

Should Managers Attend--and Participate In--HOA Meetings?

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On September 4, two community association lawyers contended in a *Los Angeles Times* column: "Management employees, like any other vendor, do not belong at association board meetings. Although they may be invited to attend, they should not be taking minutes or offering suggestions on the conduct or content of the meetings."

True? Our experts weigh in on whether managers should attend, and if so, the best role for them at HOA meetings.

Our Experts Say: Wrong!

On the first half of the columnists' comment, our experts heartily disagree. Having managers attend board meetings is a no-brainer, says Elizabeth White, a shareholder and head of the community associations practice at the law firm of LeClairRyan in Williamsburg, Va. "You want the board to be making informed decisions. I've sat in hundreds of hours of board meetings. If the manager hadn't spoken up, some boards would have really made a few bad decisions."

Managers have a wealth of valuable information that boards can and should rely on. "The manager should attend all unit owners meetings and all board meetings—with one exception," says Robert Galvin, a partner at Davis, Malm & D'Agostine PC in Boston who specializes in representing condos and co-ops (more on that exception shortly). "It's the manager who's managing the property day to day, and I don't see how you can have a meeting without that person."

That's also the thinking of Andrew Lewis of Eisinger, Brown, Lewis, Frankel & Chaiet PA in Hollywood, Fla., who specializes in representing community associations. "The manager is often the person who's in touch the most and has his finger the most on the pulse of the association and its business and affairs," says Lewis. "It only makes sense for the manager to be present. That's part and parcel and part of what the manager's job is."

Galvin mentioned an exception. When shouldn't managers attend an HOA meeting? "The board should meet once a year without the manager to evaluate the manager," says Galvin. "One of the most important board functions is to discuss how good a job the manager is doing and, if there are any concerns, what to say or whether to fire the manager or management company. The board should call one meeting a year, or if it became an issue more than one meeting, to discuss the manager."

Second Point: Maybe Not Wrong!

The *Los Angeles Times* columnists get a little more support from our experts on their second assertion: that managers shouldn't take minutes or offer suggestions during meetings. The question really boils down to how involved managers should be in HOA meetings.

Our experts generally think managers should be helpful but not intrusive. "What happens at the owners meeting," says Galvin, "is that the manager usually makes a report on the association's operations for the year just ended and talks about any continuing issues that may be on the table."

White also likes to see the manager provide summary information. "Typically, I like to see managers present something at the meeting," she says. "They might present a manager's report, and then during the meeting, the president can call on the manager after board dialogue and say, 'Is there anything you want to address?'"

Lewis agrees. "A manager should be the person providing information when called upon to do so at the meetings by the board," he says. "The president might ask, 'Can you clarify we have money in the budget for that?' or 'Did we send that letter out to the owner about that tenant?'"

Should managers take minutes? Chris Yergensen's managers do. "The expectations of what the manager should and shouldn't do at meetings are set within our management contracts," says the senior vice president and corporate counsel of RMI Management, a Las Vegas-based company that manages about 300 condo association and HOAs. "We expect our managers to be present at every meeting, and our manager will help conduct the meeting. Because the manager is there, that person is also the one taking the minutes. We train our managers how to take and prepare minutes because board members often don't have that training, and board membership can change."

Lewis, however, disagrees. "The association's secretary has a job to do, and primarily that job is to record the actions taken at the meeting," he says. "The secretary should do that job and not delegate it to the manager. But do I think it's an egregious problem that the manager is taking notes? No, I don't."

When HOA Managers Go Too Far

There's a risk that a manager can become too involved in HOA meetings. "The manager isn't a member of the board," notes Galvin. "The manager can become too involved, and the board president should take care of that. If you're dealing with a really professional manager, that's not going to happen. And sometimes, boards establish the relationships by having the board sit at a table and having the manager sit in a chair off to the side."

White agrees managers have to walk a fine line when it comes to participating in HOA meetings. "It can get out of hand when managers take a leadership role in the meetings themselves," she says. "You have egos, and members might think, 'Who is this, and why is she participating?' If the manager starts getting overly enthused about her input, maybe it's time to have a discussion about what's an appropriate role."

However, White knows first-hand that it's tough for an expert to know when to pipe up and when to remain quiet. "Lawyers get criticized for this, too," she says. "I've been in meetings where I've known I'm not supposed to talk until agenda item 7, but I see that the board is getting ready to make an unlawful decision. How do I grapple with that? Sometimes, I ask the board to take a short recess. I'll take the president aside and say, 'I suggest you move that item to executive session,' or if it's a black and white issue where the board can't do what it's considering, I've at least given them a heads up."

Yergensen agrees that his company's managers have to both help and step back at the same time. "Our managers' involvement includes conducting the meeting, introducing items, and introducing the board's discussion," he says. "Once the board takes over, to some degree, the manager should shut up, and ours are taught to do that. But meetings are fluid and unpredictable. Sometimes questions are directed to managers rather than the board. So you have to use common sense. "

If your manager chimes in often, remember that the manager may be fulfilling his legal duties. "Nevada is very, very regulated," explains Yergensen. "There are a lot of rules in Nevada law about what a manager must and must not do. A manager has a duty to make sure he tells the board to seek professional advice on an issue. We get into issues all the time when a board starts mentioning something about accounting, and we know the board should seek the advice of a CPA. So we have to say things in board meetings. If not, there's a possibility we're not following Nevada law."