COMMUNITY MATTERS

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Articles:

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What's Next?
Charting A Course For A Successful New Year

by | **Elina V. Brim, Esq.**

Following your association's annual meeting, association business generally slows down. This time provides a great opportunity to plan your community's goals for the upcoming year and to ensure a smooth transition to the new board. Most director terms commence immediately when the election results become final, unless the bylaws provide a later time. If there are any changes on the board, the time following the annual meeting can be used to obtain all documents of the Association from former directors. Prior to the first meeting of the Board, former directors should be contacted to confirm that all records of the Association have been turned over to the new Board or the community's management company.

The first organizational meeting (or initial meeting) of the new board typically occurs in January, or within a certain timeframe from the annual meeting as set forth in the bylaws. Many bylaws provide that during the first organizational meeting of the new board, officers of the Association should be appointed. Officers of the Association are typically the President, Vice President, Secretary, and Treasurer. During this initial meeting of the board of directors, it is also imperative that the new board reviews any urgent items requiring immediate attention, such as maintenance issues posing risks of property damage or bodily harm or any other time sensitive matters.

This initial meeting should also be used to determine if any committee members need to be appointed. Appointments of such committee members do not necessarily need to be made at this initial meeting; however, the need for such committee members should be explored at the earliest opportunity, and, where needed, volunteers should be solicited. For instance, some covenants provide that the architectural review committee must be appointed by the board of directors, but such committee members cannot be members of the board of directors. If the board determines that there is a need for committee members, vacancies for committee positions should be communicated to owners following the first board meeting of the year and owners should be asked to volunteer.

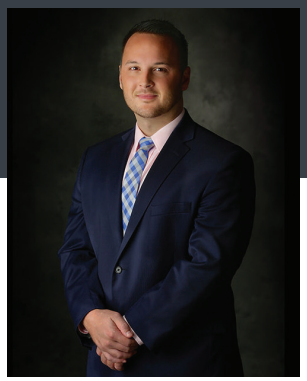
The initial meeting is also a good time to establish a regular board meeting schedule. This allows board members to plan their schedules, thereby greatly increasing the likelihood of a quorum being present at board meetings in the ensuing year. Additionally, many bylaws require board meetings to be open to members. In order to comply with this requirement, the board must communicate when and where it meets. Therefore, creating and publishing its meeting information is also an essential step in complying with the open meeting requirement of many bylaws.

If the Association was operating under the direction of a different set of directors, there are likely many ongoing projects and issues. The current board should plan to review pending matters. Robert's Rules of Order, which govern meetings of membership and the board of directors for many associations, state that when a portion of the board vacates membership, all matters not finally disposed "fall to the ground." In plain terms, this means that those matters can be taken up again at the next meeting of the new board as if they were never addressed. It is important to note that duties of the new board members include inquiring about all outstanding issues facing the community which still need to be addressed. In the event that everyone on the board is a new board member, it is prudent to invite a former director to a board meeting to discuss such issues.

Maintaining continuity of information between boards is extremely important to the well-being of your Association and community membership as a whole. As such, it is extremely important for new boards to plan to get in touch with the Association's vendors and agents. This would ensure that all parties involved are operating as one cohesive unit. For instance, if there is a litigation matter pending, the new board should familiarize itself with the specifics of the case and discuss any changes in the Board's objectives. Boards take different approaches to litigation, and your association's attorney needs to be aware of any changes in the case. The same approach should be taken with the Association's vendors, such as landscapers and pool companies, to ensure the Association is functioning in the most efficient and cost effective manner.

Board transition periods can be a stressful time for new board members, particularly for individuals who have never served on the board. However, with a little planning, most issues can be easily addressed. As always, if you encounter any issues, please feel free to contact us as your legal counsel.

Reasonable Accommodations for Assistance Animals[1]



by | L. Paschal Glavinos, Esq.

As more and more Americans turn to alternative treatment options for coping with mental and physical disabilities by possessing an assistance animal, community associations are faced with complex compliance issues where an association's governing documents may prohibit what is required by the Fair Housing Act (FHA) and section 504 of the Rehabilitation Act of 1974, according to the U.S. Department of Housing and Urban Development (HUD).

Importantly, HUD does not require that an assistance animal be any particular species. According to HUD, the governmental agency responsible for the enforcement of the FHA and section 504, an assistance animal is "an animal that works, provides assistance, or performs tasks for the benefit of a person with a disability, or that provides emotional support that alleviates one or more identified effects of a person's disability." As such, any animal could qualify as an assistance animal if it provides emotional support that alleviates at least one identified effect of a person's disability. Also, there is no requirement that an assistance animal has to be individually trained or certified.

A very common scenario presents itself as follows: an association is a housing provider under these federal statutes. This particular association has certain pet restrictions (e.g., "no pets" policy, restricted breeds, size or weight limitations, etc.) in place through its governing documents. An owner or occupant possesses an assistance animal and, when the association learns of the animal, sends notice to the owner or occupant regarding the rules in place. The owner or occupant informs the association that this is an assistance animal and requests permission to keep the animal. To put another way, the owner or occupant is requesting a reasonable accommodation to possess the animal in his or her dwelling, at which point the association must evaluate this request.

Under the FHA (and section 504), it is unlawful for associations to deny reasonable accommodations to rules, policies, practices, or services when such accommodations may be necessary to afford persons with disabilities an equal opportunity to use and enjoy a dwelling and public and common use areas.

