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**RIGHTS AND
RESPONSIBILITIES OF
OWNERS AND BOARDS,
DEALING WITH DIFFICULT
ISSUES AND ASSOCIATIONS
AND THE MEDIA**

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RIGHTS AND RESPONSIBILITIES OF OWNERS AND BOARDS, DEALING WITH DIFFICULT ISSUES AND ASSOCIATIONS AND THE MEDIA

Purposes of Owner Associations.

Owner Associations seek to preserve and enhance the values of the properties of owners. Value enhancement and preservation are typically viewed as improved through the services of the owner association and enforcement of covenants and rules. Yet there are other ways to enhance and improve values, including promoting harmony, community, and responsible leadership. Owners, residents, and owner association boards have rights and responsibilities that are essential to promoting these missions.

When difficult issues arise—understand rights and responsibilities.

When difficult issues are being addressed in an owners association, the association's response and community values will be protected if the rights and responsibilities of the association and owners and residents are understood.

Owner and Resident Rights in Communities with an Owners Association.

In communities with an owner association that all owners are members of, by virtue of their ownership of a property, owners and residents have the right to:

- live in a responsive, competent, and harmonious community
- honest, fair, and respectful treatment by the board of directors and management of the community association
- participate in the governance of the community association by being notified of board and committee meetings open to members and to attend those meetings and by being notified of owner meetings, with the right to attend and participate in owner meetings as allowed for in the bylaws
- serve on the board of directors or committees if elected or appointed
- reasonable access to appropriate association records and documents
- wise expenditures of their dues and special assessments
- live in a community where the property is maintained according to community standards, to promote the highest possible property values
- notice of their financial obligations to the community association, including responsibility for paying dues, special assessments and fines
- discuss payment plans and options with the association, prior to the community enforcing payment obligations for unpaid dues, special assessments or fines
- a fair appeals process for decisions that affect their financial responsibilities and property rights
- notice and an opportunity for a hearing prior to being assessed a fine

Owners and Residents Responsibilities in Communities with an Owners Association.

In communities with an owner association that all owners are members of, owners and residents have the responsibilities to:

- respond to and participate in community activities and governance
- read, understand and comply with the governing documents of the community
- maintain their property according to community standards
- provide constructive input to the board of directors on governance, business, and other issues impacting them
- treat the board of directors and management of the community honestly and fairly
- vote in community elections and on other ballots
- pay dues, special assessments and fines on time
- initiate contact with the board of directors to discuss a payment plan to satisfy financial obligations to the community, should it become necessary
- request an appeal regarding any decision made by the board of directors or management of the community, which they believe inappropriately or wrongly affects their financial obligations or property rights
- provide current contact information to the board of directors and management of the community to help ensure receipt of information and communications from the community

Association Board Members Rights.

Board members in communities with an owner association have the right to:

- carry out their duties and obligations in a positive and constructive environment
- conduct business of the association as prescribed by state and local law and the governing documents of the association
- exercise sound business judgment in appropriate matters
- collect all monies due, in a fair and diligent manner, from homeowners and residents resulting from their financial obligations to the association
- benefit from the constructive input of homeowner members on issues impacting individual homeowners and the entire community

Association Board Member Responsibilities.

Board members in communities with an owner association have the responsibility to:

- fulfill their fiduciary duty to the community
- establish committees and encourage owner members to seek positions on the board of directors
- conduct open, fair and honest elections
- utilize strategic planning as a method to discern the needs of the community and to strive to meet those needs
- welcome and educate new members of the community
- encourage input from owners and residents on issues and matters impacting them personally and the community as a whole
- inform owners and residents about issues and pending matters which affect them
- conduct community events that foster neighborliness and community
- operate in a professional manner that is appropriate and responsible to the best interests of the community
- operate in a transparent manner, except where confidentiality is required
- balance the rules and regulations of the community between the needs and obligations of the community as a whole and individual owners or residents

- provide open forums for owner and resident input
- provide owners, upon request, with access to appropriate community records
- obtain appropriate insurance coverage for the community
- maintain the community's assets, including common property and finances
- conduct regular reserves studies and take appropriate related action
- devise appropriate and reasonable payment plans to facilitate the ability of owners and residents to meet financial obligations to the community
- provide an appeals process for owners and residents regarding decisions made by the board of directors or management of the community, which affect financial responsibilities or property rights of the owner or resident
- use lawsuits to enforce the obligations of the owners in a manner that promotes community values and considers and recognizes owner rights.

