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CARPENTER HAZLEWOOD DELGADO & WOOD

E-NEWSLETTER

What to Do When Your Association is Sued **By Mark A. Holmgren, Esq.**

No matter how well an association is managed and no matter how prudent a board of directors, a day will come when the association gets sued. Often, your first notice of the lawsuit is when the management company is served with the lawsuit. When that day arrives, it is important that you know the appropriate steps to take to protect the association's rights.

For most lawsuits, the association will have twenty days from the date the lawsuit is served to file an answer. This means you must act quickly to notify the association's board of directors it has been sued. The board must decide whether to put the association's insurance carrier(s) on notice of the claim, decide whether to tender the claim to the carrier for coverage, and ensure the association is represented by an attorney. If a claim is filed with the insurer, the association's carrier may act quickly enough to hire a lawyer in time to file the answer; other times the association's general counsel must act. These notices and timely decisions are critically important. What happens at these initial stages often drives the success or failure of the association's defense of the lawsuit. Strategic decisions about involving insurance and how to answer even the simplest of issues in a lawsuit may be detrimental to the association if not addressed promptly and professionally.

Associations sometimes resist tendering lawsuits to their insurance carriers out of fear their premiums may increase. Although this may be true, a small increase in insurance premiums is likely to be outweighed by the risk of spending thousands of dollars in legal fees that often accompany even trivial or short-lived litigation. As the saying goes, there really are no small lawsuits.

If the association decides to litigate on its own and hire its own attorney without tendering the claim, it may wish to reverse course once the legal fees begin accumulating. If that occurs, an insurance carrier is unlikely to provide coverage for a claim the association litigates on its own before tendering. Finally, the association's policies may require that notice of any litigation be given to the carrier, and by keeping the claim from its carrier, the association may forfeit coverage on some future claims.

At all times, it is important to remember that the ultimate decisions on how to handle any litigation are decisions for the board of directors. Community managers should be prepared to provide the board with any and all information it needs to make its decision, and encourage the volunteer board members to follow sound business practices. Litigation sometimes sparks intense emotion in board members and homeowners, and a community manager is well situated to inject a calming influence and voice of reason. Your guidance will be crucial in helping your client negotiate this difficult period.



CARPENTER HAZLEWOOD

Carpenter, Hazlewood, Delgado & Wood, PLC

newsletter@carpenterhazlewood.com

Telephone - (480) 991-6949