

WHY SHOULD YOU LISTEN TO YOUR COMMUNITY MANAGER?

By Sara E. Barry, CMCA PCAM

UNLV Certified Paralegal

Director of Operations – Wolf, Rifkin, Shapiro,, Schulman & Rabkin, LLP

It is very interesting to me to hear over the years how directors get on the board after finding that, (1) they can by just saying they will and are a live body, and (2) they feel that they know better than the people currently in charge on how to run their organization.

Sound familiar? Being able to serve on the board of directors for a multi million dollar corporation should require more than just submitting your name, but in this industry it can take a lot of work to get individuals to even submit their name. Serving as a director where your neighbors are going to get angry at you for decisions you make or don't make is not the most appealing volunteering that an individual looks to do.

In a prior life where I owned my own community management company, and managed as well, homeowners who complained about something found themselves on a Committee and then ultimately on the board. It worked for me and the community as we were able to find individuals who actually cared about at least one facet of their community.

Caring, in Nevada, is not enough, however, as Nevada leads the nation in laws affecting homeowners associations. This is not something of which we should be proud. Our legislators' continue to try to legislate good behavior and it can't be done. One incident that seems over the top, has been reported to a representative and seems to need to be fixed, finds it's way into new legislation. We can almost tell you section by section what single incident, in Nevada, cause that section of our law. Self managed board members tend to be in a majority of the cases brought before the Commission for Common Interest communities and Condo Hotels for punishment. They don't know what they don't know and there is a lot to learn.

Okay, Sara, how do these all equate into listening more to our Community Manager if we are lucky enough to have one? It is rather complicated, but I will try to communicate my concerns in this area. At a recent commission meeting where discussion was held regarding the inability of a manager or managers to get their directors to listen to their advise, the Administrator of the Nevada Real Estate Division made the following comment, "As my licensee's, if a board is not following the advise of the Community Manager and is not following their documents or the laws, I expect my licensee's to turn them into the Ombudsman's Office for investigation and possible sanctions."

Wow! The manager only has the authority to do those actions detailed in their contract with the association. Since most management companies are putting the manager's requirement in NRS 116 to advise the board, in writing, to be in compliance with all laws of the State of Nevada, does this mean that the manager needs a law degree and license to

manage in Nevada? To get the Community Manager license, the manager does not need to go through the Nevada Bar to get a license to practice law, but then how can they ensure that the board does exactly what their written statement infers and Ms. Anderson wants? It is impossible, as most lawyers don't know all of the laws that "could" affect this particular HOA, based on their documents and amenities.

What can the industry do to fix this? Some have recommended that all directors must receive at least a day's worth of education in the management of a Nevada Non Profit Common Interest Community within the first year of their election. Most managers oppose this from becoming law, however, as they have a hard enough time getting individuals to step up to the plate and serve as it is.

Some managers have suggested just the opposite, keep them away from education as the little bit of education that they get just gives them enough knowledge to make them dangerous making the manager's job harder. I, personally, have been taken to task for educating directors. I found just the opposite, when I was managing, as an outside party repeating the same thing that I had been trying to tell my directors for a long time was reaffirmed by the other party and was then accepted much better.

When did education stop being fun and interesting? Any educational courses that our directors attend should be taught by knowledgeable and interesting individuals, not just someone who feels they can or want to do it and/or it is their turn in any organization that has sponsorship opportunities. Any person attending, regardless of the number of years he or she has served on the board or been in the industry, should walk away with new ideas or tools to help protect, maintain or enhance the values of the assets in their Nevada corporation.

We have some wonderful "educated" DCAL's, Dedicated Community Association Leader's in our industry who took their responsibility to become educated seriously and are continuing to get education to keep that recognition through CAI. Our DCAL's should be used to find out what motivated them to get the education and, even after getting off their board, into continuing to get the education. They should be listened to and their opinions valued.

Back to the topic..... Why should you listen to your Community Manager? Each new manager who goes through the Pre-licensing classes hears *at least* 50 times about a CYA file that they need to keep. As a director, if you have received a memo or letter from your manager or the management company advising that they have advised you to do something and you have made the decisions not to do it, you have just received something that could be used in any action to try to help release the manager from the action. This will show that he or she advised the members of the board to do something and a majority of the board chose not to take that advice. Does the Administrator of the Real Estate Division think that this is all that the manager should do? No, as we saw above, the Division wants the manager to turn the board into the State of Nevada for investigation and possible sanctions.

What problems does this cause to arise within the management company? In most cases, the manager is not the owner of the company and the owner doesn't have a license on the line for action or inactions taken. This means that the manager could be causing a problem with the contractual relationship with the company and the association and he or she *may* get fired if the company loses the contract. The company does not need to have a community manager license with all of the expectations and laws placed on that license. A push was made several years back to tie the company into the licensing process, but the Commissioners at the time did not proceed with this recommendation made by the manager representative sitting on the commission.

Managers are not just trying to be hard noses when they are insisting that the board do or not do something. They are trying to keep themselves, and the board, out of trouble that they see coming down the line. Most of them have years of experience and the board would be well served to at least listen to this experience and not discount it completely. More research should be completed to help protect the members of the board.

The State of Nevada Ombudsman's Office has educational courses on a regular basis as well as professional organizations like Community Association's Institute who has over 31,000 members nationally. Most months, they have at least one class for directors while the Ombudsman's office offers at least 10 around the state. Below are the contacts for these two organizations as well as the website to get articles on subjects that may be of interest.

State of Nevada Ombudsman's Office
Ken Richardson – (702) 486-4086 -

Community Association's Institute
info@cai-nevada.org

Community Association Solutions – Library
www.hoasupport.com