or responding to a water intrusion incident, having published policies and procedures for addressing the types of issues that come before the board primarily assists the board in maintaining consistency in addressing similar matters. This deters claims of discrimination and selective enforcement. Secondly, having such written policies and procedures in place informs the members in advance how their particular matter will be handled. Architectural review procedures and water intrusion responsibility policies are two effective policies that can avoid disputes or worse, litigation.

3. Timely Response to Maintenance Related Issues

No response, or a delayed response, is a response. It tells members they don't matter, regardless of the reason. There is perhaps no more of an emotional hotbed than when homeowners are experiencing a maintenance or repair frustration, or worse yet, a water leak, and feel ignored. Some type of communication is required. Even if an answer or date of repair is not yet known, reassuring members that management and/or the board are aware of the issue and how they are going to respond will go a long way to calm someone otherwise predisposed to "lawyer up" and file suit.

4. Deal With It!

Oftentimes community leaders and management will avoid confrontation rather than address it directly and openly. The board and management should not fear conflict in a community. It is better than apathy. And when people feel ignored they will often stop at nothing to get your attention. When conflict

is ignored rather than addressed and resolved, it grows into frustration, anger and yes, litigation. Acknowledge the disagreement, meet it head on and work to find common ground to resolve it.

5. Words Matter

Create and maintain an environment of respect throughout your community. Respect starts at the top. How an association communicates with its members sends a strong message and sets the tone for positive (or negative) interaction. A rude comment to a member at a board meeting, a harsh tone to a violation letter or an inadvertently insensitive response to a member's repair request or complaint can build hostility and resentment. Community leaders and managing agents are recipients of much criticism often undeserved or misdirected. Resist the temptation to be confrontational in responding. Showing respect for a member, even a hostile one, is good for the community. Written communications to members should be carefully worded to advise and encourage compliance in the case of a violation; and to reassure and inform in the case of a maintenance or repair matter. Well-written communication is an effective way to let your members know that the board is listening and that they have been heard.

6. Committees are Good for Your Community

An engaged community is a happy community. Involving members in established committees or special community projects is an excellent way for members to understand how their community operates. There is more than enough work to go around. And there are few better ways to connect with your membership than through committee work. When members are involved they have a greater understanding and appreciation for how decisions are made. Granted, for community association managers, sometimes working with committees means more oversight, supervision or meetings. Committees sometimes take on a life of their own. But a well thought out committee charter can assist greatly in defining the role of the committee and how it functions and help make committees more efficient and productive.

7. Resolve to Resolve Disputes

Litigation should always be the last resort. Avoiding litigation should serve as a motivator to the board and management to engage in meaningful efforts to resolve disputes before the parties become entrenched in their positions, unreasonable or otherwise. There is no better way to accomplish this than through a clearly defined dispute resolution policy. The Civil Code mandates that this policy be in place in your communities and disclosed annually. But having the policy alone is not enough. The dispute resolution process must be fair and encourage participation. Its language should be clear and easy to understand. The board should encourage dispute resolution whenever appropriate, particularly "internal dispute resolution" whether or not the member has first requested it. It may be the last opportunity to meet face to face with the member and find a way to resolve the dispute. A community will have greater long-term success in resolving disputes when the parties have worked through and arrived at the solution together.