

LEGAL



How do you protect your Board Members from liability?

BY MARK FRIEDMAN, FLORIDA BAR CERTIFIED AS A SPECIALIST IN CONDOMINIUM AND PLANNED DEVELOPMENT LAW

There are a number of ways the Association can protect its Board members from liability. Section 617.0830, Florida Statutes, provides “General Standards for Directors”, and starts off by stating that “A director shall discharge his or her duties as a director, including his or her duties as a member of a committee:(a) In good faith;(b) With the care an ordinarily prudent person in a like position would exercise under similar circumstances; and (c) In a manner he or she reasonably believes to be in the best interests of the corporation.”

In a condominium association, the easiest way to achieve the foregoing standard is to follow the provisions of your governing documents and Florida laws in your decision making and to not let personal biases interfere with your decisions. In fact, the statute specifically provides that a director is

not liable for any action taken as a director, or any failure to take any action, if he or she performed the duties of his or her office in compliance with this statutory section.

The statute goes on to provide that “in discharging his or her duties, a director may rely on information, opinions, reports, or statements, including financial statements and other financial data, if prepared or presented by: one or more officers or employees of the corporation whom the director reasonably believes to be reliable and competent in the matters presented; legal counsel, public accountants, or other persons as to matters the director reasonably believes are within the persons’ professional or expert competence; or a committee of the board of directors of which he or she is not a member if the director reasonably believes the committee merits confidence.”

Recently, a Board president went on ChatGPT and received an answer to a legal question which differed from the opinion I had provided. Artificial Intelligence (“AI”) even provided a statutory section. I reviewed the answer and realized that the AI analysis was incomplete. When I filled in the gaps, the answer became the same legal advice I had originally provided. AI is not at a level where you can safely use it to provide answers to legal questions. In fact, some attorneys have gotten in trouble for using AI without checking its results, because sometimes these programs make stuff up. Don’t do this!

In another instance, a Board member told me that the Association’s insurance person had advised that they were doing what was correct legally. Under the statute you would be remiss to prioritize that advice over advice of counsel.

In yet another instance, a Board

member informed me that my advice was contrary to what the volunteer in the UCO office told them. UCO has many wonderful volunteers, but they are not your legal counsel and what they tell you is anecdotal in nature and not something that can be relied on as “legal advice” to protect the Board from potential liability.

Legal advice must be provided only from a Florida licensed attorney who is knowledgeable in condominium law, to provide you the protections afforded by the statute.

Mark D. Friedman, B.C.S. is recognized by the Florida Bar as a specialist in condominium and planned development law. This article is intended for educational purposes only and is not meant as legal advice. Mr. Friedman may be reached at MFriedman@BeckerLawyers.com.



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