Steps to be taken when difficult issues arise.

There is nothing an association can do in advance that will guarantee that it will not have to cope with inquiries or involvement from persistent owners on difficult issues, however, an association can do things that will make it less likely that any owner disrupts association operations.

ASSOCIATION STEPS TO BE TAKEN–THE PROACTIVE APPROACH

Among the steps that every association should take are the following:

1. Insist that the board be open and accountable. Open meetings, with some exceptions, are required by state law.
2. "Be reasonable" and put the "Community First."
3. Establish and operate the community with an open system for the adoption and implementation of policies, regulations and budgets.
4. Establish and publish policy resolutions dealing with the following association governance:
 - a. Access to association, staff and office records;
 - b. Conduct of board, committee and member meetings;
 - c. Conduct of board members–consider a code of conduct.
 - d. Newsletter editorial policy;
 - e. Distribution of literature within the community;
 - e. Nomination, campaigning and election processes;
 - f. Adoption of policies, procedures, and rules adoption.
 - g. Collection of unpaid assessments
 - h. Handling of board member conflicts of interest
 - I. Conduct of meetings
 - j. Covenant and rule enforcement
 - k. Investment of Association funds
 - l. Procedures for addressing disputes between the association and unit owners
5. Establish and operate committees with clear boundaries.
6. Do not prohibit dissent or different points of view. Promote a culture .of disclosure.
7. Protect management from interference by owners.
8. Develop and make extensive use of all possible means of communicating with the owners.

9. Purchase and maintain insurance that protects the association; board members, officers, committee members and the managing agent.
10. Educate owners on association operations and don't be annoyed when owners are unaware.
11. Hostile responses to owners may energize their inquiries.
12. Keep clam and educate owners with your responses.
13. Rebuttal to all points, especially at the time raised by interested owners, is not necessary. The board should investigate and determine how to proceed.

RESPONDING TO PERSISTENT INQUIRES AND DIFFICULT SITUATIONS.

The problem of persistent owners is an evolving one ranging from owners who disrupt meetings, abuse the committee system or circulate false or scandalous written material, often under the misnomer of "concerned citizens." Some relief is available through parliamentary procedures, termination of committees and dismissing covenant enforcement actions, either within the association or in court.

The problem of disruptive owners can become severe. This is true in two respects. First, the tactics adopted by these owners can be aggressive and hurtful with a negative impact on association operations. Second, owners may resort to agencies outside the association to force their agenda. Owners who believe that they cannot accomplish their objectives within the governance structure of their association may resort to the judicial system, to state and local legislative and administrative bodies and to the media. For these reasons, associations need a range of responses for severe disruptions within the association. Moreover, the association must have an ability to counter the claims asserted to agencies outside the community by the owners who are unwilling to accept decisions made within the association.

The overall plan in dealing with a truly disruptive owner typically should look something like this:

1. Try everything that can be done to turn the disgruntled owner into a contributor, instead of an expensive problem. Different points of view and dissent in the community should be welcomed and not sought to be precluded.
2. Get the association members behind the board. Build consensus on decisions of the board.
3. Look to minimize the costs of dealing with the disruptive owner, both in terms of money costs and in terms of interference with the association's operations.
4. Be sure the association will win in court, or else do not go to court.
5. Do not bring the media into the dispute.
6. Be cordial in dealing with administrative agencies but recognize that they frequently view themselves as champions of individual citizens and will be slow to recognize a disruptive owner for what he or she is.
7. Lay the groundwork with state and local elected officials so that, if a disruptive owner appeals to them, they will recognize that your association is a fair and reasonable one and represents a significant group of voters and supporters.

