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# 10 TIPS

## FOR STAYING OUT OF COURT

1. Read the Governing Documents
2. Inspect Common Areas
3. Avoid Ambiguous Contracts
4. Be Reasonable and Consistent in Enforcing Rules
5. Document Board Actions
6. Follow Governance Procedures
7. Comply with Fair Housing Requirements
8. Act Promptly to Collect Assessments
9. Stay Informed of Laws Affecting Association Governance
10. Plan Ahead to Stay Out of Court

Community association boards frequently face situations which could result in a lawsuit against the association. Typical suits against community associations are homeowner suits challenging board actions; contractor suits seeking money for work performed; and suits by individuals injured on the association common property.

For instance, the following common situations could lead to litigation:

- A proposed condominium bylaw amendment restricting rental of dwelling units was sent to owners 21 days before the annual owners' meeting. The amendment was approved by 90 percent of the owners. All owners who rent their units voted against the bylaw amendment. Even though the meeting provision of the Bylaws allowed the annual meeting to be called on 21 days' notice, the amendment provision of the bylaws required that notice of the amendment be distributed at least 30 days prior to the meeting.
- The painting contract called for painting three buildings for a fixed fee, but did not include a termination provision. When the co-op board of directors found the contractor's work unsatisfactory after the first building was painted, the board told the contractor to leave the job and refused to make payment.

- With snow removal expenses already over budget and temperatures in the 60s expected in a few days, the homeowners' association board decided not to clear the snow and ice from the community building entrance and walkways.

However, with advance planning and an awareness of the legal consequences of Board action, litigation can often be avoided.

### Comply with Governance Procedures

Homeowner suits often involve a challenge to the procedures followed in conducting elections, approving assessments, enacting a covenant or rule, or reviewing accommodation requests for residents with physical disabilities.

To minimize the risk of such suits, the board should carefully follow all applicable procedures in the association documents and statutes. The governing documents often require notice be given to owners of certain proposed actions such as special assessments and enactment of rules. Also, state statutes such as the Condominium Act often establish specific procedures concerning association meetings, elections, assessments, and adoption and enforcement of rules.

Homeowners may also challenge actions of community association boards of directors on the basis that the board did not

have the authority to take the challenged action. For example, while community association boards generally have broad authority regarding *maintenance* of the common areas, the board's authority concerning *improvements* to the common area may be more limited and may require owner approval.

Where the board action interferes with homeowners' use of their property (restrictions on leasing) or the common areas (towing of vehicles), or involves a significant expenditure of association funds (construction of a swimming pool), there is a greater chance of a challenge to the authority of the board. To minimize the risk of a homeowner suit challenging board action, each board member should be familiar with the provisions of the association governing documents which establish board powers and may impose limitations on the authority of the board to take certain action.

Also, because the board's authority to act may be enhanced or limited by statutes such as state laws regarding association governance, local towing ordinances or the federal fair housing laws, they should consult with the association's attorney regarding the board's authority to take proposed action which restricts homeowners' use of their property or involves a significant expenditure of association funds.

### Avoid Ambiguous Contracts

Contractor suits against community associations usually are claims for money when there is a dispute whether the contractor has performed services and the association refuses to pay the contractor. To minimize the risk of being sued by a contractor, the board should make sure that the contract has sufficient detail about what work is to be performed and when it is to be completed.

