



ATTORNEYS, MANAGERS AND THE ASSOCIATION

**Attorneys, Managers and the Association
Serving and Surviving In A Unique Relationship**

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INTRODUCTION

Association managers and association lawyers should, and usually do, share a common goal: providing the best possible service to their client associations. Meeting this goal requires a high level of cooperation and understanding on the part of both the manager and the lawyer. Each of them operates under a number of practical and professional limitations and each brings to his or her work certain professional points of view and objectives. The lawyer and the manager must each understand the motivations and limitations of the other in order for them to cooperate in providing the best possible service to their mutual client.

This article is an attempt, by an association attorney, to outline the needs, perspectives and concerns of association managers and association attorneys and to suggest some ways in which lawyers and managers can best cooperate in their work.

THE MANAGER'S PERSPECTIVE

The manager's view of the association, and its legal needs is, in many ways, the product of the manager's unique position as the association's primary adviser and day to day administrator. The manager looks to the association's lawyer to represent the association's interests, and, whenever possible, to do so in a manner that makes the manager's job as easy as it can be made.

The following are some of the manager's major concerns:

- A. **The Manager Is Responsible For Everything.** Association boards frequently act as if the manager is responsible for everything. Even though portions of the actual work of operating the association are contracted out to others (such as painters and lawyers) and the major operating decisions are made by the board, the board still expects the manager to be on top of everything that is going on. At every board meeting, the manager must anticipate being put on the spot concerning anything that may be happening in the condominium. Many of the matters that the manager deals with are small and repetitive. Nevertheless, at any time, any one of these matters can become extremely important to some board member who can make life very difficult for the manager if the manager is not familiar with the particular matter or is not attending to it.

In order to meet this challenge, the manager wants to know as much as possible about everything that is being done in and for the Association. Many managers become uncomfortable if they don't know what the association's employees and contractors (including lawyers) are doing. A manager can become particularly uncomfortable if the board knows more about what its lawyers are doing than the manager does.

- B. **Lawyers And Lawyers' Fees Are Unpredictable.** Many association boards hold the manger responsible for the work and the fees of the association's lawyer. The manager is held responsible for supervising the lawyer in the same way as the board holds the manager responsible for supervising other contractors.
- C. **The Manager Is The Association's Primary Adviser.** The manager is the professional who is closest to the association's overall operations. The manager is ordinarily the only professional who attends all of the board meetings and is usually the person to whom most questions are first directed. A good manager recognizes that although he or she is not an accountant, an engineer or a lawyer, he or she must be familiar with certain accounting, engineering and legal concepts but in order to carry out his or her duties as the association's manager and to advise the association when it needs the services of other professionals.

As a manager approaches the line between his or her expertise and the expertise of the association's other professionals, the manager is concerned, on one hand, not to be required to provide professional advice of a technical nature that can only be provided by other professionals. On the other hand, the manager does not want to lose contact with and some degree of control over the actions and advice of the other professionals, especially because the manager knows that he or she will usually be called on to implement, or at least operate under, the recommendations of the other professionals. Finally, the manager is aware, as the association's board may not be, that not all the advice the association receives from its professional is correct, appropriate, or even useful.

This is especially true when it comes to lawyers. If the association's lawyer is not familiar with community association law, or with the needs and character of a particular association, his or her advice may not be helpful to the association.

