

# Choosing the Best Representation

## *What to Look for When Selecting Legal Counsel*

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'Better to have and not need, than need and not have.' This adage applies to umbrellas, insurance, and good attorneys. Condominiums, community associations, and co-op boards are volunteers, and rely on their legal counsel to navigate legal requirements, protect the interests of the association or corporation, and help avoid costly headaches. Having quality legal representation is essential—but it can be difficult to identify the right counsel for your unique community. Below are a few tips to help boards select legal counsel for their association or co-op:

### Expertise

Firstly, look for attorneys who specialize in representing community associations. An attorney with substantive experience representing community associations will more deftly assist the board in navigating the many issues that can arise in the course of their duties, from disruptive residents to delinquent assessments, to complying with any applicable legal requirements, to amending and enforcing the governing documents, conducting annual elections, negotiating contracts on the association's behalf, and so forth. An attorney who is a subject matter expert can also spot and offer proactive solutions to potential issues before they even arise, and give guidance on not just the law, but also customary best practices and practical insights.

Some questions to ask about expertise include:

- Has the attorney represented other associations similar to yours? For how long?

- Is community association work the main focus of their practice?

- Are they an active member of any community association trade organizations?

- Have they published any articles or spoken at industry events regarding community association matters?

- What are some best practices they recommend for the particular issues your community association is facing?

### Value

Like any good vendor or service provider, a good community association attorney will deliver value to their client. This starts with understanding your board's specific business objectives and concerns, and offering solutions and guidance to meet these objectives. Hourly rates are certainly part of the equation, but they don't tell the whole story. Quality of work and time to complete the necessary task are also important factors for calculating value. A low hourly rate will be quickly offset by inefficient work, or work that is not in line with your objectives. Appropriate staffing is also an important factor in delivering value. Assigning work to professionals (attorneys, paralegals, etc.) with appropriate experience and skills will help keep costs down while ensuring efficient and quality work.

Some community association attorneys will offer alternative fee arrangements, such as a monthly retainer program where the community association pays a fixed monthly fee for certain work, rather than billing on an hourly basis for time spent on the work. These

arrangements offer some cost certainty, but the value proposition depends on the specifics (e.g., amount of work, what work is included in the program, etc.). Be sure to review the scope of a proposed fee arrangement to determine if it includes the types of services your association frequently requires in order to avoid paying for services you don't need.

Some questions to ask about fees and value include:

- What are proactive ways you deliver value to your community association clients?

- What are the hourly rates for each professional?

- What types of matters do you assist your community association clients with?

- Do you assign work to associates or paralegals when appropriate?

- Are there any alternative fee arrangements besides hourly billing? If so, what are the specifics? When are these arrangements a good fit for your clients?

### The Team

You want legal representation who knows you and your association. Familiarity with your community, its board, and staff members allows your counsel to guide your association effectively and spot potential issues before they become larger problems. It also leads to reduced liability and cost savings. On the board's side, it's also important to know who else will assist in the event your 'primary' attorney is unavailable, or if an issue arises that requires expertise in another area of law. It's also important to have a designated point of

contact at the firm to help establish a relationship of trust and preserve institutional knowledge. A deep bench of professionals will help ensure that your association receives timely and cost-effective guidance (see #2 above).

A full-service firm will have other practice groups that can step in as needed and provide legal guidance in other areas of law - things like reviewing the estate documents of a deceased unit owner to determine who may access the unit, handling disputes with association employees, suing a vendor for breach of contract, or obtaining a bank loan. Working with a full-service firm will help ensure that your building or association receives quality legal counsel on whatever issues may arise.

Questions to ask about your prospective legal team include:

- What services do you offer to community association clients?

- What other professionals will we work with?

- Who will be our designated point(s) of contact?

- How are matters staffed? Why?

- What other practice groups does the firm offer, in case we encounter issues that require specific expertise? If there are no additional practice groups, how would these issues be handled?

### Issues With Prior Counsel

Chances are if you're searching for new legal counsel, there was at least some issue with your prior counsel. Identifying these issues will help guide your search. Be upfront about what worked with your previous legal pros, and where results fell short of expectations. Clear expectations are key to a good attorney-client relationship and to ensure the same issues do not recur.

Questions to ask around prior counsel include:

- We were dissatisfied when our prior counsel did 'X' - What would you do differently?

- 'X' is very important to us. Is this something you can assist us with? How?

- What expectations should we have as the board when working with you?

### Subjective Fit

The best attorney-client relationships are relational, and not simply transactional. That distinction is why objective factors like expertise and value are important in identifying the right legal counsel, but the subjective 'fit' between attorney and board should not be ignored. 'Fit' often boils down to trust and

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## FINANCIAL...

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a reserve project, you'll have a better idea of why the money is invested the way it is." That knowledge of investment strategy is a good partner to understanding the financial principles relating to your regular operations as well.

It all boils down to boards and board members being as informed as possible about what goes into governing and administering their community from day to day, from its physical upkeep to financial decision-making and long-term planning. Reading—and understanding—your governing documents, consulting your legal and financial professionals when necessary, and taking advantage of educational and training opportunities are all great ways to make the most of your tenure, and make your board the best it can be. ■

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as this, we often advise the board to seek out the help of agencies like the board of health, elder services, if applicable, and/or hoarding task forces that exist across the state. When all else fails, it may be necessary to file suit seeking an order of the court allowing the association to hire professionals to assist, charging the legal fees and costs back to the unit owner's account. To their credit, I have seen property managers assist residents in such a situation, again working with the help of outside family members, elder services, and the like."

