

# Board's actions raises questions

**Q.** We have several issues with our board of directors for our townhouse association. Recently, they signed our managing agent (who we are attempting to oust via gross negligence) to an additional two-year contract although she still had nine months left on her previous contract. No other bids were entertained and the owners were never informed of this. In our bylaws it states that the annual meeting/election is to be held in Will County, and it was held in Cook County. The board members are sticklers when it comes to the declaration, bylaws and rules and regulations. Is this enough to declare the election null and void and invalidate the contract renewal? Do we need legal assistance to proceed with this?

**A.** Your inquiry contains several questions, which need to be addressed separately. The board of directors is the duly elected governing authority for your association. Most of the decisions for association governance are required by law to be made by the board.

One of them is the power to hire and fire contractors. Notwithstanding whether owners are or are not satisfied with the property manager's performance, it is ultimately the board's decision.

Owners who are dissatisfied with the manager should certainly notify the board as to the specifics, however, if the board members are satisfied, the only alternative is to change the board.

Owners do not have a legal right to hold a referendum on the management contract. That is a legal and binding contract entered into between the association and the manager, in accordance with the terms and conditions negotiated by the board as the duly authorized representatives of the members.

There is no legal requirement that an association obtain bids, although it is a good business practice, particularly with larger contracts.

However, with continuing



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relationships, particularly when they have been affiliated with the property for awhile, there is no need to seek bids unless the service is unsatisfactory.

Holding the meeting out of county in my opinion would only be "fatal" if the location were inconvenient. Many towns are split or border another county. If the meeting place is in a central, convenient location, I do not believe it is a material flaw unless it was intentionally selected to discourage people from attending the meeting.

However, if you wish to pursue the issues of terminating the manager, taking over the board, etc., you will certainly need legal assistance.

**Q.** What is an association's obligation to reimburse an owner for their share of an insurance deductible after their unit was damaged by another unit owner who refuses to pay for the damages.

**A.** A condominium association is obligated to insure the premises in accordance with Section 12 of the Illinois Condominium Property Act, amended in 2002 and which section supersedes your declaration's provisions.

The association's insurance coverage is limited to the common elements and the limited common elements.

The unit and its contents are the responsibility of the owner. The unit owners are self-insured unless they obtain owners insurance, such as an HO-6 policy.

Deductibles are within the discretion of the owner and they can set it at whatever level they choose.

The association has nothing to do with this arrangement between the owner and their carrier.

Since owners are self-insured,

it is not within the board's discretion, nor would it be an appropriate expense of association funds, to reimburse an owner for their share of a loss suffered from paying a deductible, regardless of cause.

There are clear-cut provisions in your declaration that expressly prohibit subrogation in these instances and the only time a deductible can be recovered is when an owner or resident damages the common elements and the association is out-of-pocket for its deductible.

**Q.** Our manager sold his management company to another company. There is no right of assignment written into our contract. Although we may actually agree to this, if we do not like the arrangement, can we get out of the contract?

**A.** That depends upon whether you have a "no-cause" termination provision in your contract. If so, you can cancel for any reason upon providing proper notice. If the agreement with the management company requires termination only for "cause," or has prohibitive penalties for cancellation, assignment of the management contract does not constitute "cause."

Illinois law has addressed this issue a number of times. A contract can be assigned without an express provision permitting it because to say otherwise would violate public policy.

My best advice would be to be open to the new relationship, establish the parameters and expectation of the board and then if you are not being provided the same or higher level of service, you may then have a solid legal basis in which to terminate the relationship.

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