

# Community Association Management *Insider*<sup>®</sup>

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## FEATURE

### How to Handle Unruly Members in Open Meetings

To encourage member participation in community affairs, many associations have open meetings that permit members to attend and speak about their concerns. Allowing this exchange fosters trust between the board and the community and gives members a chance to voice their opinions and concerns.

However, members may occasionally disrupt the progress of an open meeting by acting in an unruly manner. Members may speak too long, taking time away from other members' opportunity to comment. Or at the extreme, a member may continuously disrupt a meeting to the point where hearing other members or conducting business is nearly impossible.

In extreme situations, the board response should not be to forbid all members from attending board meetings. A number of states require open board meetings, and a prudent board recognizes the value of member input and even vigorous debate in a well-functioning community.

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## BEST PRACTICES

### How to Suspend Delinquent Member's Privileges

Many associations are seeing an increase in the number of members defaulting on their mortgages and not paying their association fees. This is a problem for many communities because if even a few members do not pay their assessments on time, an association can face serious financial problems. Reserves can become depleted, and the community might have to make trade-offs about which bills to pay and which services to forgo.

Associations have a few options when it comes to handling defaulting members. These can include charging late fees, suspending member privileges, and, ultimately, starting foreclosure proceedings. Suspending member privileges is a natural remedy for members who do not pay their association fees, because these assessments pay for or make possible a number of privileges.

Suspending privileges may be an effective way to motivate a defaulting member to prioritize the payment of association fees. It may help the defaulting member appreciate all the benefits the association fees pay for and help the member realize that benefits may diminish for the entire community as a result of his nonpayment.

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## LETTER FROM THE EDITOR

Dear Subscriber:

At Vendome Group, we strive to provide you with the best practices that you need to do your job efficiently and cost effectively. We also seek to present clear, plain-English information on how to comply with the many laws affecting community association management.

I am pleased to introduce our new Web site, [www.communityassociationinsider.com](http://www.communityassociationinsider.com), which is dedicated to helping you create management strategies to save your association money and keep it out of legal trouble. This new site is loaded with useful features, and I encourage you to check them out immediately.

Along with all of the regular features you enjoy reading in our print publication, [www.communityassociationinsider.com](http://www.communityassociationinsider.com) offers **searchable archives** going back five years, **model tools** that you can print instantly after adapting them to your own use, and **exclusive content** that is written for the site and updated regularly.

We've also made it easier for you to send us your association management-related questions. Just click on the "Ask the Insider" feature in the Resources section of the Web site.

We look forward to serving you, and we want to hear your thoughts and suggestions as we continue to provide you with the need-to-know information in your industry. Please feel free to contact me at [eyoo@vendomegrp.com](mailto:eyoo@vendomegrp.com), or at (212) 812-8435.

Best regards,  
Eric Yoo  
Editor

## Unruly Members

(continued from p. 1)

Sometimes disruptions occur because members aren't fully aware of what board meetings are for, says Washington attorney James Strichartz. Members should understand that they have an opportunity to provide input, but then the board needs to conduct its business. And if a member is disruptive, the board has the authority to regulate the meeting's activity.

To accomplish this, an association must have safeguards in place so that open meetings can proceed and the board can tend to the business for which it was elected, says Strichartz. We'll explain what you can do to limit the effects of disruptive members' behavior. And we'll give you a Model Bylaw: Open Meeting Guidelines for Dealing with Unruly Members, which incorporates these safeguards.

### Establish Procedure

Your association's goal should be to encourage member input at board meetings while still allowing the meeting agenda to proceed efficiently. It is a good idea to write procedures down, rather than just rely on the board to exercise good judgment. Having an established procedure reassures your members that the process will be fair, which will help to increase members' trust in their board.

**Hold member forum early.** An early member comment period makes it easier for the board to control the duration of the meeting. By setting aside a specific amount of time for member comment early in the meeting, you can end that part of the meeting by saying it is time to move on to other business.

But if you leave the comment period until all other business has been concluded, there's nothing else to move on to—and you'll have no excuse to terminate member comment. Also, members may become frustrated at having to sit through a long meeting just to be heard.

**Authorize board president to warn members.** To prepare for an encounter with a disruptive member, give your board president the right to tell that member that his time to speak is over and that he must step down or face expulsion from the meeting.

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## MODEL BYLAW

### Open Meeting Guidelines for Dealing with Unruly Members

The following bylaw was drafted with the help of Washington attorney James Strichartz. It provides for a member forum early in a meeting agenda and details the penalties prescribed to a member who continually disrupts meetings. Check with your attorney before adapting this Model Bylaw for use in your community.

#### OPEN MEETINGS

Except as otherwise provided herein, all meetings of the Board shall be open for observation by all members and their authorized agents. The Board will provide a period of time at the beginning of each Board meeting for owners to provide input to the Board on matters of concern to them (an "Owner Forum").

After the conclusion of the Owner Forum, persons who are not on the Board shall not be allowed to participate in Board discussions unless specifically invited to do so by the Board.

Any Owner or Owner's representative whom the Board considers to be disruptive of the business of the Board shall be warned by the president to cease his or her disruption.

If he or she again disrupts the meeting he or she may be expelled from the meeting by the vote of the Board. If it becomes necessary to expel anyone from a meeting twice in a six-month period, that person may be barred from attending Board meetings for a period of three (3) months.

