

# Ah, the Pressure of Being Your Building's Treasurer! A Legal Point of View

We work with a number of lawyers in the pursuit of management perfection, and we asked Bruce Cholst from Anderson Kill to give us some insight on the legal responsibility of being the treasurer of your building. I hope you find it useful. We will be providing additional information over the coming months.

—Julie Zuraw, Argo Real Estate

Assuming the treasurer is honest and is otherwise dealing in good faith, the legal standard for his or her conduct in terms of avoiding liability is “that degree of care which an ordinarily prudent person in a like position would use under similar circumstances.” Yes, that leaves much room for interpretation. Let's try to clarify it.

Since the typical co-op or condo board treasurer is a volunteer with no accounting or auditing training, he or she is not held to the same high standard of care in the performance of his or her duties as, say, a partner in a “big four” accounting firm. So if your only background is balancing a checkbook, you are not expected to have the same acumen as someone from a Big Ten accounting firm.

Even though the typical board treasurer is an untrained volunteer, however, he or she has been elected to and has agreed to serve in a responsible fiduciary position. As such, he or she has a duty to perform that function with a basic degree of care and skill, and will face exposure to legal liability in the event of his or her failure to do so.

In plain English, this means that the treasurer needs to spend time reviewing the monthly reports; copies of the purchase orders, invoices, payment vouchers, checks, and bank statements provided by management; as well as the draft audited financial statements, and STAY AWAKE while doing so in order to be able to spot entries that don't make sense.

If during the course of this monthly review the treasurer sees something that just doesn't make sense, he or she needs to ASK QUESTIONS (of the managing agent, the super, or other board members, as appropriate),

and if those questions aren't answered to his or her satisfaction, the treasurer needs to SAY SOMETHING to the other board members or the auditor and have them probe further to see if there is a genuine irregularity. Legal liability can arise from the treasurer's failure to perform this review, or from failure to spot an entry during the course of the review that would seem “off” to a reasonably diligent reviewer, or from failure to speak out and ask questions after spotting such an “off” entry.

For example, suppose management has provided a fraudulent purchase order for \$20,000 worth of cement in its monthly report and there are no known projects around the building requiring cement mix. If the treasurer fails to spot this obvious anomaly because he hasn't bothered to review the report, or if he overlooked it out of carelessness, or if he failed to inquire with the super and/or managing agent or otherwise stayed mum, he faces legal liability. Ditto if there are excessive unexplained payments to the same vendor. This could be symptom of fraud, and the treasurer has a duty to investigate these kinds of inconsistencies—and to ask the auditor to investigate if the results of that investigation are unsatisfactory. The same goes for questionable withdrawals from the Association's bank account.

Boards should adapt a system of “checks and balances” to ensure that at least two board members or the property manager and one board member jointly approve payments and issuance of checks so that each monitors the other, and the treasurer should monitor these payments to ensure compliance with the system.



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