

AVOID ATTORNEY'S FEES - Education + Communication = Prevention

Seriously, an attorney is writing this article. Associations and the management companies can save thousands of dollars in attorney's fees, by either avoiding the costly situation or promptly identifying and remedying a problem early on. How does a client do this, through communication and education. Preventative law is the concept. Legal wrangling and wasted resources can be avoided with homeowner education and effective communication between associations and members.

Education

Attend workshops put on by the CAI and attend workshops put on by law firms. For example, our firm provides educational opportunities for clients and non-clients on topics ranging from Fair Housing to Operation to Introduction to Associations. It is important to take advantage of these opportunities. CCIOA requires it under C.R.S. §38-33.3-209.7. A common example, many new board members to associations do not realize that they are on the board of a company. The Association in most cases is a non-profit corporation. By being a board member, you are taking on a fiduciary duty to your community. This can be intimidating if you are unaware of what your responsibilities are to the community. Knowledge is empowering, if you have read governing documents and attended classes on topic, and then you are better prepared to represent your association. If your fellow homeowners have done the same, they are more likely to use the mechanism the association has in place to resolve a conflict.

Knowing the limits of the association's power and the duties of the association members creates the opportunity to be better communicators on behalf of the association. If the association is doing a good job communicating with the members, then there are going to be fewer disputes.

Communication

"Get your facts first, then you can distort them as you please." – Mark Twain

Often times, disputes can be avoided or minimized through effective communication. Taking action with incomplete information can be dangerous for both the homeowner and the association. For example, if a homeowner is unaware of the Architectural Guidelines that are in effect, then there is a good chance they will violate those guidelines. While everyone is suppose to be provided with Association documents upon purchase within a community, the reality is not everyone takes the time to review those documents. By reminding association members of through letters, or newsletters you can minimize disputes. Seasonal reminders of landscaping requirements or snow removal while they take time upfront, they can reduce the number of non-compliant owners in the long run.

One of the common elements of almost every lawsuit is bad communication. Denver County Court Judge Galchinsky starts every court day with words of wisdom for the litigants in his crowded courtroom. The theme of which is that so many issues can be resolved if people just “pick up the phone and talk”. A day in county court reveals that many cases do get resolved, the day of court, because everyone is present with facts in hand and they communicate with the assistance of their attorneys.

The quote from Mark Twain highlights a critical element of winning a dispute. Before you can construct your argument, you have to have all the of facts. Attorneys best serve their clients interest in a dispute by gathering the facts, and communicating with opposition regarding a resolution. One of the more important roles that attorneys provide clients is the investigative role. Often times, attorneys get to be the detective and assist clients and interview witnesses to determine the underlying dispute. Cases evolve from when clients first pick up the phone to the attorney, to when the investigation concludes. Sometimes that communication is a letter, and a phone call, but sometimes the only way to get someone’s attention is a lawsuit.

While talking does not always work to resolve association disputes, effective investigation of facts and communication will go a long way to minimizing disputes that get sent over to the attorney.

The Reality

We live in a litigious society that is filled with conflict. There is plenty of work for attorneys, because no matter how often you try and avoid a lawsuit, the association or management company will be involved in a suit. There is always going to be the homeowner that insists that blue is an earth tone, and there will be genuine disputes of fact. However, the best practice as an attorney is educating associations and management companies about the legal pitfalls to be avoided to reduce overall association expenses. Education provides Associations with the means to use effective communication to shut down unnecessary disputes, and for those unavoidable disputes the Association enforcement procedures inevitable lead to the lawyer.