

# COVER YOUR ASSETS

## LAY DOWN THE LAW Handling lawsuits properly yields positive results



PAUL L. WHITE, CPM®, CCIM (PAULWHITE@PLWA.BIZ), IS THE DIRECTOR OF THE COMMERCIAL DIVISION FOR KELLER WILLIAMS AND PRESIDENT OF PAUL L. WHITE & ASSOCIATES, A COMMERCIAL REAL ESTATE CONSULTING COMPANY.

**BEING SERVED WITH A LAWSUIT CAN RUIN A PROPERTY MANAGER'S DAY; KNOWING HOW TO HANDLE SUCH LAWSUITS IS ESSENTIAL FOR A POSITIVE OUTCOME TO ALL INVOLVED.**

The first step is to determine who needs to be notified of the lawsuit. Typically all parties are notified but often the property manager is served instead of the owner; therefore, the property manager should notify the owner immediately. The manager also needs to determine who will defend the suit. The property owner usually provides indemnification of the property manager against any lawsuits filed against the manager with respect to his duties at the property. There is most often one defense conducted for the property owner and manager.

The lawsuit should be sent immediately to the insurance agent or company to determine if coverage is provided. The owner's liability, property, boiler and machinery, or other policies containing liability coverage may provide the necessary protection. In the event coverage is provided, the insurance company will engage legal counsel to defend the owner and manager.

If the insurance company provides for the defense, typically they have the right to vigorously defend or to settle on whatever terms they feel appropriate. Sometimes the insurance company or their legal counsel will consult with the property manager or owner before settling, but they have no obligation to do so. A settlement does go against the loss record of the property.

If the claim is not covered, the lawsuit should

be submitted to the owner's legal counsel for determination if the owner and manager are to be defended under the indemnification clause in the management agreement. If the manager is not indemnified by the owner for negligence of the manager, the manager may need to send the suit to its own legal counsel.

Communication between the parties in the suit typically must be between the attorneys only; however, with the approval of your legal counsel, one party can contact either the other party's legal counsel or the other party directly. In fact, under certain circumstances, especially when the parties know each other, a direct meeting between the parties can be beneficial. If misunderstanding occurs by one of the parties, the matter may be resolvable on a friendlier basis.

If the litigation moves forward, legal fees can grow and overshadow the original claim. If the parties have a written agreement between them providing for the "prevailing party" to be reimbursed for their legal fees, this provision may make it necessary to prosecute the lawsuit to a final court ruling to determine the "prevailing party" and the recovery of legal fees. If the lawsuit is settled in mediation or otherwise, typically there is no "prevailing party" and each party has to pay its own legal fees unless otherwise negotiated.

It is the duty of the lawyer to protect his client's rights and to prevail for the client's case. Ideally, litigation should be a last result since the outcome is usually unpleasant to all. ■