

Condo Q&A

Feb 12 2009

Practice Area: Community Associations

Q: *We were warned to be wary of “indemnity clauses” which make us responsible when our manager is sued. But our lawyer said, “Insurance will protect you. Everybody has those clauses.”*

Signed, Board Member.

A: *Dear Board Member:*

We also told you that if you ask two lawyers a question, you may get three opinions. If you ask one lawyer, you may get two opinions. Your lawyer was right. On the other hand, he was wrong.

It is true that many Wisconsin condo managers push hard in favor of a contract clause that provides that the Association will protect, defend, and pay for the legal defense of its property manager. It is also true that your insurance, which usually names the property manager as an insured, often provides coverage. But there is a class of cases which may not be covered by your insurance, but which you are still required to defend. The lawsuit may arise from the conduct of the manager, but you and your fellow condo owners must still pay for the defense, without the help of insurance. That’s expensive – very!

We think the manager is the professional in the equation, and he can identify the risks that should be insured for better than you. We thus advocate for a modified clause which provides the indemnity only for insured losses, or for risks the manager recommended should have been insured for.

Q: *On a routine vote to approve the minutes of last year’s annual meeting, a member protested that the Secretary’s draft was incomplete. But the member wasn’t even there last year, and nobody has a recording of the meeting. We “wasted” at least 20 minutes on this. What should we do next time?*

A: Change your procedures:

- *Robert’s Rules* provides that an assembly which meets less than four times a year should not wait for the next meeting to have the minutes approved: It can be done by the Board at its monthly meeting. So skip the approval process at the annual meeting.
- Minutes are “complete” if they provide a record of official actions – votes – and reports. They are not a transcript of “he said, she said.”

We do not favor recording meetings. More on this in another Condo Q&A.

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