USING THE JUDICIAL SYSTEM TO DEAL WITH A DISRUPTIVE OWNER

Our courts are not generally up to the task of dealing with a disruptive owner. Judicial remedies are piece-meal and the expense of obtaining a judicial remedy is high. It takes a long time to obtain a ruling

and enforcing the ruling is not easy. Also, judges are not readily convinced of the bad faith of a disruptive owner and tend to be protective of the individual rather than of the association.

Still, there will be occasions when no other remedy is available except to take an owner to court. Here are the civil and criminal claims on which the association or an individual target of the disruptive owner may rely for judicial relief.

CIVIL CLAIMS

1. Actions for Injunction

Colorado has a state statute prohibiting civil harassment. Civil harassment can be stopped by filing a lawsuit against an abusive individual seeking damages or injunctive relief. Courts will issue orders to owners prohibiting them from doing or continuing some act that violates law or the covenants and is injurious to the association when the harm from the act cannot be adequately remedied by money damages. An injunction order can be either mandatory or prohibitory. That is, it can either require the owner to do something or require the owner to refrain from doing something.

2. Actions for Declaratory Relief

In cases in which an owner disputes an association's powers or authority, an association may ask a court to declare that it has the power it is asserting.

3. Actions for Damages

If an association, an officer, director or employee has been harmed by action by a disgruntled owner, rather than threatened or continuing action, it may be possible to sue the owner for money to compensate for the injury that has been done.

4. Criminal Claims

There are two major types of harassment: criminal and civil. Each municipality or county may define "criminal harassment" differently, so depending on where you live, an action may or may not be "criminal harassment." Criminal harassment cannot be threatened by the Association against an owner. The association can ask the local prosecuting attorney (district attorney or city attorney) to bring a criminal harassment charge. The prosecutor has discretion on whether to bring the charge or not.

DEALING WITH LEGISLATIVE AND ADMINISTRATIVE AGENCIES

Dissident owners who seek their objectives outside the association often will turn to state and local legislative and administrative bodies, rather than the courts. This is true because owners are finding that if an association has adhered to its covenants and due process and other procedures, the owner will not fair well in court. In addition, going to court is an expensive proposition for individual owners. On the other hand, there are little or no costs associated with appealing to a legislative body or to a human rights, tenants' rights commission or other governmental body. Thus, associations are finding it necessary to defend themselves in these forums.

Several suggestions are in order:

1. Learn the ropes.
2. Learn the players.
3. Understand the limits of the agency's jurisdiction.
4. Understand the appellate process.
5. Be moderate and be bona fide.

ASSOCIATIONS AND THE MEDIA

Media coverage of associations can affect how the public views owner associations generally, but such coverage virtually never has any lasting impact on an individual association.

For this reason, it might be argued that an association can afford to ignore the media and media treatment of an individual story about an association or its affairs. The reality is, however, that association officers are loath to permit a negative story to be run about the community and are always anxious to influence the media to cast their community in the best light possible in all circumstances. When the owners turn to the print or electronic media, the association's officers will surely want their side of the story to be attractively presented to the media and, through the media, to the public.

Here are some general suggestions for dealing with the media:

1. Understand board and owner rights and responsibilities.
2. Become a prompt and reliable source of information.
3. Be proactive.
4. Be truthful.
5. Be helpful.
6. Don't get annoyed.
7. Don't seek revenge.
8. Resist attacking any owner in speaking with the media.
9. Understand the basis on which any conversation with a reporter is bad.
10. Decide in advance who will be the single spokesman for the association.
11. Respond succinctly, with brevity, a theme and a clear message.
12. Consider engaging a media consultant.
13. Always assume you are on the record.
14. "No comment" is not helpful. A responsive, brief, themed comment is helpful.
15. Do not repeat negative statements.
16. Be gracious and maintain your composure.
17. Don't use terms like "us" and "them." Use the "community," the "owners," etc.
18. Be public, not private.
19. Reflect community desires.
20. Always be impartial.
21. Don't make threats.
22. Represent everyone.