After a request is made for a reasonable accommodation for an assistance animal, the association must answer the following: (1) does the person have a disability (a physical or mental impairment that substantially limits one or more major life activities); and (2) does the person have a disability-related need for an assistance animal? If the disability is not apparent, the association may request information from the individual seeking a reasonable accommodation. Often, the owner or occupant will present an emotional support animal (ESA) letter for consideration. If the answer to these questions is yes, then the reasonable accommodation should be approved, unless a hardship could be determined.

Several forms of hardships could warrant a refusal to grant a reasonable accommodation, including if granting the request would impose an undue financial hardship and administrative burden; granting the request would fundamentally alter the essential nature of the association's operations; the specific assistance animal would pose a direct threat to the health or safety of others despite any other reasonable accommodations that could eliminate or reduce the threat; or the request would result in significant physical damage to the property of others despite any other reasonable accommodations that could eliminate or reduce the physical damage. Thus, a refusal to allow an assistance animal must be based on a legitimate and demonstrable hardship to the association.

The more difficult question is how to determine what types of situations would qualify as one of the above exceptions. A request to keep an elephant in a condominium would almost certainly result in significant physical damage to the property of others, and an association could reject that request. But a request to keep a large dog breed in a condominium with an outright prohibition on animals would not necessarily qualify as a hardship. For example, even if the large breed dog potentially posed a threat to the safety of others, the Association would have to show that the dog did in fact pose a threat, and that there were no other means of reducing or eliminating that threat. Accordingly, there are plausibly situations in which an association would need to grant a request permitting a dangerous animal if there were other accommodations that could eliminate or reduce the threat.

The FHA weighs strongly in favor of the individual seeking the reasonable accommodation, and an association should tread carefully when contemplating such a request. In the event that a reasonable accommodation is denied, an association could find itself facing a HUD complaint that can take months to investigate and litigate, and which will cost the association time and resources to defend. There are undoubtedly situations which may warrant the refusal to grant a reasonable accommodation. However, an association that refuses such a request must be prepared to demonstrate to HUD that one of the hardships above clearly and objectively applies.

[1] This article specifically addresses assistance animals, which are distinguished from "service animals" as that term is defined under the American with Disabilities Act (ADA).

A Short Tale about Short Sales:
A Guide to Short Sales

by | **Kyle T. Jones, Esq.**

There are many ways for a community association to collect assessments. The efforts are either focused on trying to compel the owner to pay the amounts owed from his or her own personal assets or to collect the amounts owed from the property itself. In order to collect the amount owed from the property itself, the property must have value exceeding the liens encumbering it. In other words, the property must have "equity." When the sum of the liens encumbering a property exceed the market value, the property cannot be sold to a third party unless the lien holders agree to accept less than what they are owed. The proposal by the owner to the lien holders to accept less than what is owed is commonly referred to as a "short sale." The concept is best illustrated by example.

Assume that Donald Delinquent owns a unit worth $50,000 subject to the obligation to pay assessments owed to Magic Tower Condominium Association, Inc. ("Association"). The Association possesses a lien against the property securing a balance of $5,000. In addition, Mickey Mortgage has a first mortgage against the property securing a balance of $48,000. Behind on his mortgage, Donald Delinquent faces the possibility of losing his unit to foreclosure. Donald has found a buyer, Goofy Galant, who is willing to buy the unit. The problem is that Goofy can only procure financing of $50,000, which is not enough to cover the Association's lien of $5,000 and the mortgage of $48,000. Something has to give. Rather than lose the unit to foreclosure, Donald has inquired whether the Association would be willing to take $1,000 in exchange for releasing the lien so that the property can sell for $50,000.

What should the board do? There are two schools of thought here. The first is "something is better than nothing." By taking this approach, the Association recognizes that if this sale goes through, there will be a new homeowner in the property and hopefully one who will pay his or her dues on time and in full. The new homeowner will be responsible for assessments going forward, and the lien will be extinguished against the property. To collect the difference, the Association can make an agreement with Donald that it will agree to the short sale, so long as he agrees that he has personal liability for the amounts being cut from the lien and that failure to pay this amount may result in a lawsuit being filed against him to obtain it.

The second school of thought is the "hardline" approach. The hardline approach is that the Association refuses to accept anything less than the full lien amount owed. Associations may decide to do this because they do not want to lose the leverage (the lien) that they have. In theory, if the Association's lien is the one piece that is holding up the sale, this may motivate the buyer, the seller, and even the closing agents to come up with the amount required to cover the lien balance. However, the potential issue with that is if the short sale does not go through, and the mortgage company forecloses the property, that would result in an extinguishment of the Association's lien without receiving any money for the lien amount. There is more of a "risk-reward" with this school of thought.

In today's market, it is far more common that the value of property exceeds the amount of encumbrances against the property and far less common that short sale scenario would be prudent. If a short sale is being requested, it is important to gather as much information as possible before making a decision. Having a reasonable estimate of the value of the property is not always possible, but board members are usually somewhat familiar with the market conditions within their own community. Knowing the sale price and loan balance is also important and this information can be observed in the closing statements for the proposed sale.

Ultimately, a Board's decision to allow a short sale to proceed while receiving less than the full lien amount to which the Association is entitled or whether to "cut their losses" and accept a guaranteed amount to settle the lien is a decision the Board should weigh carefully.

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