Spring 2018

CONDO & HOA NEWS

COMMON SENSE

FROM SANDLER, HANSEN & ALEXANDER, LLC - COMMUNITY ASSOCIATION LAWYERS

A NEWSLETTER FROM

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OFFICER? DIRECTOR? WHAT'S THE DIFFERENCE?

Most folks living in a community association don't know the difference between the officers and the directors of the association. Of course, the fact the officers and the directors tend to be the same people does not make it any clearer. But really, what is the difference?

Directors

The directors are the association's elected leadership. They constitute the association's board. They are the decision makers.

- The directors are elected by the unit owners at the annual meeting of the association.
- The directors may be removed at any time by a vote of the unit owners.
- When the board takes a vote, it is the directors who participate in that vote.
- In most communities, there is no distinction between directors. Each director has one equal vote in the affairs of the association. The most common exceptions to this rule are:
  - Mixed-use communities, where some units are residential and others are commercial; and
  - Master associations where the individual constituent communities have varying numbers of units.

Officers

The officers have specific job functions and responsibilities. They often work with the association's manager, if any, to fulfill these functions and responsibilities.

- The officers of the association are typically the president, vice president, secretary, and treasurer. There may also be an assistant secretary and an assistant treasurer.

- The president is responsible for chairing association meetings. The president carries out the decisions of the board. For example, if the board approves a contract with a vendor, the president is then authorized to sign it on the association's behalf. The president is also empowered to appoint committees.

- The vice president assumes the president's duties when the president is unavailable. The vice president may also act for the association as authorized by the board or as delegated by the president.

- The secretary is responsible for taking the minutes at meetings and for general recordkeeping .

- The treasurer is responsible for the association's financial books records.

- In most associations, the president and vice president must be directors. No other officers must be directors.

- In most associations, any person may hold multiple offices, except for the offices of president and vice president, and president and secretary.

- The officers are typically appointed by the association's board, and not elected the unit owners.

- The officers can typically be removed at any time by the association's board.

While the individuals serving as directors typically also serve as officers, they do not necessarily have to be the same people. It is important for the association to maintain the distinctions between officers and directors, especially for the purposes of conducting votes and elections, and appointing association representatives.

The association cannot require owners to obtain the association's permission prior to installing the dish.

AVOIDING MIXED SIGNALS CONCERNING THE INSTALLATION OF SATELLITE DISHES

Many associations are confused over their ability to regulate the installation of satellite dishes. Does an owner have an absolute right to install a dish? Where may the owner place the dish? Under what circumstances can the association require the owner to remove the dish?

The following are the core points that the association needs to remember:

- The association cannot prohibit owners from installing dishes on the owner's "exclusive use areas," which include the owner's unit and the limited common elements assigned to that unit.

  - Exception: If the association installs a central dish that is accessible to all owners, then it may prohibit owners from installing additional dishes anywhere within the community.

- Unit owners have no right to install dishes on general common elements, even if they do not have an exclusive use area on which the dish can receive the signal.

- The association can adopt rules that regulate the installation of dishes on exclusive use areas, subject to the following restrictions:

- The rules cannot require the owner to install the dish in a location where it does not receive a signal. In other words, the association can tell the owner where to install the dish, so long as the dish will receive a signal in that location. If the dish will not receive a signal in that location, then the association must permit the owner to install the dish somewhere else within the owner's exclusive use area.

- The rules cannot require a method of installation that substantially increases the cost of the installation.

- The association cannot require owners to obtain the association's permission prior to installing the dish. If the association has adopted rules governing the installation of dishes, and the owner installs the dish in a manner that is contrary to the rules, then the association may take enforcement action against the owner.

Please contact us if your association would like us to review your existing rules concerning dishes, or to prepare a new set of rules for its consideration.

FAIR HOUSING LAWS: NEW RULES AND NEW PITFALLS

State and Federal fair housing laws consider community associations to be housing providers, like a landlord. These laws prohibit discriminating behavior against certain protected classes of residents within the community. Under new rules, the association can be held liable for the discriminatory actions of other residents in the community.

Protected Classes

The fair housing laws prohibit discrimination against the following classes:

- Race;
- Color;
- Religion;
- Sex;
- National origin;
- Disability; or
- Familial status.

