#335 HOA Homefront – Reader Questions – Ten Ways to Keep the Lawyers at Bay

By Kelly G. Richardson, Esq. CCAL

Serving as a volunteer director is often thankless, but it shouldn't be risky. Here are ten ways to reduce if not prevent personal risk from your service.

Learn and follow the Business Judgment Rule. Found at California Corporations Code 7231 and 7231.5 and contained in most bylaws, the Rule protects volunteers from liability while acting in good faith, for the association's best interests, and upon reasonable inquiry.

Only serve if the association has directors and officers ("D&O") insurance coverage. Civil Code 5800 protects directors from personal liability if the HOA with more than 100 memberships has $1,000,000 of D&O insurance or $500,00 if less members.

Refuse compensation. Whether called a "stipend" or assessment reduction, reject any form of renumeration for board service. Upon receiving even one dollar of compensation the director is no longer a volunteer and loses all the immunities of volunteers. Reimbursement for a director's time serving the HOA is not reimbursement – it is compensation. Reimbursements are repayments of out of pocket expenses.

Don't get mad… or even. "Good faith" doesn't just mean a pure heart. However, it certainly does exclude any willful, malicious or retaliatory intent. The nastiest homeowner has the same rights as the saintly ones. Enforce the rules evenly.

Don't take matters into your own hands. HOA governance is a team sport, not an individual event. What you think is valid instruction may be viewed by the board (and the HOA's attorney) as interference. A director (even the president) must use restraint and wait for the board to act.

Follow the corporate process. Is the association making a contract, or the director? The corporate process is what makes it clear that the corporation is acting and not you. The corporation acts by the board voting in a meeting and then documenting that vote in the minutes. Sign contracts in the name of the corporation, not in your own name - "Shady Acres HOA, by John Smith, director."

Do not make commitments to HOA vendors without having clear board authority. A director committing to spend HOA funds without board authority may be held to have made a binding commitment under the doctrine of "ostensible agency." The association in that event would have to pay, but the board could decide the expenditure was not in HOA's best interests and sue the director for reimbursement.

Get the advice necessary for the decision at hand. Most of the time your manager will supply the board's advice for ordinary decisions, but sometimes more specialized expertise is needed. Don't rely on a fellow director for specialized advice – it is not fair to ask them to take on the responsibility of a free expert, even if they truly do have the required expertise.

Deal promptly with danger. Earlier in 2018, a Nevada association was shocked when a jury imposed a $20,000,000 verdict including $10,000,000 punitive damages, arising from a serious playground injury, finding that the HOA ignored previous failures of playground equipment. A willful failure to deal with known hazards can expose directors to personal liability.

Avoid conflicts of interest like the plague. Don't seek or accept special favors or treatment.

Volunteers should avoid personal risk arising out of their service. Understand the protections the law provides and stay within them.

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