

## Selecting a Property Manager

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Property managers play a significant role in commercial real estate operations. With thousands of property managers to choose from, finding a suitable one may be daunting. This article addresses some of the factors to consider in selecting a property manager for a condominium or homeowners' association (Association), whether controlled by a developer before the owners have a right to elect a majority of the Board of Directors, or by a Board elected by the owners. It is not intended to be an exhaustive analysis, but rather provide some guidance on the selection process.

Associations are formed by developers when a community is built, at which time the developer appoints the Board of Directors, and the Board appoints officers (usually the same people who are on the Board). The appointees are almost always employees of the developer, and may not have much experience with the management of Associations. As such, the Board typically engages a property manager to assist in the administration of the Association.

Both directors and officers owe a fiduciary duty to all owners which requires them to act in the best interest of the owners. Initially, the only owner is the developer, but the developer sells lots to homebuilders who become owners, and homebuilders sell homes to consumers who become owners. In condominiums, the developer sells units to consumers who become owners. Mismanagement of the Association by a developer or by an inappropriate or unqualified property manager, in addition to jeopardizing the financial condition of the Association, can result in liability on the part of the developer who controls it, as well as its appointees to the Board of Directors.

In view of this, developers and Associations should be careful when selecting a property manager. The following are some qualities you should look for in selecting a property manager. Although tailored for Association managers, some of the concepts discussed below are also applicable to other property managers.

### Types of Managers

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There are two types of property managers. One type performs leasing and management activities at a development like an office building, shopping center or apartment project. Leasing is considered a real estate activity under Florida real estate licensing laws. This type of property manager needs a real estate broker's license if they are paid by commission, and are handling leasing for others. No license is required for managing personally owned properties. There is no "property manager" license or certificate required for this type of property manager, although the management of certain rental properties requires a license issued by the Florida Division of Hotels and Restaurants.

The other type of property manager oversees the operation of an Association governed by Florida's Homeowners' Association Act in Chapter 720, Florida Statutes (HOA Act) or Condominium Act in Chapter 718, Florida Statutes (Condo Act). A Florida Community Association Manager (CAM) license is required for any person or company managing an Association of more than 10 units and/or with an annual budget in excess of \$100,000. A CAM license allows the holder to (i) manage condominiums, homeowners' associations, cooperatives, timeshares, mobile home parks and planned unit developments, (ii) administer and oversee the Association's funds, (iii) supervise the preparation of the budgets and other financial documents, (iv) ensure appropriate notices to conduct Association meetings, (v) coordinate maintenance and contracts with employees and services providers, and (vi) perform various day-to-day tasks involved with the operation of the Association.

CAM Licenses are issued by the Florida Department of Business & Professional Regulation (DBPR), which requires applicants to complete a training course, pass a background check, file a license application and pass a state exam. While obtaining a license allows the holder to perform CAM functions, keep in mind that it is a minimum standard, so is only a basic criteria for selecting a manager.

The DBPR's regulation of CAM license holders includes the investigation of complaints, so before hiring such a manager, the developer or Association should verify that the manager holds an active CAM license and should review the DBPR website to see if any complaints have been filed, and how they were resolved.

### **Pricing of Management Services**

Like anybody else, property managers are compensated on the basis of the services they perform. An Association manager should be expected to comply with the minimum requirements to operate the Association under the HOA Act or Condo Act. Before hiring a property manager, the developer or Association should be familiar with these requirements, and determine whether any services are needed that exceed these minimums. The property manager's proposal should include a list of the services they will provide for a stipulated price. Additional services (and their pricing) can be negotiated. Sometimes the pricing for services is tied to the number of times the service is provided. For example, the manager may agree to have a representative attend one regular Board of Directors meeting each month, but charge extra (on an hourly basis) to attend any special meetings of the Board.

It is not unusual for property managers to pass through out-of-pocket costs to the Association. These can include copies, facsimiles, postage and certified mail charges, envelopes, ballots, payment coupons, recording fees, annual report fees, records storage, and anything else the manager can think of that it pays to third parties to conduct its operations. These are sometimes used as profit centers by the manager, so should be closely scrutinized. Both the types of these items and their pricing are subject to negotiation.

The variances in pricing are as great as the number of property managers, which is why it is important to obtain proposals from multiple reputable managers so that their pricing can be compared. This will also help in negotiating pricing.

### **Maintenance, Repairs & Inspections**

Monitoring of the physical condition of the Association's property, as well as the compliance of unit owners or homeowners with the Association's covenants regarding maintenance, is an important function of the Association. It is imperative that a property manager routinely inspect the Association's property and the exteriors of owners' homes to identify any needed maintenance and repairs. It is not unusual for a property manager to perform monthly inspections, accompanied by a representative of the developer or the Association. Frequency of inspections should be considered, as well as how comprehensive the inspections should be. It may be prudent to ask the prospective property manager for a sample inspection report, as this will give you an idea of the things they look for, and whether you want them to expand or reduce the scope of inspections, thereby impacting pricing. The property manager should also have a recommended system for facilitating compliance by owners with their maintenance obligations.

Look for a property manager with an electronic method (such as a software program) to track maintenance and repairs, as this reduces the chance of a manager forgetting to address maintenance issues and provides you with meaningful data points (e.g., the amount of time it takes for the manager or affected owner to address maintenance and repair issues). Also, make sure you ask who will be performing repairs that are the Association's responsibility. Does the manager have its own maintenance personnel or hire independent contractors? Is there a mechanism to determine whether maintenance and repairs will be performed by personnel that are licensed, bonded, insured and covered by workers' compensation?

### **Records Management**

Florida law requires Associations to maintain various records and provide certain records at the time the developer turns over control of the Board of Directors to the homeowners. If records are improperly maintained, the developer or Association may be exposed to liability for violating Florida law. Therefore, it is prudent to understand a property manager's recordkeeping policies.

A property manager with an electronic recordkeeping system will allow you to remotely monitor whether the records are properly maintained, providing you with safe and easy access. If a property manager stores the association's records electronically, ask (i) whether the records are backed-up in a cloud based system, and (ii) what data security system is in place to guard against a data breach exposing sensitive information.

### **Other Considerations**

Doing your due diligence to select the right property manager is crucial, and you should consider more than the factors discussed above, including the manager's location, financial viability, accreditation, reputation, services provided, and experience. Competitive bidding is extremely useful, and each property manager vying for your business should provide references that you can check. Lastly, even when you perform the necessary due diligence, the property manager you select may end up not meeting your needs, in which case you will want to have a termination provision in the manager's contract that allows you to end the relationship without cause.

These are only a few of the many issues to consider when selecting a property manager for your Association. Vetting a proposed property manager can be a complicated process, especially for a Board of Directors that is composed of volunteer homeowners. In those situations, it is a good idea to have the Board appoint a small committee to compare and contrast competing proposals, negotiate services and pricing with the desired manager, and bring a recommendation back to the Board for approval.