



# Ask the HOA Expert

## Getting a Director Resignation

by Richard Thompson

**Q** We have a board member who is now living at a rehab facility. Eventually, he hopes to return to his home in the HOA but that is uncertain due to his physical condition. We're debating whether to ask him to resign from the board. What would you suggest?

**A** Directors need to be able to attend meetings, make inspections, and take care of routine board business. Unless the prognosis is short term, he should resign his board position and allow another to be appointed. While the reason here is somewhat unusual, the result is the same as a

director whose job takes him out of town for extended periods. When circumstances change or prevent continued board service, it's time to bring others in who are able to serve. The board president should ask for his resignation with tact and compassion.

### **Q** Flooring Creates Noise

I just spent \$7000 to install hardwood flooring in my unit and my downstairs neighbor is complaining about noise. Can't I decorate my unit the way I like?

**A** In common wall communities, noise transmission is a huge issue. Most new construction provides for soundproofing in its design and material by installing double separation walls and concrete floors. Older buildings with single wall construction and wood frame flooring have substantial noise challenges. If these conditions exist, it's best for the HOA to restrict the installation of hard surface flooring which will only exacerbate the problem.

Your neighbor probably has a legitimate complaint which won't go away. You might offer to install soundproofing material on his ceiling at your cost. And walk lightly.

### **Q** Uninsured Contractors

If a contractor has been hired by the HOA but will not provide proof of insurance, can the members of the HOA be sued if a worker gets hurt?

**A** It sounds like one of the board's requirements of being hired was providing evidence of insurance. If the contractor can't produce it, the board can and should terminate the contract. And yes, the HOA indeed could get sued if an uninsured worker was injured on the job. That's why it's so important not to hire anyone that doesn't have the proper licensing, bonding, and insurance. The board that ignores this basic puts itself and the other members at risk.

### **Q** Dangers of Radon

One of our unit owners discovered his unit tested positive for radon during a sale related inspection. The results came back at three times above the EPA's recommended level. In order to sell his unit, the buyer required him to install a radon abatement system. The unit owner felt that the HOA should pay the cost since the radon originated from outside of his unit. Is he right?

**A** Radon is a toxic and radioactive gas which causes cancer and death ([www.epa.gov/radon/pubs/citguide.html](http://www.epa.gov/radon/pubs/citguide.html)). The unit owner is correct that this is an issue that the HOA should remediate just as it should with water intrusion, rats, termites, and other issues that originate from the common area. All ground floor units should be tested and the HOA should install whatever abatement solution is indicated. Radon is deadly and the sooner evaluated the better. When it comes to health issues, the board should respond aggressively.

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## Unused Special Assessment

Our board billed us for a special assessment to construct a guardhouse and gate. The money was paid, but the gate and guardhouse project was cancelled. We have asked for a refund many times. The board responded that the funds will be applied to our HOA fees.

The purpose of this special assessment was specific. If the project did not take place, the money should be refunded to those that paid it. Applying it to HOA fees is fine as long as each owner approves doing that. The board has no authority to change the use of the funds on its own. And the more time that passes, the higher the likelihood that some that paid the special assessment might no longer be owners. This board needs to refund or credit back the money immediately.

## Contract Signing Authority

Who on the board has the authority to sign contracts? Our secretary recently executed a large renovation project agreement in the president's absence.

Typically, the president signs contracts. If the president is not available and there is an urgency to get the contract signed, the vice president can act on behalf of the president. The treasurer and secretary are not generally authorized to sign contracts unless the governing documents indicate otherwise.

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