OUR ATTORNEY
LEGAL AND INSURANCE ISSUES

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PHADA 2015
Your Attorney

• Choosing the attorney
• Procurement issues
• No retainer may be in force
• Who does he/her represent?
Know What You Want

• Represent PHA?
• Represent staff?
• Represent Board?
• Attend board meetings?
• Review agenda/policy issues
• Evictions and collections
• General legal advice: i.e. personnel
COMMUNICATIONS/SESSIONS

• Do we get a regular report of legal activity?
• Are we told status of cases/settlement?
• Do we have a voice in settlement?
• LOOK AT STATE LAWS
• What does insurance policy say?
The Insurance Company

- Procurement?
- Limits of policy
- Right to obtain counsel
- What does the contract say?
- Who is the client?
INSURANCE ISSUES

• Who engages attorney?
• Who pays for insurance coverage work?
• Do we have coverage?
• What are the limits?
• What is deductible?
• WILL ANYTHING BE PAID FROM FEDERAL FUNDS?
Reservation of Rights
Umbrella Coverage

• What is the letter about?
• Who gets?
• Do I need umbrella coverage?
• Sued in individual capacity.
Attorney Communications

• Executive Session?
• Can I end effective attorney/client privilege
• So what is that?
• Work product?
• Who is represented: board, PHA, staff, etc?
• Represents the best interest of the PHA
Attorney Duties

- Truthful
- Represent to the best of his/her knowledge
- Keep client informed
- Maintain attorney/client privilege and attorney work product
- Notify of any conflicts
What Do I Do If I Am Sued

- Do NOT DESTROY any documents, emails, etc.
- Do what is said in the attorney hold letter
- Don’t talk to any non-party about the case
- DON’T TALK TO THE PRESS
- Let your attorney represent you
- Immediately contact HUD and insurance company
Important Attorney Steps

• Must file answer within time period
• Must know affirmative defenses
• Must have basic knowledge of facts
• Must be in touch with insurance and HUD
Attorney and Insurance

- Engagement letter
- Knowledge of policy
- Outline of case
- Cost projections
- Experts, discovery costs
- Boil down from many issues to smaller ones
Attorney Strategy

• Have an idea about the attorney involved
• Have information about the Plaintiff
• Know the good points
• AND: THE BAD POINTS
• Work to establish strategy/goals/settlement options, etc.
• Work backwards in general
WHAT IS REQUIRED? OPTIONS?

• What is required coverage under ACC?
• What are some options we need to consider
• What if I am sued in individual capacity?
• Duty to defend?
• Conflict of interest: separate attorney?
• Who pays?
HUD Notification

• When to notify.
• What about Board notification?
SETTLEMENT ISSUES

• Nuisance settlement?
• Cost analysis
• Board informed?
• Board approved?
• What if disagreement?
LEGAL FINANCES

- Detailed statement
- For everyday questions: AMP costs?
- Or: central office costs
- Board direct communications?
- Who pays for insurance coverage cases?
Worst Case Issues

- Judgment against PHA
- No coverage: i.e. retaliation in some cases
- Excess judgment
- No HUD notification
- Who pays?
Case No. 1

• Board holds executive session, returns and puts ED on administrative leave so attorney can investigate.
• HUD IG investigates, finds Board was racially discriminatory.
• EEOC filed.
• Insurance issues?
• Who pays?
Case No. 2

• Temporary worker files EEOC alleging racial discrimination.
• PHA notifies employment agency they don’t want her back because of filing.
• PHA learns she is also employed by another employer. PHA goes to that employer and as a result she gets fired.
• Judgment for retaliation: who pays?
Prevention Issues

• Have good insurance company
• Try to negotiate who will represent you when sued
• Have a strategy for getting information to the attorney
• Know what is going on
• Get regular reports
• Stay quiet around others
AND MOST IMPORTANT

- Be sure you are covered
- Know the ACC issues
- Be sure staff is trained
- DO what is right and legal
- GET legal advice
- FOLLOW IT