

The Role of the HOA Attorney
By: Colorado HOA Forum www.coloradohoaforum.com

The question of who the HOA attorney represents can be confusing to home owners. Does the attorney represent the HOA as a corporate entity or the home owners? Should the HOA's management company be involved with the actions and correspondence between the attorney and HOA? Should home owners be allowed to read correspondence between the HOA and attorney? When is the HOA attorney crossing the line between providing legal advice and advocating for the Board? Should the HOA attorney be asked to defend the actions of any one (or all) Board members? The questions are many and the answers are always not black and white. Below are some of our observations and links to legal and other sites on this topic.

The HOA attorney represents the HOA as an organization and reports to the HOA Board similar to what happens when a corporate Board hires an attorney for legal matters. The best interests of the organization (home owners) is to be the primary purpose of legal services.

- a. The HOA attorney should not be completing any legal services in the interest of any one Board member (without the approval of the whole Board) or to complete any personal representation for a Board member in a legal or personal action. Legal actions and services prompted by the behavior of any one Board member become an issue of responsibility for the total Board and thus HOA (unless the Board member has committed a crime).
- b. The HOA property management company need not (and should not) be involved in correspondence between the Board and attorney unless it is deemed by the Board that the management company has a "need to know".
- c. Home owners do not normally have access to correspondence between the Board and the HOA attorney.
- d. The HOA attorney should not be involved in advocating legal activities and court cases but rather serve in an advisory capacity on legal matters and problem resolution.
- e. Any correspondence from an attorney to home owners should not be as that of an advocate of a position on an issue but informational only. If such correspondence is addressing approval for legal action, a recall election, etc. it should only be informational and as appropriate provide the pros and cons to any issue that home owners are to vote on.
- f. The HOA should not have a business or other close relationship with the HOA property management company to ensure conflicts of interest are avoided.
- g. Any defendant or plaintiff in an HOA legal action should not have a history with the HOA attorney.
- h. The HOA attorney should have a track record in dealing with HOA matters and exhibit an understanding of HOA law and their primary area of practice should be HOA law.
- i. Most HOAs are set up as corporations. The Board is the elected body which governs the corporation. An HOA attorney is hired and compensated by the Board NOT the individual property owners. The attorney would take direction and instruction from the Board. They would serve at the pleasure of the Board not the owners. The Board is elected to serve the interests of property owners/home owners in a trusting capacity.
- j. If an individual BOD member is being sued they would get sued as an individual and most likely it would be the HOA risk/fidelity insurance company's lawyer that would get involved. It would work more like an insurance claim.

- k. If the HOA itself decides to sue the individual BOD member for misconduct (Like theft, damages...etc.) this would involve the HOAs attorney. Thus, and it gets a bit complicated, the HOA attorney would still represent the board/HOA but NOT the individual. That individual would have to find their own attorney.

Articles: these are general informational articles and law may be somewhat different by State.

[Association's Legal Attorney](#)

[If You're My HOA's Attorney, You Represent Me, Right?](#)