

Should Associations Hire Professional Managers?

By: Neal McCulloh

Absolutely! Too often, unit owners and Board members believe that they can substantially save money by not hiring professional management and effectively manage the Association without professional managers. However, Clayton & McCulloh **strongly** recommends that Associations practice **risk avoidance** to attempt to curtail, limit, and eliminate Association and Board of Director liability. Ultimately, the owners (i.e., members of the Association) need to understand that curtailing risk to the Association will benefit them individually and expose them to potentially less liability and less risk.

While there are some very good self-managed Associations, they are becoming more and more rare. Good, self-managed Associations generally have Boards who routinely attend seminars and keep abreast of periodicals on Association issues such as law, insurance, accounting, etc. In today's litigious society, Associations generally benefit from professional management. Professional managers can offer Associations consistency in handling matters and records, and objectivity in dealing with owners. The Florida Statutes now require community association managers to be licensed. Community Association Managers (or "CAMs" as they commonly call them) are licensed professionals which should be knowledgeable about how Associations operate. The State requires CAMs to obtain a minimum of sixteen (16) hours continuing credit every two years. Because of this licensing and professional training, CAMs should be able to reduce the Association's risk and exposure. In addition, they should be able to help the Association properly comply with its duties.

Obtaining legal counsel should aid Associations in their efforts to properly comply with the Florida Statutes, the governing documents, etc. However, we **must** recommend that Associations seriously consider hiring professional management to also help curtail risks. The Board of Directors and/or the actual members may be opposed to the cost associated with such management and while such cost may be significant, nevertheless, we strongly urge Associations to retain professional management to curtail and reduce the risk and exposure of the Association.

Professional management does not eliminate the need for attorneys. Associations should view it as an adjunct to legal counsel. Understand, self-managed Associations frequently have greater problems, greater risks, and greater liability resulting from lawsuits, noncompliance with Florida Statutes and/or their governing documents. This is not to suggest that such increased risk arise by virtue of *intentional* actions of Board Members. Generally, increased risk flows from the fact that volunteer Board members do not have the necessary time to devote to the Association's daily operations. Properly running an Association takes time, effort and *knowledge*. While we recommend that Board members become familiar with the appropriate governing documents, statutes, etc., all too often, volunteers cannot justify the time, effort and expense of digesting the requisite information, much less devoting the requisite time to properly operate the Association on a daily basis. As such, risk, liability, and exposure to the Association, the Board of Directors, and even the membership may transpire. Think of professional management as added insurance for the Association.

Boards of Directors have a fiduciary duty to the membership. In general, such fiduciary duty may include but not be limited to:

1. Doing that which is in the best interest of the membership as a whole;
2. Following the Florida Statutes; and
3. Following and **enforcing** the governing documents.

A fiduciary duty is the highest duty imposed by law. As such, whether an individual Board member wants to increase assessments to pay for professional management should not affect his or her decision on whether to obtain professional management. The Board's decision regarding whether to obtain professional management should be based upon the perspective of "what is in the best interest of the Association?" The fact that there is a cost (and maybe even a very high one) associated with professional management should not deter the Board from hiring professional management if this is the only viable method to properly operate the Association and comply with the governing documents, Statutes, etc. Associations should think of professional management as a tool which may be necessary for Boards who do not have sufficient time or knowledge to properly deal with the Association's daily operations.

As recited above, hiring professional management may require increasing or even drastically increasing the assessments that each member of the Association must pay. This may be very unpopular. However, the members need to realize that such a cost may be insignificant compared to the alternative (i.e., increased risk). The increased exposure and liability that Associations face from not having knowledgeable legal counsel and professional management can lead to increased lawsuits, damages and judgments against the Association. Should this transpire, the cost associated with the failure to hire professional management and competent counsel could greatly exceed the cost that an Association would ever spend in retaining such professionals and services.

What most Associations do not understand or appreciate is that the Association is a "business" and should operate as a "business." Not for profit corporations, such as Associations, have many, if not all the same, needs that "for profit corporations" may have. Accounting, insurance, legal and yes, management services are general customary business expenses of corporations. We recognize that the community may have divided factions existing on this issue. If communities have divided factions, it generally increases the need for counsel and professional management. Why? Whenever there are different factions, strong disagreements, etc., the possibility of lawsuits may increase.

Boards may consider professional management to be an option they cannot afford. However, we suggest you a different thought process. ***It may be an option you can't afford not to use.***

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