The Board &Management Company Relationship

When a board contracts with a management company for community management services, a relationship is born. What is involved in this relationship? Basically, the management company becomes the guardian of the board's best interests. By becoming the guardian, the manager should act as the board would act.

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Recently we met with a community manager. During the meeting, we asked the Manager for some documents regarding an association. The Manager thought about our request for a moment and then responded, "I think the Board would be okay with that." The Manager then went on to explain his brief pause by saying, "I paused for a moment to think 'what would the Board say if they were here?'" This Manager understood his role and duties in the board/ manager relationship. The best way for a manager to maintain a relationship and protection from liability is to always have the interests of the board in mind. Additionally, this example demonstrates the Manager's unwillingness to breach his delegated duties by exercising too much power.

Why Does A Board Hire A Manager?

In short, the board hires a manager to oversee and fulfill the administrative tasks of the association. The board does so because they may not have the time or expertise to administer their day to day obligations. The board looks to the manager as an expert who can effectively and efficiently fulfill the administrative tasks while representing the best interests of the board. This relationship is one of trust. Once a management contract is formed, the manager has a fiduciary relationship with the board. As a fiduciary, the manager is an agent authorized to act for the board within certain delegated powers.

What Can A Manager Do To Maintain The Board's Trust And Control Exposure To Liability?

Some managers believe that the best way to manage is to control everything and keep their boards in the dark. By doing so, these managers overreach their contracted power and expose the association to potential damage. If the association is damaged by an over-controlling manager, the management company may find themselves liable for breach of contract.

In a recent case, a property management firm found itself in such a situation. The firm was sued by an association for exceeding the firm's delegated duties. One of the firm's managers had overspent the budget against the board's instruction. Additionally, the manager spent the association's reserves without board approval. Even though the funds were spent on association needs, the court held that the manager had breached their duty to the association by acting beyond the manager's delegated tasks. The firm was found liable for breach of contract and the association was awarded money damages.

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To avoid such liability, it is important that a manager understand their role in the board/ manager relationship.

What is the Appropriate Role of a Manager?

The first role is that of administrator. A board delegates certain tasks to the manager. These tasks usually involve the day to day functions of association administration. The board sees the manager as an expert collector, bookkeeper, customer service agent, etc. The manager becomes the liaison between the board and the landscapers and maintenance people. The board authorizes the manager to act for them when negotiating contracts, collecting assessments and fines, and disclosing information to third parties. They are an expert in all areas of day to day administration.

The second role is that of advisor. Because the manager is an expert, the board turns to the manager for advice. The manager has the delicate responsibility to advise the board correctly without giving legal advice. The board trusts that the manager will give correct and trustworthy advice. Because of this and their duty to act in the best interest of the board, the manager has the duty to know the limits of their expertise. When their expertise fails or overreaches professional boundaries, the manager should advise the board to turn to an expert. The manager should have established relationships with lawyers, accountants and other professionals whom can be readily referred. Nothing can destroy a relationship faster than a manager speaking beyond their expertise and giving bad advice. By overstepping their expertise the manager exposes themselves to liability.

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The third role is that of educator. Some managers believe that a board's ignorance equates to job security. This is a potentially dangerous and professionally fatal position. To maintain a good relationship the manager should look beyond the board's petitions for advice as opportunities to educate. They should share with the board the latest developments in issues concerning associations. Because the board is ultimately liable for the association, it is in their best interest to be well educated about association issues. Education empowers the board and creates a more sophisticated environment for policy and decision making. A sophisticated board will be able to recognize their weaknesses and better understand the benefits of management help.

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Conclusion

Managers have a fiduciary relationship with the board. The manager should think of themselves as an extension of the board. As an extension, the manager has a duty to know their limits of expertise, educate the board, and always act with the board's best interests in mind. By keeping a board in the dark, a manager is not protecting themselves from liability, they are endangering their career, and the well being of the association. An effective manager should not overreach their delegated authority to administrate the affairs of the association. They should give competent, professional advice while being mindful of the limits of their expertise. They should voluntarily and freely educate their boards so the board can make knowledgeable and sophisticated decisions about their communities. By fulfilling these three roles, the manager protects themselves from liability and maximizes their utility to a board.

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