

HOA Board Member Roundtable

9.27.18

Dilemma: What should an HOA Board do if it gets complaints that Marijuana is drifting thru vents and windows/doors and negatively impacting neighboring units?

Recap of board member and expert proposed resolution: *Marijuana is lawful until it's a nuisance and encroaches on quiet environment. Is it a violation per the community's governing documents? Should it be treated differently if it's being used inside a unit vs outside unit? An association should consider the locations at which marijuana smoke is an issue. Is it at the pool? Then NAC444 would be applicable which dictates no smoking in pool areas. Is it at the community park? In which case the HOA can ask its Corporate Counsel to look into and write a resolution for use of the common areas. Is it in a condo? In which case, the association can suggest the marijuana smoker instead use it in a different form? Or can suggest to the complaining party that they use air filtration. One note to remember, if the marijuana smoker sites its use for a health related reason, HIPPA will likely limit the amount of information you can require from them. When it comes to complaints in multi-family residences, the HOA should take care to acknowledge that it can be difficult to determine and substantiate where it's coming from.*

Dilemma: Does Board have right to eliminate common elements? For example, if a community has a gym that several argue is only used by a handful of people and too much of a financial drain on the community between upkeep of equipment and janitorial maintenance of the room/equipment, can the HOA Board get rid of the gym?

Recap of board member and expert proposed resolution *In such an instance, the Board should check its governing documents. Do CC&R's give Board authority to get rid of or modify the common elements? If so the board would then need to consider, where does the money comes from to take this action.*

Dilemma: An owner in an HOA complains continuously of very limited lighting of area by walkway and street and with owner being a single woman with a small child. Owner requests of board to install another street lamp in her area and expects board to act ASAP or be held responsible if she comes to harm due to the dark area.

Recap of board member and expert proposed resolution: *If the HOA is in receipt of a lighting complaint and it's being indicated that the issue is a safety concern for person asking, it doesn't matter who they are, the Association should first determine if is the area in the dark is maintained by the City or County instead of the Association. The HOA Board should also consider and look to see if the governing docs allow board to add new common elements. The addition of new lights would likely be considered a capital improvement. If the HOA lights this area, should it also consider lighting other areas? The Association doesn't want cause detriment on neighboring homes with light pollution. One possible response would be to recommend to the homeowner to get a flashlight!*

Dilemma: Overseeing vendor projects – do HOAs hire project managers to oversee vendor contracts in person such as pool resurfacing, playground equipment repair, lawn maintenance, etc. – Otherwise, how do you know vendor is living up to contract as far as supplies, labor efficiency etc.?

Recap of board member and expert proposed resolution: *The preferred solution is for the HOA to hire contractors to oversee projects, including making sure all parties are licensed and insured. Because smaller HOA's can't afford two contractors, some use volunteers or homeowners with expertise. The Board should create and appoint individuals to formal committees for such work and double check with the HOA's insurance that these individuals are covered under the HOA's D&O policy. Smaller HOA's also do have Board Members oversee, but this can less than ideal due to inexperience with the work being completed.*

Dilemma: How should an HOA handle an owner request for electric charging stations in the common area? What comes into play with this? ARC guidelines? Who pays for use of electricity?

Recap of Board member and expert proposed resolution: *If Common Area is available, an HOA could pay for station as a capital improvement. for The Association could pay for the electricity and could do credit card swipe for use or have it work per a job system and directly charge users. In such an event, the HOA would have to police terms of use, and create rules & regulations to regulate.*

Dilemma: How do you deal with Airbnb, Home away, Flip Key, etc., as short term rentals when our CC&R's state rentals cannot not be for less than 6 months? What do you need by way of proof in order to fine? Fine with every ad? With every tenant occupation? What other entities could help-state/county?

Recap of Board member and expert proposed resolution: *Need proof it's a short term rental in order to fine homeowner. If people on theboard have time and are willing, the board members can monitor websites such as airbnb. Code enforcement with the City/County has been helpful. Can consider short term rentals to potential be a health, safety and welfare violation in which case, heavier fines are applicable and you have more teeth to discourage people from doing it.*

Dilemma: In order to save money, the board president insists on using the landscaper, a tiny company that usually does residential lawn mowing, to do brick wall repairs, major irrigation repairs and even asks them to help with some plumbing issues. I don't think this is a good idea, but am out-voted! Is this illegal? What liability do we have? How do we check to make sure a vendor has whatever is required to work on our property?

Recap of Board member and expert proposed resolution: *Use of a licensed competent contractor is required bystatue. Board members in this dilemma should talk to the CAM and through CAM, to the HOA's attorney. If that does not result in resolution, they should contact the Ombudsman for mediation. A board member who votes for unlicensed could have personal liabilities if you are a board member dissenting make sure the minutes accurately reflect your dissent.*

Dilemma: Homeowner dies and there is no family or anyone claiming the unit/home. Discuss from standpoint of unpaid assessments, unmaintained exterior. Could discuss from perspective of a condo unit that needs clean up and/or an age restricted community where unit is left to an underage family member (board submitted is the age restricted community issue). In condo, HSW for neighboring owners? What issues should be considered by BRD?

Recap of Board member and expert proposed resolution: *If CC&R's allow entry into the unit then go in and cleanup the emergency. You could get court injunction and if they don't pay you can put lien on property and follow normal lien process. You can work with probate. If this type of scenario occurs in an age restricted community that is subject to Federal Fair Housing Laws, then an individual who may be awarded ownership of the property can own it, but just can't live there unless they are 55 or older.*

Dilemma: A robbery occurs on property in which someone is injured. An HOA Board member is named directly in a law suit alleging that the Association has been negligent in providing a safe environment. He doesn't know what insurance the HOA carries. What does he need to do to make sure his interests are represented and defended? Should he consider getting any of his own insurance?

Recap of board member and expert proposed resolution: *In such circumstances, the board may ask, as the HOA are we liable? The HOA must have General Liability insurance for injuries. D&O insurance covers all Board members. If an association doesn't have insurance they should get it! Additionally, Workman's Comp is must have, even if you have no employees you still need it.*

Dilemma: A new owner living in an HOA begins construction in backyard on a casita structure with an attached patio cover to the home and concrete deck with landscape. It is noticed on a routine inspection and with no record of an ARC application submitted by owner. Owner is issued a violation notice but work continues with HOA not taking action to stop work and with total improvement completed at over \$50,000 cost. HOA board issues a decision in writing for owner to remove casita structure and owner has their attorney issue a letter threatening legal action against HOA. What should board do from this point and must owner remove casita structure?

Recap of Board member and expert proposed resolution: *One of the first questions the HOA can ask is do the owners have County permits for the work. If not, then the county can help. Additional considerations would be if the improvement is visible from a Common Element lot and whether or not neighbors and others like it. The HOA should consider whether or not it has any past approvals on file for any similar existing structures that have been built. If not, then the HOA may be in trouble for non-uniform enforcement if it pursues a violation against this owner. The HOA should notify its insurance in writing of the threat of legal action and also notify its corporate counsel. The Board members shouldn't approach the owners independently and directly, but should call them to a hearing to talk and have its management company coordinate the communication between the board and the owner. If the HOA can cause the owners to submit an ARC form, and the structure would otherwise be approved, then it should just let the issue go. If they refuse to submit an ARC form, then the HOA can take the matter to the NRED and potentially then seek a court injunction. But in all respects, the HOA should attempt to negotiate a resolution!*