The fair housing laws protect all residents within the community, regardless of whether the resident is a unit owner or a tenant.

Enforcement of Fair Housing Laws

At the Federal level, the U.S. Department of Housing and Urban Development ("HUD") enforces the fair housing laws. At the State level, the Connecticut Commission on Human Rights and Opportunities ("CHRO") enforces these laws.

Nonetheless, HUD and CHRO have agreed that CHRO will take the lead on discrimination claims in Connecticut, unless HUD has some specific interest for doing so. Therefore, most discrimination claims are investigated and resolved by CHRO.

An individual who wishes to file a discrimination claim ("complainant") can obtain the assistance of private entities, such as the Connecticut Fair Housing Center or various other legal aid offices, in proceeding with the claim. These entities are often staffed by attorneys who will help the complainant navigate through the claim process as follows:

- They assist in drafting the complaint;
- They guide the complainant during the investigative stage of the claim; and
- They advise the complainant on any offer of settlement.

Such claims have become more frequent as residents have become more aware of the laws in general and the methods for asserting their rights.

Both HUD and CHRO, together with the private entities that get involved in these complaints, are often very aggressive when it comes to dealing with an alleged violation. Many well-intentioned and uninformed associations find themselves on the wrong side of these claims.

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Common Examples of Association-Related Fair Housing Claims

Associations typically face claims under the following types of scenarios:

- Where a particular rule or policy of the association is discriminatory on its face;
- Where a board member or property manager has acted in an allegedly discriminatory way; or
- A request for a "reasonable accommodation" or a "reasonable modification" has been allegedly mishandled by the board and/or property manager.

Example 1: The association adopts a rule providing for an "adult swim" every couple of hours during the day, prohibiting anyone under the age of eighteen to use the pool during that time. This would likely be considered discrimination due to familial status or age because children are denied the use of a common area.

Example 2: A board member files repeated complaints against a resident for a noise violation, but the board member has made it clear that he or she doesn't like "those people." In this example, "those people" could be people of a certain race or from a certain country.

Example 3: The association generally prohibits pets, and refuses to permit a resident to keep an emotional support animal in her unit, even after receiving a letter of need from the resident's treating professional.

New Rules that are not Black and White

At the Federal level, new rules have been adopted concerning harassment and discrimination. Under these new rules, the association can be held liable for failing to take corrective action against a community member who engages in the following forms of harassing or discriminating behavior:

Quid Pro Quo Harassment: The term "quid pro quo" harassment refers to a situation involving the following:

- The complainant is a member of a protected class;
- Another member of the community makes an unwanted demand or request of the complainant.
- Compliance with the unreasonable demand or request is a condition to the terms of the resident's housing or the provision of services.

Quid pro quo harassment is more often seen in the workplace, such as where an employer demands sexual favors as a condition for employment or advancement. Under the new rule, however, it will now be more closely scrutinized in the context of housing.

Hostile Environment Harassment: The term "hostile environment harassment" refers to a situation involving the following:

- The complainant is a member of a protected class;
- Another member of the community subjects the complainant to unwelcome spoken, written, or physical conduct, even if it only happened once;
- The conduct is because the complainant is a member of a protected class; and
- The conduct, considering the totality of the circumstances, was so severe or pervasive that it unreasonably interfered with the use and enjoyment of the housing.

Would a reasonable person, in the same position as the complainant, find the conduct to be so severe or pervasive that it unreasonably interfered with the use and enjoyment of the housing?

To determine whether the conduct is severe enough to constitute hostile environment harassment, we use a "reasonable person" standard: Would a reasonable person, in the same position as the complainant, find the conduct to be so severe or pervasive that it unreasonably interfered with the use and enjoyment of the housing?

HUD has stated that these new rules are not an expansion of liability. Rather, they are a clarification of what already existed. Whether that is true or not remains to be seen.

Nonetheless, HUD has certainly expanded the potential liability of the association for the actions of third parties. The new rules impose liability on the association for *"failing to take prompt action to correct and end the discriminatory housing practice by a third party, where the person knew or should have known of the discriminatory conduct and had the power to correct it."* A "third party" in this instance could be another resident of the community.

