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Getting Sued: A Manager's Checklist for the First 100 Days

Speakers:



Karen A. Kannen, Esq.
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When your Community Gets Sued

- A guide to handling litigation against your association

The Association has been sued! ...what does that mean?

Civil Actions – Superior Court - Filed vs. Served

Verbal or written threats/demands?

ADR demands?

IDR demands?

Fair Housing Claims?

☒ Compile ALL documents served

- Including duplicates

- Including “boilerplate” documents

The multiple copies may be purported service upon multiple parties and boilerplate documents may convey special or local court rules/processes or other documents that relate to the service/potential service of the documents.

☒ Document how and upon whom the documents were served

More than one service? For each:

- HOW: Handed to a person? By mail? Placed on a counter or at a door (if so, was anyone present at that time?)
- UPON WHOM: A Board member? The community manager? Other management-related personnel?
- WHEN: What was the date and time when it was served/received?

☒ Immediately inform the Board of Directors

DO NOT wait until the next Executive Session to inform the Board.

PROVIDE the Board with all documents served, but request that they not be distributed to non-board members or discussed with others until after legal review and feedback.

INFORM the Board that you will be conferring with the Association's legal counsel immediately.

☒ Immediately inform the Board of Directors (Cont.)

INFORM the Board that you will confer with the Association's insurance professionals (but no claim unless/until the Board approves?). More on this later.

INFORM the Board that this will be reviewed at the next Executive Session of the Board, or earlier if recommended by legal counsel.

DO NOT start investigating the claims or compiling, reorganizing or searching for additional or specific records or discussing the claims in detail until after conferring with legal counsel. Also refrain from discussing the claims in detail until the Board confers with legal counsel. Request that the Board do the same.

☒ Provide information and documents served to legal counsel (endeavor to do so within 24 hours)

CLEARLY identify the nature of the email as time-sensitive - consider an initial phone call

INFORM legal counsel the date of the next scheduled executive session

PROVIDE all documents that were served

PROVIDE the information compiled regarding the service of the documents

☒ Provide information and documents served to legal counsel (endeavor to do so within 24 hours)

INFORM legal counsel (if you know), if there are named DEFENDANTS other than the Association and/or current Board member(s)

INFORM legal counsel (if you know), if any PLAINTIFFS are on the Board, or are not members of the Association

☒ Confer with Legal Counsel

Legal Counsel will determine:

- The required response date
- Whether a special or emergency Executive Session will be required
- Whether an Executive Committee of the Board might be required or desired
- Whether there are potential inbound or outbound defense/indemnity demands from others (more on this later)

☒ Confer with Legal Counsel (Cont.)

-The timing and nature of the investigations, compilation and reports that might be required of the Board, Management or others.

In the first days, the association's legal counsel will determine important deadlines, issues and potential strategies that can have significant impacts upon the legal claims and the effectiveness and cost of defense.

☒ Confer with Association Insurance Professionals (endeavor to do so as soon as possible)

- The timing of a claim can, with some policies, have a huge impact upon the availability of coverage. As such, it is very important that The Board work with its insurance professionals to balance the potential risk vs. benefit of various strategies.

☒ Confer with Association Insurance Professionals (Cont.)

Preliminary evaluation of claims and potential coverage:

- Comprehensive General Liability (CGL): Claims for Bodily Injury/Property Damage, Personal Injury.
- Directors and Officers (D&O): Accusations of wrongful acts/breach of fiduciary duty involving board governance. D&O excludes Bodily Injury and Property Damage.
- Both: Claims can absolutely trigger both types of liability policies.

The Insurance Processing Timeline

- File the claim and expect to receive written confirmation within one business day.
- Expect to hear from an adjuster within two days and if not, reach out to broker or insurance adjuster.

Timing Issue Amplified by Type of Claim

- Claims Made or Occurrence Policy?
 - Claims Made example- On 07/01/2024, BOD's vote to approve an architectural application. On 08/01/25, they are served with a lawsuit for that approval. In 2024, HOA was insured with ABC Insurance. In 2025, they were insured with XYZ.
 - Claim is filed with XYZ because they were the insurer at the time of the claim filing.
 - Occurrence example- On 07/01/2024, a guest of the community slipped on the pool deck. On 08/01/25, the HOA is served with a lawsuit. In 2024, HOA was insured with ABC Insurance. In 2025, they were insured with XYZ.
 - Claim is filed with ABC because they were the insurer at the time of the slip (occurrence) in 2024.

Late Filing

- Directors and Officers: Critically important to notify the insurance company at the time of notification of a claim. Your coverage could depend on this timing.
- General Liability: Also very important to notify the insurance company. HOA's that act on their own or ignore, could be in for a very expensive ordeal.

☒ Initiate an “Evidence Hold”

- PRESERVE documents and information related to the claims.
- INFORM the Board Members of the need to do the same since this applies to BOTH the Association and its individual directors.

This is very important. If information or documents is/are purged or destroyed after notice of a claim, it can significantly impair the ability to defend those claims, EVEN IF IT IS INADVERTENT. However, refrain from compiling, reorganizing or searching for additional or specific records until after conferring with legal counsel.

Executive Committees

If a PLAINTIFF in the case is a Board member, Association member or a vendor of the Association:

- There is a potential need for an Executive Committee
- There are potential limits upon rights to review Association records related to the claims.

Executive Committees (Cont.)

- An executive committee is a committee consisting of at least 2, but less than all of the Board members who will be vested with the power to act on behalf of the Association in addressing the claims.
- Look to legal counsel for recommendations regarding executive committees.
- Look to legal counsel to provide the required logistics of creating and operating any executive committee.

Defense and Indemnity Issues

- If a DEFENDANT in the case is a Board member, or a present or past community manager or vendor of the Association, there is a potential of an inbound or outbound demand for Defense and Indemnity.
- A defendant Director may demand that the Association provide for their personal defense either through insurance coverage or paid by the Association and under many circumstances will have a right to such defense.

Defense and Indemnity Issues (Cont.)

- In addition to the management company, a defendant vendor can potentially have a contractual right to defense and indemnity.
- A defendant Association may have a contractual right to demand such defense and indemnity from an Association vendor.

Look to legal counsel to provide further information regarding these issues and as to any related obligations and logistics. This may also implicate insurance if a defendant is an “additional insured” on either the vendor’s or the Association’s insurance policy(s).

The Importance of the Insurance Response(s)

The initial response of any insurance carriers and its evaluation can have very significant impacts. As such, it is very important that a manager timely convey any insurance responses to legal counsel and potentially others.

- Coverage of Defense vs. Indemnity
- Denial of the duty to Defend
- The impact of a denial vs. never tendering the claim in the first place
- Challenging a denial

The Importance of the Insurance Response(s) (Cont.)

- Coverage of Defense:
 - The Carrier will pay for defense (Attorneys Fees and costs)
 - Does the carrier have the right to choose the attorneys?
 - The importance of “Reservation of Rights” (ROR) letters from the carrier
 - An ROR is a notice that the insurance company is investigating a claim and while they may commit to a certain level of coverage, they also reserve the right to decide not to cover based on the policy and circumstances.

Prelitigation Demands

- IDR Demands
- ADR Demands
- Verbal or Written Threats/Demands
- Fair Housing Claims



THANK YOU