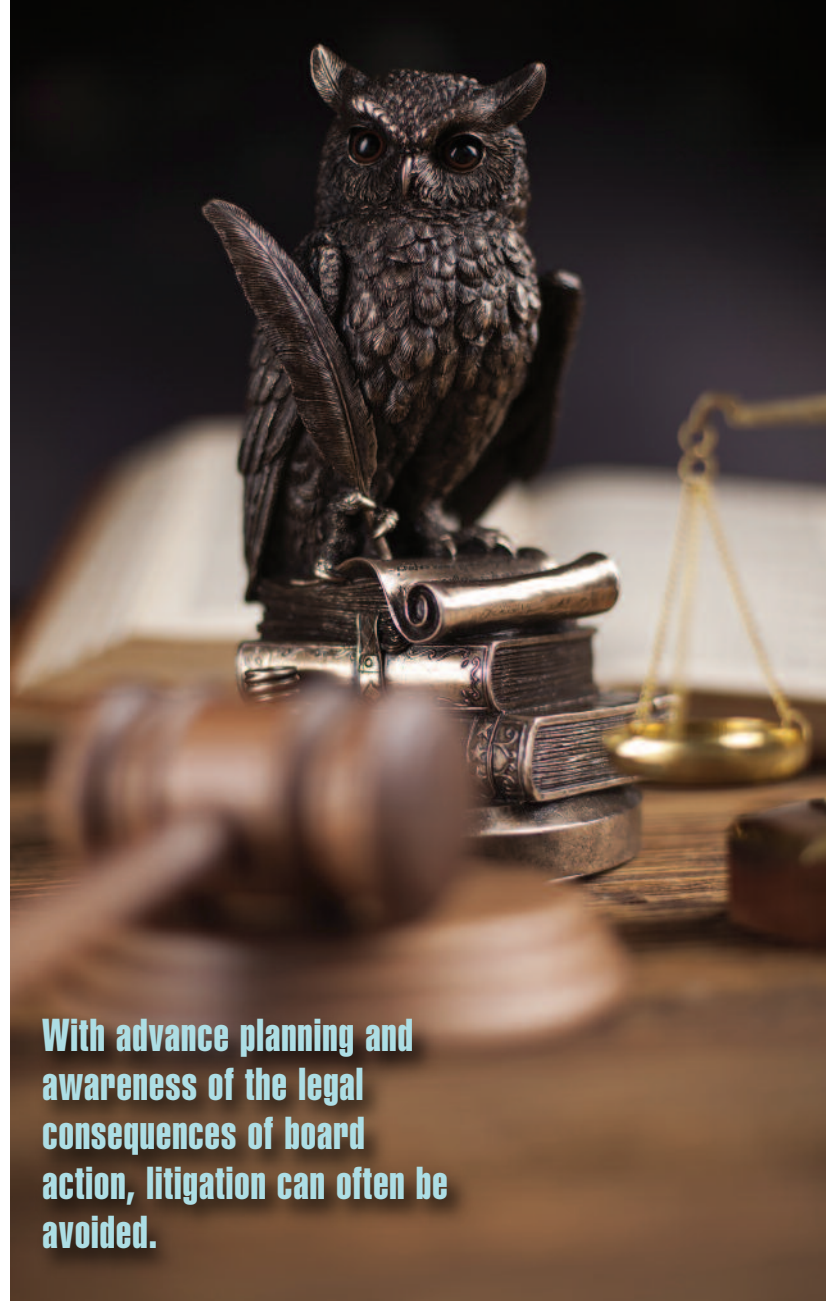
Also, a carefully written termination provision is the single most important provision to avoid contractor suits. If the association can terminate the contract without a specific reason and without a payment penalty, the association will greatly limit its exposure to suit by the contractor.

Where the contract involves a significant expenditure of association funds, the board should consult with the association's attorney to ensure the contract provides adequate protection to the association. Also, if the contract involves substantial repairs or improvements to the common property, the board should obtain assistance from an engineer or architect in describing the specific work to be performed.

If the board is not satisfied with the contractor's work, suit can often be avoided by explaining the concerns to the contractor. It is always best to work with the contractor to resolve disputes either directly or through mediation. Merely withholding payment from the contractor greatly increases the risk of suit against the association.

### Inspect Common Areas

Lastly, community associations are often sued by people injured on the common property. Because the association is responsible for the maintenance and repair of the common areas, it could be held liable for injuries which result from the board's failure to use reasonable care in main-



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taining the property.

To minimize the risk of personal injury litigation, the board should conduct regular inspections of the property to make sure there are no unusually hazardous conditions. Focus should be on the building access areas such as walkways, steps and parking lots. Special attention should also be given to recreational facilities such as playgrounds and swimming pools. In addition to inspection of the physical property, the board should also evaluate whether there is adequate lighting in the parking area and other areas used at night.

### Plan Ahead

Not all litigation can be prevented. However, the key to reducing the risk of suit is advance planning and knowledge of the legal consequences of its actions. 📺