

## Tip of the Week - March 4, 2011

### HOA Litigation: How to Avoid It

Litigation gobbles up time and money, and your home owners association should do all it can to avoid becoming embroiled in it. In a new HOAleader.com article, we provide seven rules your HOA should follow to limit its risk of ending up in court. In this week's tip, we offer two of those rules:

1. Don't accept contracts without negotiation or review. "When you have a vendor, remember the importance of good contract negotiation and review before you sign them," advises Jed L. Frankel, a partner at Eisinger, Brown, Lewis, Frankel & Chalet PA in Hollywood, Fla., who advises community associations. "When you run into trouble, if you have a fair contract, there's probably not going to be litigation."

Frankel offers a typical example. "If you have a contract that expires on Dec. 31 on its own, you're not going to get involved in litigation if you don't renew it," he explains. "But if it automatically renews for three years, the president who negotiated the contract has moved to a new association and nobody else knows about that provision, and then you try to cancel, guess who's going to be sued?"

2. Know your contractual duties, and document problems. "Keep track of your contractual obligations, like when contracts expire and what you must do to terminate them properly," says Frankel. "If you have problems, document them and notify the vendor in writing so that if you get to the point of sending a termination letter, you've got documentation to back up your termination. All too often, a client will say, 'This garbage company was horrible.' I'll say, 'Did anybody ever document it or call the company?' The answer will be, 'Maybe we had someone call in once, but we can't remember who we talked to and didn't follow up with letters.'

"I've also seen situations where associations sent notice of termination to the wrong person or did not send it by certified mail, and the vendor says, 'Guess what? We think you breached, and you owe us liquidated damages and attorneys' fees,'" says Frankel. "That puts the association in a bad position because it'll be paying some damages, and there's not much I can do to mitigate them."

To learn about all Seven Rules for Avoiding HOA Litigation, see our new article: <http://www.hoaleader.com/members/549.cfm>