When a resident refuses to stop or change their behaviors despite warnings, fines, and other efforts to resolve the issue, it may become necessary to turn to the court system, says Carl A. Taylor, an associate with The Simone Law Firm, located in Cinnaminson, New Jersey. "The problem is the board only has limited ways to help two disputing neighbors. When in doubt, always keep

communications [with the resident] public. That helps demonstrate that the residents' issues are not so much a problem with the association, but rather that the issue is the problem resident him- or herself. Also, try as best you can not to take things personally. If it's a civil issue, filing a lawsuit with the local court may be necessary. For some matters, contacting the local municipality may be another option. When warranted, and depending on the infraction, the local municipality does at times have other ways to handle a situation."

And on the rare occasion that a resident's behavior is harassing, violent, or otherwise illegal, "If the matter is criminal, residents must call the police and file a police report," says Clayton. "Management and the board should not intervene," both for reasons of liability, and for their personal safety.

### Tread Carefully But Firmly

Resolving disputes with problem residents, who themselves are often frustrated and angry, may come down to interpersonal skills and good leadership. Making sure residents are informed of their rights - and the limitations of those rights - and that they feel they have a say in the governance and administration of their community goes a long way toward preventing issues from festering, says Clayton.

"Always invite all owners to board meetings, and make sure that meeting minutes are readily accessible. An open forum allows owners to speak openly about their issues, and to be educated on how things work at the association." Also, "Make sure your governing documents are clear, concise, and up to date with the current federal, state, and local condo laws." Finally, Clayton advises taking a critical look at your community's rules, and making prudent adjustments where warranted. "If rules are vague or too relaxed, they won't actually address issues, and residents will push back," he says. "On the other hand, making rules and regs too strict can actually make residents more unruly," and may lead to board members - and even managers - being dismissed in favor of leaders more in-step with residents' needs and expectations.

What the issue of 'problem' residents in multifamily buildings and associations of-

ten boils down to is peoples' ability—and willingness—to understand and respect the fact that they're living on top of, underneath, and immediately adjacent to other people who have just as much right to the peaceful enjoyment of their homes as they do. When that understanding or willingness breaks down, or is absent altogether, boards and managers need to act promptly and prudently to address the issue before it escalates into a much bigger problem. Clear, unequivocal communication of rules and expectations is almost always the best place to start. ■

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personal comfort level, as well as the specific needs of each association. Not all associations are created equal; some have frequent, complex legal matters that require a firm with not only association-related expertise, but also other areas of expertise, such as litigation, employment or corporate experience. Smaller associations, or associations with few legal issues may not require the same level of representation—so keep in mind the specific needs of your association when looking at options for counsel.

Questions about subjective fit include:

- Do we trust the attorney to 'have our back' and help our board navigate thorny issues and look out for our best interests?
- Is their personality and temperament a good fit for our board and (if professionally managed) our management?
- Is their approach to problem solving compatible with our board and our community?
- Will this professional tell us what we need to hear—even if it's not necessarily what we want to hear?
- Does their level of expertise and rate structure fit our association's needs?

Quality legal counsel is essential for a community association to function properly, but identifying the right counsel can feel overwhelming. At the end of the day, the process is more art than science. The above questions and considerations are by no means exhaustive, but are intended as a jumping-off point to help guide multifamily boards through this process, so that the legal counsel they get is exactly what they need. ■

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policies. While homeowners' insurance companies typically won't add the co-op or condominium as an Additional Insured, they may add it as an Additional Interest. This designation will notify you if a policy is being canceled.

Monitoring insurance coverage offers several key benefits to the association and its residents:

An uninsured resident who causes damage because of their negligence will result in your insurance paying a claim, rather than the resident's insurance company. Claims are the biggest reason for increased premiums and canceled policies. Transferring the risk to the negligent party will keep the claim off your loss history.

In addition, having proof of insurance for each resident may allow your insurance company to subrogate for a loss, thus removing it—which would also benefit your loss history.

Everyone having insurance reduces the likelihood of a General Liability Property Damage claim against you. Uninsured residents who experience damage are more apt to sue the association for what they are responsible for, such as any improvements, their contents, or their expenses if they cannot live in the unit due to a covered peril.

Due to repeated losses throughout the industry (especially water damage losses), more and more insurance carriers are providing quotes with higher deductibles and/or separate water damage deductibles. Having this option allows an insurance company to provide a new or renewal quote when they normally wouldn't.

One of the coverages in an owner's policy is Loss Assessment, which provides coverage for an assessment related to a covered peril. Knowing that all owners' policies include Loss Assessment coverage, the association can assess owners for their deductible in the event of a covered loss, instead of having to draw from the community's reserves.

Having a higher deductible not only reduces the amount and/or frequency of claims, but translates into a lower premium. This helps prevent maintenance increases or assessments to pay for increased insurance premiums—and lower maintenance increases property values.

Ensuring that all unit owners have adequate insurance protects not only the individual owners, but also the entire association. Effective monitoring of insurance policies helps prevent financial losses, reduces the likelihood of disputes, and maintains the association's financial health. By implementing robust insurance requirements and monitoring practices, associations can foster a secure and stable living environment, safeguarding the property's value and enhancing the overall quality of life for all residents. ■

## Understanding Your Business Is Our Business

EXCEPTIONAL LEGAL EXPERTISE AND STRATEGIC  
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