- D. **The Manager Cannot Lose Sight Of The Practical.** In order to carry out his or her duties as the association's manager and the board's adviser, the manager needs practical information that he or she can act on; something lawyers don't always provide.
- E. **Community Association Management Is A Highly Competitive Business.** Managers are often engaged in vigorous competition with other managers over services and fees. Most contracts are for fixed fees and for fixed terms and many associations seem to have little loyalty to their present manager when their management contract is up for renewal. As a result, managers are constantly looking over their shoulders at their competitors and are extremely concerned and sensitive about anything that will make them look better or worse to their associations when their contract next comes up for renewal.
- F. **Lawyers Seem To Play By Different Rules.** From the manager's perspective, many things that lawyers do are disquieting. Much legal work is done on an hourly basis, making it difficult to predict or control fees. A lawyer's sense of time often appears different than that of the manager or the board. The association may engage a lawyer for a particular project and then not hear anything for a month or more. The association may be faced with an immediate covenant enforcement problem, requiring court action, and it may be several weeks or a month before the lawyer can arrange for a hearing. On the other hand, the lawyer may request large quantities of information, assembled in a very particular way and on very short notice, in order to prepare a pleading in a particular case, and will expect the manger to furnish what the attorney needs without regard for the manager's other responsibilities.
- G. **The Manager Doesn't Want To Be Shot In The Foot By The Association's Lawyer.** Many managers express the concern that the association's lawyer will embarrass them or contradict them in front of the board. This concern seems to have two origins. First, the manager is frequently put on the spot by the questions asked at board meetings which the manager is expected to answer, at least preliminarily, without outside professional advice. If the manager takes his or her best shot,

he or she seldom wishes to have the association's lawyer, with the benefit of greater knowledge and time to reflect, telling the board that the manager was wrong. Second, many knowledgeable association managers don't always trust the association's attorney. Although, in many cases, the managers recommend attorneys to the associations, some associations select their own lawyers, often based on criteria that have nothing to do with knowledge of community association law. As a result, some managers know more about community association law than the lawyers of some of the associations they manage.

THE LAWYER'S PERSPECTIVE

The lawyer's view of the association's manager is also the product of his or her professional training and practical experience. The attorney's obligations to the courts, to other lawyers, and to a detailed and often mechanistic code of ethics frequently affects how the attorney approaches his or her work. The legal culture in which the attorney has been educated in law school and trained as a young lawyer also affects the lawyer's attitude toward his or her association clients and their managers.

The following are some of the lawyer's major concerns:

- A. The Lawyer is Usually a People Person. The law, as a profession, tends to attract individuals who are verbal and concerned with personal relationships. This personality type is sometimes referred to as an interpretive personality. Lawyers are most comfortable doing their jobs when they feel they have a personal relationship with their clients so that they know how their clients feel about the issues that are facing them and how their clients feel about their lawyers personally. If they do not have this direct contact with the officers and directors of their client associations, they become uneasy and tend to resent the manager who they may feel is interfering with their proper relationship with their clients.
- B. The Lawyer Is Required To Do The Job Right, Regardless. The standards under which lawyers operate, as expressed in their professional codes and standards of malpractice, require that when a lawyer undertakes to provide a particular service, he or she must do the job right regardless of the cooperation, or lack of it, the lawyer receives from the client and regardless of fees. This is not only a professional requirement, it is part of the lawyer's professional culture. While the lawyer knows that he or she is not infallible, the lawyer is always concerned that his or her work will be judged by a standard of infallibility.
- C. Full And Accurate Information Is Crucial To Lawyers. Whether a lawyer is being asked to review a contract, draft a bylaw amendment, or defend a lawsuit, complete and accurate information is crucial. A lawyer's advice or advocacy cannot be any better than the information he or she has. If a lawyer is given sketchy or incomplete information, he or she frequently becomes uneasy and will repeatedly press for more complete information. On the other hand, if the lawyer is presented with complete and organized information, he or she can work much more efficiently and can provide the required services for a lower fee.
- D. Most Lawyers Believe That They Can Provide The Best Services To Their Client Associations If They Have An Ongoing Relationship With The Association. If a lawyer has an ongoing relationship with an association, he or she is in the best position to provide advice that is most useful to the association, to identify particular issues of concern to the association, and to help the association achieve its particular goals. If the lawyer deals with the association only on a spot basis, he or she is less able to provide this kind of service or can do so only at additional cost because of the necessity to bring himself or herself up to speed concerning the association's particular situation and concerns.

