



COMMUNITY MATTERS

LUEDER, LARKIN & HUNTER

News and Trends in Community Association Law

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Neither Snow Nor Rain Nor Heat Nor Gloom of Night...Just Really Slow Mail Delivery

by | **Harrison J. Woodworth, Esq.**

If you are in the metro Atlanta area and have had to send either important or routine mail, you have likely noticed substantial delays in shipping and delivery when using the United

States Postal Service. This service disruption, which has caused consumer complaints to the level where Members of Congress have begun inquiries, is reportedly due to changes both at a national level for the USPS and to local processing centers being closed and consolidated. In addition to being a potential annoyance individually, these delays can have a significant impact on day-to-day operations for community associations.

For written communications from an association to its member owners, the mailing requirements will often be set-out by the governing documents or statute, and often both. Typically, regular notices—such as due dates for assessments, budgets, or for annual meetings—are required to be sent to the subject property and an offsite address if the homeowner has provided one. Generally, regular mail would suffice. Warnings of a foreclosure lawsuit pursuant to the Georgia Condominium or Property

Owners' Association Acts are required to be sent via Certified Mail or statutory overnight delivery, and proof of said notice is required to be shown during the ensuing litigation. Fines or violation notices may or may not be required to be sent via Certified Mail, although often it is best practice to do so in order to confirm delivery to a homeowner. The cost of postage for Certified Mail or another carrier such as FedEx or UPS, as opposed to regular mail, is, of course, significantly higher, and so it is unlikely to be feasible to send all correspondence to homeowners via tracked mail simply to avoid delays. However, as a practical matter, an association may want to try to have some process in place to record outgoing mailings, such as saving copies of letters and stamped envelopes that it mails out. If there is correspondence where time is of the essence in terms of both delivery and showing proof of delivery, an association may opt to use an alternate carrier while

USPS delays are still ongoing.

There is also the issue to consider of mail arriving from homeowners to their associations. The most obvious example of this is payments for assessments. Most governing documents provide for late fees to be assessed after a certain time has elapsed from the due date. The Board may want to consider extending these due dates, or having an extended "grace period," to allow for significant delays in mail delivery. Another avenue is to have alternate options for assessment payments such as via an online portal, if not already available.

The ongoing delays in the postal service can be a nuisance, but if properly managed they need not to be the cause of critical issues for community associations. If your community has questions about their legal obligations and processes for mailing of notices or other important documents, we advise contacting your legal counsel for advice. ❖



Board Boot Camp is back! Our firm's annual Board Boot Camp will be on the morning of **Saturday, August 24, 2024**. This is a complimentary community association seminar open to all board members (regardless of whether or not your association is a client) and property managers. **This year's Board Boot Camp will focus on best practices in areas involving Fair Housing Act (FHA) protection.** During the class, we will investigate difficult scenarios. But, be prepared to walk away equipped with the tools needed to effectively handle discrimination investigations and avoid costly discrimination claims.

The three-hour presentation will be from **10:00 AM to 1:00 PM** with continuing education credit available. The seminar will be in two formats this year:

- 1) Live in-person at the Norcross Cultural Arts and Community Center located at 10 College Street, Norcross, Georgia, 30071**
- 2) Simultaneously broadcasted via Zoom for those who prefer to attend from home. Registration and a complimentary continental breakfast will begin at 9:00 AM for those who attend in-person.**

Injunction Junction, What's Your Function? - Update

by **Brendan R. Hunter, Esq.**



When an owner violates the governing documents, the Board often has various enforcement remedies available to it. These enforcement remedies can include imposing

finances, suspending amenity use and voting rights, exercising self-help, and litigation. With an ongoing violation, litigation will generally seek an order from the court requiring the owner to abate the violation. This is called an injunction.

The injunction may direct the owner to cease doing some activity, for example, stop leasing his or her property. Alternatively, the injunction may require the owner to perform some activity, for example, perform lawn maintenance.

While this enforcement remedy was generally available for violations of the governing documents, in 2021, the Georgia Court of Appeals in the case of *Deerlake Homeowners Association, Inc. v. Brown* upheld a trial court order denying an association's request for injunctive relief for an ongoing maintenance violation. Both the trial court and the Court of Appeals found that the association had an adequate remedy at law short of an injunction, specifically the right of self-help. Consequently, the trial court and the Court of Appeals held that the association was

not entitled to injunctive relief which then-existing Georgia law considered to be an extraordinary remedy that should generally only be used if other remedies were not available to the association.

The Court of Appeals in *Deerlake* did not say that injunctive relief is never available in all situations, even where an association has the right of self-help, however. Rather, the Court of Appeals said that injunctive relief should not be granted where the exercise of self-help would be adequate. This is a fact specific determination based upon the particular circumstances of the violation.

The *Deerlake* decision left many associations in the unfortunate position of attempting to determine whether exercising self-help in a particular situation was an adequate remedy. This was further complicated when the owner was also not paying assessments and the costs of performing self-help may be significant, not to mention burdensome or even dangerous.

The good news is that the Georgia Legislature recently passed legislation to address this issue. The Legislature has

amended the Georgia Condominium Act, the Georgia Property Owners' Association Act, and O.C.G.A. § 44-5-60 (common law HOAs) relating to the rights of an association to injunctive relief. These new laws take effect on July 1, 2024, and provide that an association may pursue injunctive relief without the need or requirement to first pursue or utilize any other remedies, even if such other remedies might otherwise be adequate. These new laws, when they take effect, essentially overturn the holding in *Deerlake*.

Although these new laws are beneficial to associations, the Board should still carefully consider whether self-help or seeking injunctive relief may be appropriate in a particular situation. There are pros and cons to both approaches, and there are many factors the Board should consider and weigh. There are still circumstances where self-help can be an appropriate remedy to address a violation, especially where such self-help is inexpensive, relatively non-invasive, and has an immediate, beneficial impact on the community. ❖



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