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LEGAL LINES



Community Associations and the Unauthorized Practice of Law

Community association managers are regularly involved in hiring contractors, collecting assessments, adopting community rules, and many other tasks necessary to govern a community. Managers must be knowledgeable of a community's declaration, bylaws and other governing documents, as well as a variety of state, local and federal laws which impact association governance.

However, managers must be careful not to provide legal opinions or prepare documents which constitute practicing law. Similarly, community association directors and officers must be aware of the legal line between a personal opinion and the unauthorized practice of law.

matter before a government board or commission established to oversee matters involving common ownership communities.

Avoid the Unauthorized Practice of Law

Many decisions made by community managers and volunteer directors have legal consequences and every community must be operated in compliance with the association's governing documents and law. Where the documents are ambiguous or inconsistent with statutes, determining how they should be applied may constitute the practice of law. Preparing assessment liens which affect title to property is generally considered to constitute practicing law.

association managers in Maryland, Virginia, and the District.

The Florida court advised that the following activities constitute the unlicensed practice of law and are not allowed to be performed by community managers:

- drafting assessment liens;
- determining the votes necessary for certain actions which require the interpretation of statutes and rules;
- advising that an action may or may not be authorized by law, rule, or the association's governing documents.
- drafting amendments to the association declaration and bylaws; and
- analyzing statutory or case law to reach a legal conclusion.

However, tasks which are ministerial or do not require interpretation of the association governing documents or law, do not constitute the practice of law and may be performed by community association managers.

Community association directors and officers must be aware of the legal line between a personal opinion and the unauthorized practice of law.

Know the Legal Lines

Maryland, Virginia, and the District of Columbia all prohibit the unauthorized practice of law by statute or court rule. Although there are some differences in how each jurisdiction defines the practice of law, all prohibit a person other than a lawyer from giving legal advice or providing legal services to others. Additionally, preparing legal documents which affect title to real property is specifically prohibited in all three jurisdictions. All generally prohibit representing others in a court or administrative agency proceeding, unless specifically allowed by statute or court rule. For instance, an officer or employee of a corporation may represent a corporation in small claims court suits. And, in Maryland, an officer or director of a community association may represent the association in a dispute, hearing, or other

Where officers are permitted to represent a corporation in assessment suits involving "small claims" that generally does not allow a community manager employed by a management company to be appointed as an officer to appear in court on behalf of an association (except as a trial witness). However, a manager employed by the association may come within the exception for non-attorneys to represent a corporation in a small claim matter.

Although not directly applicable in other states, the Florida Supreme Court recently provided guidance on the boundary between activities which may be performed by a community manager and activities which require an attorney. Because other states often look to Florida for guidance on matters involving community associations, the guidance is instructive for community

The Bottom Line

Where the unauthorized practice of law occurs, a community association manager or director could be liable to the association for any financial loss resulting from actions which involve the unauthorized practice of law. In Maryland and Virginia, the unauthorized practice of law is a misdemeanor crime subject to a fine and/or imprisonment.

While association managers and board members must have general knowledge of the association's governing documents and laws related to association governance, they should avoid the unauthorized practice of law and consult an attorney on matters which require the interpretation of governing documents or the application of state, local or federal law.