

## HOA University

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### How to Use an HOA Attorney Effectively

The following are topics for discussion and comments by Curtis G. Kimble:

- Know how the relationship with the attorney works.
- A good HOA attorney will appreciate the financial constraints of an HOA and will both advise the client about the law and analyze the situation on a practical cost-benefit basis to allow the client to make a fully informed decision.
- Because of the inherent financial constraints of HOA's, attorneys have to represent many of them at once (hundreds) which means they can't remember all the minute details of your governing documents or your HOA's history at all times. You should do everything you can to remind them of relevant details or point them to relevant facts or documents so time isn't wasted by the attorney.
  - If you send an email, put your HOA name in the subject line. If you say that the CC&Rs state this or that, cite the provision where it can be found.
- Because of the financial constraints of most HOA's, a board should realize the attorney won't do work unless they are asked to. So, just because you have them do a specific project addressing a certain issue doesn't mean they've examined anything else or that they'll advise you on other things unless you asked them to.
  - They address your concerns and issues when they are presented to them, they generally don't proactively seek out and find all of your issues and offer counsel on how to solve them.
  - The point is that you must work closely with your attorney and communicate frequently and openly. The role of the attorney is to advise, educate, and guide the board of directors as part of the ongoing operations of the association, but the attorney can only do that when asked and consulted with frequently.
- With the above said, you've got to be willing to pay for an attorney's counsel. If you balk at bills and refuse to pay for this or that, the counsel you receive will greatly suffer, likely without you even knowing it. The reality is that attorneys have to feed their families and they just aren't going to spend a lot of time on people who aren't willing to compensate them for what they do.
- Use the preventative law approach to avoid litigation and to make an association operate more smoothly. This means you should ensure that you're operating legally and properly at all times, that your governing documents are not problematic, that you're operating according to best HOA and business practices, and that you know and understand your governing documents.

- Understand who the client is. The client is the association itself, as a whole. It is not any one homeowner or a majority of homeowners, and it is not the board or any one board member. The board is the contact point and the source of input because the association can only act through the board, but the association as a whole is the client. What that means is that the association's best interests are the primary concern for the attorney.

- Designate one board member to communicate and interact with the attorney. All board members should feel free to speak with the attorney and be involved in the issues the attorney is dealing with, but there should be one person that is able to authorize the attorney to perform work (and incur fees).

- This is simpler, cheaper, and there is less chance of miscommunication.

- Realize that compromise can be the cement that holds any community or group of people together and that the attorney should be used as a negotiator just as much as a hammer trying to pound owners into compliance. An important part of this concept is the attorney's role as an internal negotiator, informing the board fully and fairly of risks and returns, costs and time commitments, and the other factors inherent in a decision.

- Never hire an attorney that doesn't specialize in condominiums and community associations to represent your HOA, and be very wary of advice from such an attorney (especially well-meaning relatives or other homeowners).

This area of practice requires a high degree of specialized knowledge and experience that a non-specialist just won't have.

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