- E. It Is Difficult To Quote Fees When You Don't Know Exactly What You Are Being Asked To Do. Most legal billing is directly or indirectly based on time. Even when a lawyer quotes a fixed fee, he or she is usually doing so based on an evaluation of the difficulty of the work to be done and the amount of time it will take to do it. When a lawyer is first engaged to deal with a matter, it is often difficult to predict how much time will be involved. Frequently, the first thing the lawyer is called upon to do is to evaluate the situation and describe the problem. If the problem cannot yet be described or evaluated, it is difficult to estimate how much time it will take to solve it. Frequently, in litigation, the amount of time required will depend as much on the cooperativeness, or uncooperativeness, of the other parties involved. Legal fees will be significantly higher if the opposing party and the opposing party's lawyer are determined to engage in hard ball litigation, as opposed to seeking a decision that will resolve a dispute.
- F. Managers Are Often The Primary Source Of Referrals To Association Lawyers. Most lawyers recognize this and want to be sensitive to it, but they are also sensitive to the fact that the client is the association, acting through its officers and directors, and not the management company.
- G. Lawyers See Themselves As Loyal Advisers. Lawyers are educated and trained to be loyal advisers to their clients. A lawyer views his or her engagement with an association as a relationship that goes beyond the specific matter for which he or she has been hired. The lawyer identifies with the client association and is concerned for the association's overall benefit. If the free flow of information between the lawyer and the association is restricted, or if the lawyer is treated as the rubber stamp for the manager, the lawyer may become restive and resentful.

PARTICULAR PROBLEMS LAWYERS ENCOUNTER WITH MANAGERS

The following are some of the problems which lawyers encounter in dealing with managers of the associations they represent:

- A. The Manager Who Is Determined To Keep Complete Control Of The Relationship Between The Lawyer And The Association. This manager tries to minimize all direct contact between the lawyer and the association. The manager discourages all direct communication between the lawyer and the association's board, sometimes even to the point of refusing to provide the lawyer with home address or phone numbers of board members, discourages the board from inviting the lawyer to meetings, or alternately prohibits the lawyer from attending board meetings, tries to act as the go-between for all correspondence and communication between the association and the lawyer.
- B. The Manager Who Has Unrealistic Expectations Of The Association's Lawyer. This manager fails or refuses to recognize the limitations on what a lawyer can do or the amount of work, and fees, required to handle a given job. He or she creates unreasonable expectations on the part of the association concerning how long it will take the lawyer to complete a given project and what the fees will be, or concerning when the problem is one that the association's lawyer and the legal system just cannot completely fix. This manager frequently waits until the day before the board meeting to notify the lawyer of a request for legal services that the manager has known about since the previous meeting, and then expects a response in 24 hours or starts every conversation with "you're not going to bill me for this, are you?"
- C. The Manager Who Thinks And Acts As If The Lawyer Works Primarily For The Manager And Not For The Association. This manager explicitly or implicitly expects the lawyer to cover for the manager's shortcomings, and not to call the association's attention to the manager's

improprieties. This manager also frequently acts as if the lawyer owes the manager something in exchange having referred the association's legal services to the lawyer.

- D. **The Manager Who Doesn't Follow Up On Time.** This manager does not follow up on time or respond promptly to requests from lawyers. He or she may be a procrastinator, may be spread too thin, may not be getting adequate support from his or her staff or contractors, or may just not have a good system for following up on details.
- E. **The Scapegoater.** This is a manager who is always trying to blame someone else for things not getting done. He or she appears to put more effort into making sure that someone else will be blamed for anything that goes wrong, than into serving the interests of the association. Usually, this is done behind the lawyer's back preventing the lawyer from responding.
- F. **The Manager Who Thinks He or She Is Also a Lawyer.** This is the manager who believes that the only time you engage the services of a lawyer is after you've been sued. He or she continually offers legal advice and provides legal services under the auspices of "I know the answer to that" or "I can save the association a few hundred dollars." The concern lawyers have is not the loss of business or income, but rather that the advice given or service performed by the manager frequently is wrong, or at best, incomplete.

