



BEWARE! WATCH YOUR STEP

Take Precautions

PROTECT YOUR COMMUNITY ASSOCIATION AGAINST A LIABILITY CLAIM



**BY ADIA
WALKER**

Lawsuits are a regular occurrence in today's society; you hear of them often on television, in the newspapers, or during conversations. It is common sense then, for individuals and associations to take the necessary precautions to keep themselves from ending up on the wrong side of one of these legal proceedings. In order to gain a better understanding of what community associations can do to ensure liability protection, we asked several professionals who provide services to community associations to share some insight from their individual areas of expertise.

STRUCTURAL ENGINEERING AND CONCRETE RESTORATION

Donald Chalaire of Chalaire & Associates says that most of the cases he's seen are a result of community associations failing to enforce rules and regulations. "Laws in Florida require community associations to enforce the rules," he says. As Chief Engineer for a structural engineering and concrete restoration company, Chalaire has witnessed many lawsuits brought against community associations.

"A fair amount of lawsuits are from unit owners," Chalaire says. "One I regularly see is when a sidewalk is offset, or there is some other issue within the community that could cause a safety issue. Sometimes the association representatives are not aware of the problem; someone from the maintenance staff may be aware, but they fail to inform the association."

Failure to meet soundproofing requirements has likewise

been the cause of several lawsuits, according to Chalaire. He also recalls a case where one of the unit owners was complaining about a leaking ceiling. "It turned out the unit above had broken windows," he says. "The association thought it was the unit owner's responsibility, not theirs. Associations often don't realize they have to enforce the rules and regulations."

Sometimes the issue is not ignorance of the law, but a lack of money. "If a board doesn't have a lot of money in reserves and they don't want to upset people by collecting money for repairs, sometimes they will only address the issues that people are complaining about," Chalaire says. "Association managers can find themselves caught between a rock and a hard place; they are trying to do the right thing by enforcing rules and regulations, but they are fighting an uphill battle because everything has to go through a board that may not share the same goals."

BEE REMOVAL SERVICES

Willie Sklaroff, bee expert and Owner of The Original Willie the Beeman, says that removing beehives from community associations can be a serious event. "Sometimes the police will call us to let us know there is a situation that requires our services, and then they have to stay there until I'm finished with the job," he says. He's often heard residents threaten to take an association to court for failure to effectively remove bees. "I'm not a lawyer so I don't know what would happen in court," he says, "but I've heard residents complaining, saying, 'the management hasn't done anything about it; if I get stung, I'm going to sue.' I don't know about liability, but I do know it's a safety hazard."

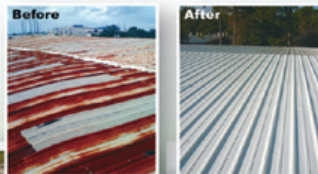
Sklaroff points out that 50 percent of people who get attacked by bees knew the beehive was there. "A lot of times a beehive has been around for years, but people will wait until someone gets stung to do anything about it," he says. Sklaroff acknowledges that cost may be the prohibitive factor in situations like these. "These types of things are usually not in the budget unless something like this has happened before," he says.

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However, the best way to avoid a lawsuit, he advises, is to address the issue immediately. "If a bee problem is reported, get it removed quickly by a company that is licensed and insured by the state," he urges. He cautions against using someone who does not have the proper training and insurance. "If they get stung, you could be liable," he says.

PROPERTY MANAGEMENT AND CONSTRUCTION CONSULTATION

"One of the biggest risks community associations take is hiring illegal contractors to do work," says Carmelo A. Gonzalez, President/Owner of Empire Property Management Solutions and Empire Management & Construction, Inc. "I've seen construction-related lawsuits occur because associations use unlicensed people to do the job."

According to Gonzalez, "This not only creates a dangerous environment due to substandard work, but could also create big liability issues if the contractors do not have proper workers' compensation insurance." To avoid these potential liabilities, Gonzalez advises community associations to deal strictly with association management companies who have relationships with licensed contractors. "If you want to take it a step further, you could hire a construction consultant to do quality control inspections," he says.

Gonzalez actually has expertise in both arenas: "We are an association management company, and we are also experts in construction," he says. "We can perform the same quality control inspections as architectural firms." Working closely with experts is another way to limit the possibility of a lawsuit; they will know which aspects of a job are absolutely

necessary and which ones require less rigid guidelines.

APPLYING THESE IDEAS ACROSS A BROAD SPECTRUM

Though many of the examples in this article are from a specific sector, the main messages can be applied to any situation a community association may face. Here is a broad summary of the key points:

- Ensure open and frequent communication between unit owners, maintenance staff, managers, and board members. This is the best way to stay on top of any issues that could potentially cause a liability issue for the association.
- Understand the laws that affect community associations, such as those that require associations to enforce rules and regulations. Though you may perceive the moral responsibility as someone else's, legal responsibility is what matters in a court of law.
- Be proactive, not reactive. Any potential hazard should be addressed immediately in order to mitigate the chances of a liability claim.

Utilize professionals with proper training, licensing, and insurance. Consulting with a professional who knows a lot in one small area of expertise will provide you with better results than someone who knows a little bit about everything. Working with individuals who are not licensed or do not have appropriate insurance can increase your likelihood of a lawsuit. ■



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