

## ASSOCIATIONS

# Owners lost control after hiring management firm

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**Question:** The San Pedro homeowner association board of which I am a member hired a management company to run our association. Now the board cannot communicate directly with anyone anymore. The management company tells the board what we can and can't do. We've lost control of our association.

Even our board meetings have been taken over by this company. Why do we need a management company employee to send a message to the board from our attorney? How do we get control of our board meetings away from this management company?

**Answer:** The management company is merely a third-party vendor that is subject to supervision and instruction by the association's board of directors. Such companies go as far, and charge as much, as boards let them. Titleholders who allow the board to accept outside vendors that usurp the board's authority are equally to blame for failing to band together and stop it.

Although it may at first seem difficult, it is not impossible to change the way your association is run. The owners must first understand how they lost control to the board and vendors and then take immediate steps to regain authority. If the board refuses to change the way it does business, then removing the board is the only option. Because removing a board requires a sig-

nificant effort by a specified percentage of titleholders, it is not always easy to accomplish.

There also appears to be a breach of the attorney-client privilege by the association's attorney. Since the association is the client, discussion by the attorney with any third party, including the management company, constitutes a serious breach of confidentiality.

If your board signed a management company contract relinquishing that privilege by allowing management employees to make direct contact with the attorney, the board should be sued for breach of its fiduciary duty.

As a board member, you have an absolute right under Civil Code sections 1363(f) and 1365.2, and Corporations Code section

8330, to access the association's books and records on demand and to make copies. Pay close attention to the attorney's bills, reconciling them with board meeting minutes indicating the board contacted the attorney.

The board's mentality is an alert for all titleholders in your development that their assets may be at risk. Refusing to talk, listen or respond to titleholder issues is a sign of unprofessional behavior by the board and poor management in general.

Management companies are not law firms and should not be giving legal advice, nor should they be interfering with an association's compliance with the law. Attorneys hired by the association owe their duty of loyalty to the association — not the management company.

Delegation of board duties to a management company does not relieve any individual board member of liability. Worse, if the management company's advice violates the law, its contract likely prohibits recovery against the firm by the association, leaving the entire damage award amount for the association to pay.

Take back control of your board and meetings by requiring management representatives to leave. If they refuse, fire them. The titleholders have too much to lose to continue dealing with machinations like the ones you mention.

*Send questions to P.O. Box 11843, Marina del Rey, CA 90295 or e-mail noezit@mindspring.com.*