PARTICULAR PROBLEMS MANAGERS ENCOUNTER WITH PROBLEM LAWYERS

The following are some of the problems which managers encounter in dealing with lawyers of the associations they represent:

- A. **The Lawyer Who Fails To Keep The Manager Informed.** This lawyer is the one who takes a matter and goes off and attends to it without keeping the manager posted on what the lawyer is doing. This makes it impossible for the manager to carry out his or her duties as the general administrator and adviser of the association. It also leaves the manager looking unprepared when the board asks for a progress report.
- B. **The Lawyer Who does End-Runs Around the Manager.** This is the lawyer who communicates only with the board and keeps the manager cut out of the loop. This lawyer also makes it difficult for the manager to carry out his or her job as the association's administrator and adviser. In addition, this lawyer sometimes puts the manager in the position of having to defend his or her actions or decisions from board members making use of information from the lawyer of which the manager has no knowledge.
- C. **The Lawyer Who does Not Take The Manager Seriously.** This is the lawyer who fails to recognize or respect the manager's knowledge and responsibilities. He or she fails to take into account the manager's experience and knowledge of the association and, on many occasions undermines the manager's ability to carry out his or her duties.
- D. **The Procrastinator.** This is the lawyer who fails to carry out his or her duties in a timely manner. He or she forces the manager to spend additional time chasing the lawyer or, if the manager does not chase the lawyer, leaves the manager looking bad if the board holds the manager responsible for the lawyer's actions.
- E. **The Scapegoater.** A lawyer can be a scapegoater as easily as a manager. If he or she makes a practice of blaming the manager for things that are not done, it makes the manager's relationship with the association more difficult and forces the manager to take time away from the association's management needs to protect his or her position.

- F. The 'Blank Check' Lawyer. This is the lawyer who acts as if an engagement from the association is a blank check for billing. When the lawyer is engaged, neither the manager nor the board has any clear idea of what his or her fees might be. The lawyer makes it extremely difficult for the manager to administer the association's budget and sometimes causes the manager to be responsible for overruns in legal fees.
- G. The Lawyer Who Does Not Know Enough About Association Law. A lawyer who is not expert in association law is unable to provide effective legal representation for an association. He or she will fail to identify legal or practical issues which are important to the association. This lawyer will sometimes take excessive time and charge excessive fees for providing what ought to be routine services. This is especially disquieting for the manager who, because of his or her education or experience, may know more about the legal problem and its solution than the lawyer. Managers seldom recommend inexperienced lawyers to associations. When a manager encounters such a lawyer, it is usually because the lawyer has been hired by the association based on his or her relationship with a member of the board. The lawyer may be a relative or maybe the lawyer who represented the board member when her or she purchased a unit in the community.

WAYS IN WHICH THE LAWYER CAN IMPROVE HIS OR HER RELATIONSHIP WITH THE MANAGER AND THE SERVICE THAT BOTH OF THEM PROVIDE TO THE ASSOCIATION.

There are a number of things that an association lawyer can do to improve his or her relationship with the association's manager. Many of these require the involvement and cooperation of both the lawyer and the manager.

