

### Managing your lawyer

by Gregory P. Hawkins, Claude T. Hawkins, and Carolyn St. John

*When the lawyers are through, what is there left? Can a mouse nibble at it and find enough to fasten a tooth in?*

—Carl Sandburg

As a business professional, you need lawyers. You may not like them. You may not even trust them. The fact is, lawyers are important for your business—or, at the very least, unavoidable. Since 1960 the world's population of lawyers has nearly doubled, but in the United States it has tripled—to over 750,000.

The July 1992 issue of *The Economist* quoted Charles Sifton, a federal judge in New York: "Lawyers are like doctors. They have people by the throats. Sometimes they save you. Sometimes they choke you."

Your challenge, as a property manager, is to make sure that you are choked less often than you are saved. There are two levels to this process: finding the best person or firm to champion your legal interests, and managing that person for the best results and with the least impact on your financial resources.

Most lawyers prefer that once you have passed the ball you get out of the way, and let them run with it. This is the traditional lawyer/client relationship. Today, such a relationship may not be in your best interests.

Increasingly, large corporations have begun to demand a more strict accounting from their lawyers—shopping for rates and services, insisting on a detailed budget up front, monitoring the progress, and requiring itemized bills.

Huge multinational businesses with their complex legal problems and corresponding big budgets possess the clout to compel satisfaction. Can you do the same? In one sense, the answer is no. But while you may not have the power to compel, you can experience many of the same results on a smaller but equally effective scale.

#### Keep your composure

While you may also have an emotional investment in your legal dilemma, your lawyer does not. Displays of anger and frustration waste time, cost money, and put you at a distinct disadvantage.

If you need to vent, choose another type of professional counselor. This advice is not given in jest. Legal troubles can be as emotionally debilitating as any of life's major calamities. Still, you are the best person to gather and order the facts that pertain to your particular situation, but only if you can step away from the resentment felt by many people caught in the jaws of litigation.

#### Take time to organize

Be methodical and organize the data in chronological order, attaching pertinent documents. Working with an organized client has a curiously motivating effect on most lawyers.

Make a commitment to be honest with yourself and with your legal counsel. In an adversarial situation, you hope the facts will support your position and nullify your opponent's case. But distorting the truth greatly lessens your chances for victory. To serve you best, your lawyer will need a complete picture—both good and bad parts.

#### Shop around

Armed with the facts and a list of questions, begin your search for an attorney. Many lawyers do not charge for initial consultations; thus, the time you invest at this point can pay big dividends.

Remember, your search should be as thorough as if you were looking for a key employee—which, in effect, is what your lawyer will become for a time.

#### Find a fit

Do not pick an attorney out of the yellow pages, and do not call the local bar association for a referral. Why? Because often anyone can be listed as a specialist in real estate law, regardless of his or her background or training, says Bruce J. Nelson, who represents several property management firms as an attorney with Allen, Nelson, Rasmussen and Christensen in Salt Lake City.

Nelson advises, "Personal referrals are best. The ideal situation is to obtain a recommendation from a friend or associate who has faced a situation similar to yours."

Lacking this, says Nelson, your next best bet is simply to call an attorney and ask for three personal recommendations of good attorneys with real estate or property management experience.

#### Questions to ask

Next, interview each attorney you want to consider. A telephone interview is an accepted practice your prospective lawyer will welcome.

Each of the following questions is simple and direct. Yet, they are an effective way to get inside the lawyer's mind. You will find out about how cases are handled and whether open, two-way communication is valued. Plus, you will gain valuable insight into a process that may have seemed unintelligible—and perhaps intimidating—before.

Your questions are also a subtle form of management. By answering them, the lawyer essentially commits to a course of action.

This questioning process is as effective when posed to a lawyer with whom you have had a long and successful relationship as with one you are meeting for the first time.

- *What experience do you have with matters like mine?* A pediatrician may not be the best person to perform bypass surgery and a surgeon could be unqualified to fix your child's broken arm. While no general practice pediatrician would consider heart surgery, many lawyers will accept a matter outside their area of expertise, if you are willing to foot the bill for them to gain the expertise.

- *Look for someone who is not only familiar with the area of law that you require, but also experienced in its practice.* An attorney experienced in real estate and property management must be familiar with complicated government regulations as well as more routine matters.

- *What were the results?* With few exceptions, court records are open to the public. Your prospective lawyer will be happy to talk about previous victories. With encouragement, he or she should be willing to discuss other, less triumphant cases as well.

- *Ask for references—names and phone numbers of current or former clients.* It is common practice for lawyers to have a public list of clients that they have represented.

- *Who will be involved with the case?* This is a critical question. Contrary to popular opinion, most lawyers are honest. However, listen carefully and encourage them to be specific about who will be doing what.

Although it is uncommon, some firms have been known to turn work over to a less experienced associate, a paralegal, or a secretary, while billing at the attorney's hourly rate for all services.

• *What are the steps you will take to resolve my case?* For a relatively simple matter such as a tax hearing or a foreclosure, the lawyer may be able to outline the steps quickly and easily. Something more complicated may require preliminary research and a formal report, for which you will be obligated to pay for the time and services involved. This is fair, as it goes beyond the "let's get together and chat" stage.

If the attorney is on your list of candidates, consider spending the money. At some point before you make your final decision, be sure you thoroughly understand the process involved.

• *How long do you think my matter will take?* If the case involves litigation, this question is practically impossible to answer conclusively. However, it is a question you want answered, at least with an intelligent guesstimate.

• *What do you calculate as the total cost?* The answers to the questions you have asked up to this point will lay the foundation for a fairly accurate estimate. This also opens the door to a frank discussion of fees.

Be sure you understand the fee arrangement completely. Will there be an engagement fee, or a retainer? Is it refundable? Are there different fees for associates, law clerks, paralegals, secretaries, etc.?

If there are large numbers of copies to be made, will they be commercially done or billed at the firm's usual rate? Will you be billed monthly or at the conclusion of the work? What potential costs are involved in addition to lawyer's fees? (In one of the author's cases there were over \$60,000 in costs unrelated to lawyer's fees.)

#### Ending the search

You may decide to interview a dozen lawyers, asking each the same questions—or only one. Once you resolve to entrust your legal matter to a particular lawyer, you have cleared a big hurdle, but you should remain involved, perhaps at a less intense level.

• *Ask for periodic updates.* Keep in mind that every communication will

cost you money. Many lawyers bill a minimum increment of time for services, such as three-tenths of an hour, even for telephone calls lasting less time.

Strike a balance between hounding your lawyer's every move and being cut from the information loop. At the least, you want your lawyer to inform you of unexpected developments and expenses that go beyond projected limits.

• *Request a detailed bill.* A simple billing statement such as "Professional Services, October 1993, \$3,000" is not satisfactory. Ask for an itemized bill, including the dates each service was performed, the actual time each service took, who did the work, and a clear specification of non-lawyer costs.

#### Two parting comments

Be assured that with all the legal arrows filling the air in today's real estate environment, it is highly possible that one will find a chink in your armor. The

techniques noted above can help, but are only a few among many. You should modify them to your own needs.

When in doubt, ask simple, direct questions. And expect clear, concise answers. Keep asking until you are satisfied, or find a lawyer who will satisfy you.

Finally, the single most important secret to eluding messy legal entanglements is not to avoid lawyers but to work with them sooner—and smarter—before a problem escalates, or even before it begins.

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