

“Know When To Call Your Professional,” FCAP Managers Report

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What a year. Because of COVID-19 issues, associations have dealt with owners working from home, children remote learning, contractor issues, common area issues, the pool, the gym, the visitors, the cleaning, the quarantine, the masks, and so on. Quite a year indeed.

Many associations have spent more time speaking with their attorney, and hopefully insurance agents, than they would have liked to. But along with all the other lessons, dealing with a pandemic has taught associations, perhaps the most important one in the long run will be - **know when to contact your professional.**

Of course, it is easy to determine when to contact your attorney when the association has a contract dispute, has been sued, violations, problem owners, problem tenants, etc. But there are other, not so obvious times as to when an association should contact its attorney. We will get to those in a bit. But what about other association professionals? When should an association contact its accountant, its insurance agent, engineer? Let's discuss some of these scenarios.

ACCOUNTANT

Your association should be working with an accountant that specializes in association work. There are many nuances in dealing with condominium, cooperative and homeowner associations, especially in regard to what forms to file, how to present the year-end financial statements, including statutory required information, etc.

- How will pre-paying a loan affect the association's tax filing status?
- Are surplus funds taxable?
- Can the association sell a unit it owns via foreclosure and make a profit?
- Is that profit taxable?

These are all questions that should be discussed with your association accountant before the association takes action on the questioned items. The response from your accountant may allow the association to make a more informed decision as it pertains to how such decisions affect the association's year end statement and taxable items.

The association should be in communications with its accountant as needed, and certainly more than once a year, especially when it is time for the year-end report. Utilize your accountant when assessing the above issues.

INSURANCE AGENT

The association insurance agent should be involved in many aspects of your association. If the only time you hear from your insurance agent is when it is time for the annual renewal, the association should consider a new agent. Your insurance agent should proactively be working with management and the board to reduce risks in the community. Your agent should inspect the property at least once a year to identify risks and advise the association how to eliminate or mitigate such risks.

Large association contracts (roof repair/replacement, painting, concrete restoration, air conditioning, cooling towers, renovations, etc.) typically have association insurance requirements as well as indemnification provisions. These contract provisions should be sent to your insurance agent for review and comment before any such contract is signed (of course they should be reviewed by your association attorney as well). The contract may call for insurance the association currently does not have, or indemnification requirement specifically excluded by the association's current policies.

If the association signs a contract that contains insurance requirements or indemnification that the association's existing policies do not cover, in the event of a claim, the association may be paying out of pocket for such claims. If the association is paying out of pocket to defend a contractor for damages or injury caused by the contractor, such costs can get very high very quickly. Always have your insurance agent review the insurance and indemnification provisions of these types of contracts after your association attorney has made any revisions he or she deems necessary.

Finally, you may want to contact your insurance agent in regard to social events. If the association plans on serving alcohol, such as at a holiday event, do you have insurance for that? What about allowing others to serve alcohol when a social room is used by the owners for an event - does the association have insurance for that? Are you inviting the public in for an event? Does the association have insurance for that?

ENGINEER

Most condominium and cooperative associations have engaged an engineer from time to time, whether to prepare specifications for a job or to oversee

large construction or renovation projects. But there are other times an association may want to utilize an engineer.

The roofing company will tell you they will supervise the roof installation. The painting company will tell you they will inspect the paint job. The general contractor will tell you they will inspect the concrete restoration work. And they all will. So why should an association pay an engineer to inspect and oversee such work? I would hope the answer is obvious. No disrespect to any of the aforementioned contractors, but an association should always have its own engineer overseeing such work. The association engineer works for the association; the inspectors from the various companies work for the company. An association should always factor in the cost of its own engineer when planning the costs for such large projects.

There are other times an association should utilize its engineer. If your association is approving owner renovations through an architectural control board ("ARB") or other similar body, or even just the board, generally board members are not qualified to review plans. If an owner is installing a new floor or changing out a door, an engineer may not be necessary; when an owner is making structural changes in a unit, combining units, installing a pool, adding an addition, etc., the association should engage an engineer to review all plans and inspect the work to insure it is done according to the association approved plans. Generally, an association can pass such costs on to the owner, but you need to check with your association attorney to determine if any amendments or rules must be enacted to do so.

ATTORNEY

As you can see from the above information, there are many times an association should consult with its professionals. Typically, the attorney is the one associations consult with the most. I am not exaggerating when I tell you I have some clients I am in contact with on a daily basis. There are many factors at play when considering when to contact the association attorney - manager experience, board experience and involvement, age of the association, etc. Some associations contact their attorney regarding every violation or violation letter. Other associations only contact their attorney when they have been sued. There is no one size fits all.

Any large contracts should be reviewed by your attorney. Does that mean the attorney needs to review the contract for a \$5,000 water heater? Perhaps not. But be wary of one page "proposals" contractors ask you to sign; be wary if asking for 50% or more down (never sign such a contract without attorney review); be wary of signing any proposal that is valid "today only" or "this week only"; and never sign an AIA contract before your attorney has reviewed the contract.

All requests for a reasonable accommodation (handicap parking, emotional support animal, service animal, ramp, pool lift, etc.) should always be sent to the attorney for review.

If the association is considering denying a sale or lease application for any reason, consult with your attorney before the association denies the transaction.

If there are any questions on official record requests, or written inquiries, contact your attorney. Rule interpretation. Guest interpretation. Vehicle towing questions. Employee questions. Document interpretation. Consult your association attorney for all of these questions before the association makes a decision that may require your attorney to untangle later.

Finally, please do not make the mistake I see all too often. The association sends the attorney a significant contract for review. The attorney diligently reviews the contract, making notes as to revisions, addendum, etc. Turns to the last page of the contract - already signed by both parties. Asks the association why it is signed already - "we already signed it, just wanted to see if you had any comments". Don't be that association!

To read the original article, please [click here](#).

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