UNDERSTANDING THE ROLE OF HOA PROPERTY MANAGERS

by Lawrence Szabo, Esq. | Sep 23, 2022 |

A homeowners association's board of directors is responsible for the operations of the association. The members of the association, who are the owners of the properties that make up the association, elect the directors in accordance with procedures and rules that are set forth in state statutes and the governing documents for the association that are created when the association is formed. Typically, the directors are elected at annual meetings of the association members, and they serve for terms that are specified in the governing documents.

Because the directors are volunteers with limited time and expertise that is needed to properly run a homeowners association's business, associations often utilize the services of property managers. An association property manager is a person or entity who, for compensation or in expectation of compensation, provides management services that typically include such things as:

Administering or supervising the common areas of the association.
Administering the financial assets of the association.
Implementing resolutions and directives of the association's board of directors.
Implementing the association's governing documents, which govern the operations of the association.
Administering contracts with vendors, contractors, and other third-party providers of goods and services utilized by the association.
Advises, supervises, and directs association activities.

An association's property manager is a representative, or agent, for the association who represents the association in dealings with third parties. Because state statutes and association governing documents provide that the activities and affairs of the association shall be managed and all corporate powers shall be exercised under the ultimate direction of the association's board of directors, a manager's authority to act for the association must be delegated by the association's board of directors. The delegation of authority to a manager should be documented in a contract between the association and the manager, and in minutes of board meetings. The contract should be reviewed and approved by the board and minutes of the board action should reflect the approval of the contract and authorize a particular board member or officer of the association to enter into the contract with the manager.

Property managers can perform many of the day-to-day management responsibilities of the board of directors, but there are some duties that association boards of directors cannot delegate to a manager, such as:

Appointing executive committees or their members;
Approving settlement agreements;
Attending board meetings;
Voting on Motions at board meetings;
Electing officers;
Filling Vacancies on the board;
Reviewing the Association's Finances;
A decision to record a lien for delinquent assessments;
A decision to foreclose on a lien;
A decision to file a lawsuit.

The hiring of a manager by a homeowners' association must be authorized by the association's governing documents. Thus, before hiring a manager, the association's board must review the governing documents (typically the CC&Rs and Bylaws) to determine whether there are specified limitations on the hiring of a manager to perform association responsibilities. Once the authority for hiring a manager is established, the board should always carefully review the proposed contract with the manager before entering into it. Because the contracts with property managers are generally provided by the prospective property manager, they are typically drafted with provisions that are for the benefit of the manager. Without an understanding of those provisions, associations will frequently sign contracts with property managers that do not include some provisions that are designed to protect and benefit of the association. To minimize the risk of entering into an undesirable contract with a property manager, associations should always have their legal counsel review the contract before it is entered into.