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“A rose by any other name . . .

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. . . *would smell as sweet.*” Juliet, in her dialogue from William Shakespeare’s Romeo and Juliet, meant to argue that the names of things do not matter; only what things are matters. This may be true, but there is power in words. How we refer to something or someone makes a difference. Ask yourself, would any “Community Manager” want to be referred to as a “Property Manager?” Another example? Consider the confusion caused by the term “Transfer Fees” after the enactment of Assembly Bill No. 271 in the 2011 Session of the Nevada Legislature. CAMEO Members acted quickly to amend the term “Transfer Fees” to “Account Set Up Fees” in their Management Agreements once AB 271 became law. Words matter.

A term that is in widespread use in the Common-Interest Community (“CIC”) Industry, which has caused me angst since I entered this practice, is “General Counsel.” Attorneys in our industry are not “General Counsel” attorneys. Attorneys who perform legal services for a corporation are properly referred to as “Corporate Counsel,” and if they are not employees of the organization, they are also “Outside Counsel.” A “General Counsel” (also “Chief Legal Officer,” “Senior Managing Attorney,” or “Director of Legal Affairs”) is the chief lawyer of a legal department, usually within (“In-house”) a corporation or government department. The term refers to In-house Attorneys who manage other attorneys. While some solo In-house Counsel may refer to themselves as “General Counsel,” they often manage Outside Counsel, so the term is appropriate.

The distinction is important beyond the accuracy of terminology; the positions encompass many distinctly separate responsibilities and liabilities. General Counsel have one client, the organization, and are direct-hire employees under an employment contract with the organization. General Counsel are responsible for the overall legal compliance of the organization. Corporate Boards of Directors, who are usually separate and apart from the Executive Officers of the corporation (unlike most CIC Executive Boards), require their executives to present any and all legal issues for review and approval by the In-house Legal Department before taking action. While Executive Officers of a corporation may manage the corporation, their proposed actions are subject to appeal by the General Counsel directly to the Board of Directors. In extreme cases, such as with publically traded corporations whose Corporate Directors or Executive Officers are engaging in illegal activity, General Counsel have the legal responsibility of reporting their superior’s actions to governmental entities, such as the Securities and Exchange Commission, or potentially face personal liability for failing to do so.

Having been General Counsel of an international corporation, managing a staff of a dozen In-house Counsel, and numerous Outside Counsel, I personally know that representation

of CIC clients is quite a different practice. CIC Executive Boards do not tender every action which may present a legal issue to an attorney. Thus, CIC Attorneys are generally only responsible for their review of the limited legal issues presented to them. CIC Attorneys may or may not have a written agreement for services. Although encouraged by the Nevada Bar Association, written representation agreements are only legally required in certain circumstances, such as with contingency cases (for example, CIC construction defect matters). Instead of sending all legal issues to a specified Legal Department, CIC Executive Boards may retain a different attorney or law office for each and every legal issue they want reviewed, simultaneously retaining more than one attorney or law office for separate legal matters. While General Counsel are terminated according to their employment contract, CIC Counsel is seldom “terminated,” per se, unless there is a written contract, or other counsel is retained for a pending matter; they just stop receiving new work.

The responsibilities and liabilities of General Counsel vary distinctly from that of CIC Corporate Counsel, and the terms are no more synonymous than are the terms Community Manager and Property Manager. Therefore, we should begin properly referring to the Outside Corporate Counsel in our industry as “CIC Corporate Counsel,” or simply “Corporate Counsel.”

William Paul Wright, Esq. is the Managing Member of Wright Law Firm Ltd. He is also Corporate Counsel to CAMEO. His contact information is: WPW@WrightLawFirmLtd.com; 702.776.7257.