

HABITAT BRICKS & BUCKS

Hourly Rate or Monthly Retainer?

Emmet Pierce in [Bricks & Bucks](#)

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Which is the smart way for your board to pay for legal advice?

When it comes to paying their attorneys, co-op and condo boards can go one of two ways: an hourly rate; or a flat monthly retainer. Most boards choose the former – forking over \$300 to \$500 for every billable hour of legal advice – while some boards, and even some attorneys, insist that a monthly retainer is the smart way to go.

Attorney **Mark Hankin**, a partner at **Hankin & Mazel**, says a retainer, which requires law firms to bundle many services together and typically costs \$500 a month, can result in big savings for boards.

"Almost 80 percent of our clients are on retainer and it works well for everybody," Hankin says. "Most attorneys favor hourly rates because they're making a fortune."

Proponents of hourly legal rates, on the other hand, say they save condos and co-ops money by allowing them to pay only for the legal services they actually use. They hold that flat-rate agreements can end up costing boards more if they need fewer legal services than anticipated.

Attorneys who charge flat monthly fees often end up spending more time with their clients than hourly-rate lawyers, Hankin counters. The tradeoff for attorneys is that they become more familiar with the issues facing their boards, he adds, enabling them to provide better services and deal with small legal problems before they become big ones.

"The more lawyers are involved with their clients, the easier it is to service them and understand what is happening in the board room," Hankin says.

Mark Elman, senior vice president of **Citadel Property Management**, says one advantage of paying lawyers by the hour is that board members feel free to seek outside legal help when their principal lawyer encounters issues that are outside of his or her field of expertise. For example, if the board must negotiate a complex contract, it may feel the need to call in a contract law specialist. But boards that sign flat-fee monthly retainer agreements may feel that they need to stick with their principal law firm to save money, he adds.

Attorney **Scott M. Smiler**, a partner with **Gallet Dreyer & Berkey**, notes that flat-fee agreements typically contain "carve-outs" that allow law firms to begin charging hourly rates if they must work on litigation or other time-consuming tasks.

No matter which fee arrangement they choose, condo and co-op boards can protect themselves against excessive legal billing by insisting that they are provided with itemized invoices that explain how their lawyers spent their time. In a remarkable number of cases, this is not done.

It comes down to common sense: if you're going to pay for what you get – and with lawyers you definitely will – then make sure you get what you pay for.