

MANAGING THE MANAGEMENT CONTRACT – 101

By: Sara E. Barry, CMCA PCAM, UNLV Certified Paralegal
Director of Operations, Wolf, Rifkin, Shapiro, Schulman & Rabkin, LLP

The above topic is not as easy as it may sound and definitely based on what is in your contract. As a member of the board, have you read the management contract and in fact all of the associations contracts?

Depending on what is in your contract, the President is normally the person who has the authority to direct the manager and employees in the management company to take actions without question, unless it is against the law.

The President, therefore, should be a person that the remainder of the board has confidence in and should know where his or her authority starts and where it ends. If something needs to be vetted among the members of the board, the President should be doing this before contacting the manager. Unless this vetting is specifically part of the contract, the manager takes direction from the President and is normally not required to be the facilitator of this process. This activity would require too many e-mails or phone calls if the manager is required to do so outside of the contract.

Having managed community associations for 20 years, I do understand how difficult this can be, but hopefully will help both the manager and the board deal with discussion of this and many additional delicate issues.

Do managers make mistakes? Yes! Do members of the management team make mistakes? Yes! We are all human and therefore must understand that we will never find a manager or company that will be perfect 100% of the time.

One of the reasons, however, that our industry loses so many good managers is because of lack of communication and lack of understanding of what the manager should and should not be doing. Managers are typically individuals who like to serve people and help build successful communities. They take pride in the communities that they manage and don't want to fear that someone in the industry may find out that they manage a community where the board refused to maintain and enhance the value of the assets. The average life of a manager is 2 ½ years in our industry. It can take that long to get a grip on this legislative riddled industry to effectively manage, unfortunately.

Why do we lose so many excellent managers? They mostly want their lives back, which is why I sold my company in 1997. I was working 7 days a week and sometimes as much as 24 – 25 hours a day helping my communities. It is unreasonable and unacceptable for members of the board to expect this.

Unless the board is willing to pay the management company the salary of and benefits for the manager with profit built in to have a full time manager, the manager has other clients that they need to service and contracts that need to be fulfilled. If one association is out of control and demanding too much time from the manager, the company, the manager and ultimately, the communities they manager suffer.

One of my Directors, LeeAnn, (I will never forget LeeAnn), would send me 10 – 20 faxes a day. Because each one had enough validity to it, I had to drop everything I was doing to research it and either react or put it in the list "to do." Back before I sold my company in 1997, faxes were overall more common than e-mails. Because of E-mails, our society has become an instant gratification society expecting immediate responses since the BlackBerry and I-Phones, etc. get you to your manager everywhere they may be via e-mail. Again, I ask you to go back to what the contract says. Most state that the manager will attempt to get back to individuals within 24 hours unless an

emergency. Is everything you ask your manager to do an emergency and could that E-mail be put in "Messages Waiting To Be Sent" and built upon to send one weekly message or more likely one every other day or so?

When does the manager get his or her work done, all those things in the contract, when they are continually at the beck and call of all of the directors? The answer is that they don't get the work done and then the Board and owners in the community are unhappy because "nothing gets done."

Are there some bad managers out there? Yes! Are there people out there who should not be managers? Yes! Looking at your contract to ensure that the actions to be taken in the contract are completed is the prime responsibility of the board as a whole and if actions are not being completed, an executive session meeting should be called to discuss the contract and issues. This is one area that is currently allowed to be discussed in executive session. Both parties should be very candid and individual feelings should be set aside to get to the bottom of any issues. The company doesn't want to lose the contract, doesn't want to lose a good manager and neither should the board as it takes a manager about 6 to 9 months to get up to speed with the unique personalities, documents, etc., in a new community. It is much more productive for everyone to have this meeting and get the issues ironed out.

Over the 20 years of owning a management company, it amazed me how the directors felt that I should volunteer my time because they volunteered theirs. The management company is a for profit company while the association is a Not for Profit formed under Non Profit Nevada laws.

Even if your manager isn't complaining, have a conversation with him or her regarding working together better. This is obviously after you go back and re-read that contract. Excellent service can always be improved upon with cooperation from the board and effective communication with the owners.

As I, unfortunately, train all of the new managers in the State of Nevada, many individuals take the pre-licensing classes to do a better job than their managers are doing only to find out that managing isn't quite what they thought it would be. Our State has more laws and place more requirements on community managers than any other state in the U.S. Not something of which we should be proud as it only means that our legislator keep legislating to fix one problem – a problem at a time and it affects all of us.

As licensed community managers in Nevada, the managers are held responsible for what you as directors do or don't do, unfortunately. The Nevada Real Estate Division Administrator, Gail Anderson, stated at a Commission meeting the following, "As Licensee's under the NRED jurisdiction, I expect the managers to turn directors into the Division if they are not following the laws and doing what their documents state they should be doing." This is a very scary statement.

If you find that you are not following the recommendations of your manager and the manager feels a need to send you a memo or put into the minutes that they have advised you to take or not take an action, they are covering their behinds as they see trouble brewing. Some of these files that the Community Managers keeps are huge.

To wrap this up, please read and be familiar with your contract and as a complete board, determine who should be contacting the manager, how they should be contacting the manager, and how often while keeping in mind what is not getting done each time you contact them. If sections of the contract are not being followed, immediately ask for clarification while giving the manager and/or the company time to fix it before you jump ship. Ask yourself, did we just ask for the lowest price when this went out to bid or did we write specifications for what we wanted any potential companies to bid upon. Associations who keep members of the board for a while and write specifications before entering into a contract are far happier with their service providers. Remember that it takes a good 6 to 9 months for a company to get up to speed with your association and to be able to make a real difference.