- A. Make Liberal Use of Photocopies. Send the manager copies of everything that goes out of or comes into the lawyer's office, including letters and pleadings. This is a quick and inexpensive way of keeping the manager up to speed on what the lawyer is doing. This provides a continuing reality check. If what is being sent to the manager is not consistent with what he or she thinks is going on, it gives the manager an early opportunity to let the lawyer know and to exchange any information or directions that have not gotten through.
- B. Send Status letters. Once a month, or on some other periodic basis, send a letter to the association and manager listing each matter that the lawyer is handling for the association together with a brief summary of the current status of that matter. Status letters also provide for a regular contact between the association's lawyer, its manager, and the board. The preparation of the status letter can be scheduled so that the status letter arrives shortly before each board meeting and can be reviewed by the manager and the board as a regular item on the board's agenda. The status letter provides an additional reality check to be sure that the board, the manager, and the lawyer all have the same understanding of the status of each legal matter.
- C. Meet With the Board Periodically. In many cases, the association's lawyer will find occasion to meet with the board once a year or more in the course of providing regular services to the association. If the lawyer finds that he or she has gone a year without meeting with the board, suggest a meeting. Even if the lawyer attends the meeting at no charge, it is frequently worth the lawyer's time and effort in establishing and maintaining the relationship with his or her association.
- D. Ask For and Review Copies of Minutes. If the association furnishes its lawyer with copies of minutes of all board and association meetings, the lawyer can review them quickly both in order to stay up to speed concerning the association's activities and concerns and to identify situations for which the association may need legal assistance.

- E. Treat The Manager Like A Fellow Professional. Some managers are sensitive about the lawyer's level of educational and professional credentials. Some lawyers tend to talk down to anyone who is not a lawyer. The association is best served when both the lawyer and the manager recognize that the manager is also a true professional.
- F. Help Educate Managers. The more association managers know about association law, the better advice they can give to their associations and the better they can work with the association's lawyers.
- G. Be Accessible To Managers. Spend time talking with managers. Ask questions. Answer questions. Return telephone calls.
- H. Help The Manager Spot Issues With Legal Consequences. There is no benefit to the association's budget or to the manager's ego in having all association decisions reviewed by counsel. The manager would like to be in a position to help the association to identify when it needs legal advice. This can best be done if the lawyer helps the manager to identify when legal issues are likely to arise.

WAYS IN WHICH THE MANAGER CAN IMPROVE HIS OR HER RELATIONSHIP WITH THE LAWYER AND THE SERVICE THAT BOTH OF THEM PROVIDE TO THE ASSOCIATION.

As mentioned earlier many of the things that a manager can do to improve his or her relationship with the association's lawyer require the participation of both parties.

- A. Keep The Lawyer Informed. Managers have photocopiers too. Furnish the association's lawyer with copies of minutes, reports, correspondence and other materials relating to any matter with which the lawyer is involved and with any matter that may have legal implications. Some associations are uneasy with being billed for time spent by the lawyer reviewing minutes or other matters that have not been referred to the lawyer for action. Many association lawyers are willing to spend a certain amount of time, without charge, or are willing to establish a monthly or annual retainer for these types of services. Where appropriate, take the lead in working out such a relationship with the association's lawyer.
- B. Remember That Lawyers Are Creatures Of Detail. How many times have you asked a lawyer a question and the answer starts with "It depends," or "I need more information." Remember that lawyers always need to know the details. Take the lead in providing them with as much information as you possibly can. The more a lawyer knows about an association or a particular problem it is facing, the more her or she can do to help it to address its legal needs.
- C. Remember That Many Legal Problems Can Be Solved Best If They Are Solved Before They Occur. It is usually much less expensive to get legal advice before an association takes any action than legal representation after it has been sued. Encourage the association to have contracts reviewed before they are signed. If the association's board is faced with a decision that may have major legal implications, it is usually to the association's advantage to seek advice before an action is taken than to seek representation after it has been sued on the basis of an ill-advised action.
- D. Encourage Orderly Communication Between The Association And The Board. Recommend that the association appoint an officer or board member to act as legal liaison. If the lawyer is not furnishing the board and the liaison with copies of materials relating to what the lawyer is doing,

furnish them yourself. Invite the lawyer to meet with the board on a regular basis, to discuss issues that are presently pending as well as recent legal developments affecting associations.

CONCLUSION.

The relationship between an association, its manager and its lawyer is a complex one. In some ways, it is as unique as the association itself. If managers and lawyers will take the time to understand each other's needs, backgrounds and points of view, there is much they both can do to raise the level of service they provide to their mutual clients.