

Seven Signs That Your Association Needs a Lawyer

By: Kathleen Penland

Both large and small associations must seek legal advice from time to time. By developing a relationship with an attorney before problems arise and taking preventative measures, an association can minimize its problems and control its legal costs.

Seven Signs that An Association Needs A Lawyer. The following issues or situations are among those that require the advice of an attorney who is experienced in the law that governs condominium and homeowner associations:

1. **A Summons is Served.** Don't hesitate. Immediately send the summons to the association's attorney.
2. **Questions Arise Regarding the interpretation of the Condominium Property Act and Association Documents.** A declaration must be interpreted in the light of the current law. If the board is uncertain whether the provisions of the declaration govern a situation, call the association's attorney. The Illinois Condominium Property Act has been amended numerous times and generally supersedes the provisions of a declaration. The cost of misinterpretation, both in time and money, (e.g. rescheduling an improperly held election) often far exceeds the cost of a call to the attorney.
3. **The Association is a Party to a Contract or Other Document.** To determine whether a contract will be sent to the association's attorney, the board of directors should consider the actual cost of the agreement. The cost includes the contract price, the cost to repair or replace defective work (e.g. construction contracts), the risk of personal injury (e.g. improperly performed services) and the length of the term of the agreement (e.g. laundry room and cable agreements). The cost of the poor workmanship or poor performance under a long term contract may far exceed the contract price and will result in seemingly endless frustration for the association.

Association documents which must be recorded (e.g. amendments, license agreements) or have long term implications must be properly drafted and executed. Don't assume these are "form" documents which can be prepared by the board or management.

4. **Labor/Employment/Discrimination Issues.** Both the rights of the parties and the nature of the proceedings are dictated by specific statutes and documents. The cost to an association can be very high if the disgruntled employee or unit owner succeeds in a claim.
5. **Violations of the Rules or Provisions of the Declaration.** The board of directors should seek legal advice immediately if the violation creates a threat to the structural integrity of the property or physical safety of its residents, employees or the general public. A delay or failure to follow the requisite enforcement steps present significant risks to the association and possibly the personal assets of its directors.

6. **Delinquent Assessments.** If an owner does not pay within the number of days set forth in the association's rules, contact the association's attorney. Don't wait until the association is served with a summons in a foreclosure or the owner files bankruptcy.

7. **Rule Review.** Rules which are improperly adopted or inconsistent with the Illinois Condominium Property Act or a declaration cannot be enforced. The law has changed dramatically in recent years. Update your rules and ask your attorney to review them prior to adoption.