Practical Concerns and Implications

Associations now find themselves in a difficult position. In the past, if there was a dispute between residents, the association could choose not to support either side. Under the new rules, if one of the residents is a member of a protected class, then the association cannot simply ignore the situation.

The following are a few steps that the association can take in order to reduce the likelihood of a claim:

- Make sure that the association's rules are both gender and age neutral.
- When a dispute between residents arises, invite all involved parties to a hearing.
- If a resident accuses another resident of harassment or discrimination, conduct a hearing to discuss the allegations. The association may also suggest that the complaining resident contact the police department.
- Conduct hearings while in open session, so that the association can maintain the appearance of being fair and neutral.
- After a hearing, issue warnings and levy fines as needed to curb any harassment or discrimination.
- Although this is already required by statute, it bears repeating: The board must not be arbitrary or capricious in its decision-making. If the board intends to grant or deny a resident's request, whatever that request may be, it should document its reasons for doing so. Treating one resident different from another is likely to raise questions. The association should be prepared with answers.

Conduct hearings while in open session, so that the association can maintain the appearance of being fair and neutral.

As stated above, CHRO pursues fair housing claims quite aggressively. CHRO may require an offender to pay fines, compensate the complainant for his or her attorneys' fees, and require the association's board members to attend mandatory training. Given this, the association should consult with legal counsel whenever dealing with a resident who is a member of a protected class. This is one area where an ounce of prevention is worth a pound of cure.

DOLLARS AND SENSE: FRUGAL OR FOOLISH?

As a rule, the costs of goods and services increase every year. Are your association's finances keeping up?

Constant Conflict

Every year, associations are faced with an inherent conflict: whether or not to increase the common charges.

But the costs of services increase. Management fees, insurance premiums, electric rates, contractors' rates, even (gasp!) the hourly rates charged by the association's attorneys, all increase.

What is an association to do?

Unrealistic Expectations

Too many unit owners, including some board members, believe that the role of the association is to keep the common charges low. Unfortunately, that's not a realistic expectation.

I've had board members boast to me that their association has not increased common charges in the past five years. I've also had owners complaining about regular increases in charges. To these folks, I must always pose the following question: So, what are you willing to sacrifice?

Revenue Reality

The association has but one source of revenue: common charges paid by unit owners.

Unlike our federal government, associations cannot operate at a deficit. You can only spend the money that you have.

Associations have financial obligations. Though this can vary from one community to the next, these obligations typically include the following:

- Maintenance and repair of landscaping, infrastructure, and other common elements.
- Insurance.
- Snow removal.
- Landscaping.
- Management services.
- Accumulation of a reserve fund.
- Cost of living increases.

Too many unit owners, including some board members, believe that the role of the association is to keep the common charges low. Unfortunately, that's not a realistic expectation.

Additionally, any number of unexpected events can create unforeseen financial obligations. Common examples include the following:

- Restoration of damaged property not covered because of a deductible under the master insurance policy.
- Bad debt when unit owners fall on difficult times and cannot pay their common charges.
- Legal and administrative costs of dealing with problematic owners and residents.

To the extent possible, associations must take these costs into account when preparing their annual budgets.

So the next time a unit owner complains that they are paying too much in common charges, ask them: What are you willing to sacrifice to pay less?

NEWS ABOUT OUR PEOPLE

Sandler, Hansen & Alexander, LLC will be an exhibitor at the CAI-CT Annual Expo, which takes place on Saturday, March 17, 2018, at the Aqua Turf in Plantsville, Connecticut. We can be found at booth #16.

Scott J. Sandler attended the CAI National Law Seminar this past January. On January 20, 2018, Scott was a featured speaker at the CAI-CT Condo 101 seminar. Scott will serve as a panelist at the CAI-CT Annual Expo, discussing legal issues facing community associations.

Laura McLaughlin has joined our firm as a paralegal. Laura received her BA in Administration of Justice from Salve Regina University. Laura has over 20 years' experience as a paralegal, working in a number of different practice areas, including collections and litigation. She is also a Notary Public.

CONTACT US

If you should call our office and the automated answering system answers, you may use the following extensions to reach us if we are in the office or to leave a message in our individual voice mailboxes. You may also contact us at the following e-mail addresses:

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