If it becomes necessary to expel anyone from a meeting a third time in a one-year period, that person may be barred from attending Board meetings for a period of one (1) year.

Upon a vote in open meeting to assemble in closed session, the Board may convene in closed executive session to consider any matter which the Board determines in good faith should not be considered in open session in furtherance of the best interests of the association and its members, including but not limited to matters involving personnel issues, consultation or consideration of communications with legal counsel, likely or pending litigation, possible violations of the Governing Documents, and the possible liability of an Owner to the Association.

The motion shall state specifically the purpose or purposes for the closed session. Reference to the motion and the stated purpose for the closed session shall be included in the minutes. The Board shall restrict the consideration of matters during the closed portions of meetings only to those purposes specifically exempted and stated in the motion.

## Unruly Members

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If a member refuses to stop talking after his allotted time ends or after he otherwise disrupts the meeting, you can follow this three-step process:

► **Issue oral warning.** The president should issue an oral warning that if the member continues to disrupt the meeting, the member may be expelled from the meeting by the vote of the board. If the member refuses to leave, the president should warn that the police will be called to remove the individual.

► **Call recess, speak to member.** If the member continues to disrupt the meeting, the board president should call a recess and speak directly to the member, reiterating that either the member might be excluded from future meetings or that the police will be called.

► **Call police.** If the member still refuses to cooperate, the president

can choose to call the police. If the police are called, you can have the member removed as a trespasser. Most community association members have the right to use the common elements only to the extent that their behavior conforms to the association's rules and regulations. Or you can have the member removed as a disorderly person.

Our Model Bylaw provides for progressive penalties against a member who disrupts more than one meeting. A progressive system gives the member a chance to correct his behavior and gives the association a reasonable remedy. It provides that if it becomes necessary to expel anyone from a meeting twice in a six-month period, that person may be barred from attending board meetings for a period of three months. If it becomes necessary to expel anyone from a meeting a third time in a one-year period, that person may be barred from attending board meetings for a period of one year.

However, it is important to realize that each one of these options depends on the specific circumstances. A member who is merely voicing an opinion that the board doesn't like is not necessarily disrupting the meeting. Also, the board should realize that the ranting of a member who lacks credibility in the community won't carry much weight, and if the board reacts in a rash manner—that is, in a way that doesn't follow the above escalating measures—other members might believe that the member's comments have merit.

### Insider Source

**James L. Strichartz, Esq.:** Law Offices of James L. Strichartz, 201 Queen Anne Ave. N., Ste. 400, Seattle, WA 98104; [www.condo-lawyers.com](http://www.condo-lawyers.com).

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board meeting; unruly member

## Delinquent Members

(continued from p. 1)

If a member is in arrears and the board is considering suspending his privileges, make sure the board follows proper procedures. Otherwise, if the defaulting member challenges the penalty, a court could rule that the suspension isn't valid.

We'll explain how to make sure you're on sound legal footing before you suspend a member's privileges. We'll also give you a Model Letter: Notify Member of Intent to Suspend Privileges, to make sure you give a delinquent member adequate notice.

## What Privileges to Suspend

Members' assessments pay for or make possible a number of privileges such as voting and access to amenities. Therefore, there is no reason a delinquent member should get a say in association business and enjoy privileges that other members have paid for. Suspend those privileges until the member pays.

The types of privileges an association may suspend will vary from association to association. According to New Jersey attorney David Byrne, your governing documents should state what privileges your association can suspend against delinquent members. Here are some examples of

common privileges associations can suspend:

- Voting privileges;
- Use of the pool, playground, park, tennis courts, golf course, and other recreational amenities;
- Use of the clubhouse for functions unrelated to association elections;
- Use of common laundry facilities if laundry machines are paid through members' dues and are not coin-operated; and
- The right to park a car on common property. This may include parking privileges for guests, as they could be required to find parking outside of the community.

## Check Governing Documents

When considering suspension, make sure that your community's governing documents allow it. Many community associations' governing documents include a rule that a member must be in "good standing" to have access to amenities, serve on the board, and vote.

If you are on sound legal footing, courts should be sympathetic to your case. For instance, in one case, an Indiana appeals court ruled that a condominium association's governing documents supported its decision to suspend a member's voting rights after he refused to pay his assessments. Also, the member was liable for assessments due after the association suspended him of his voting rights [*Lynn v. Windridge Co-Owners Assn., Inc.*, July 2005].

## Give Adequate Notice, Follow Local Laws

Many states have laws protecting members' property rights, and an association must follow those laws before taking any punitive or disciplinary actions against a member. Some states have "due process" requirements. Due process is procedural fairness in the board's decision-making process. It requires giving the member notice and an opportunity to be heard before taking adverse action against him.

Other jurisdictions might not use the phrase "due process" but have other ways to ensure that a member is not unjustly punished. For example, New Jersey requires that before an association takes enforcement or punitive action against a member, it makes alternative dispute resolution available, says Byrne.

When an association seeks to enforce the provisions of its governing documents on one of its members, the association should be able to show a court that it has followed both its own standards and procedures as well as any local law requirements prior to pursuing a remedy. If a decision to suspend a member's privileges is challenged, courts will look to see if

the association's procedures were fair and reasonable and that decisions were made in good faith.

In the Indiana case mentioned above, the member also tried to argue that the assessments due after his voting rights were suspended were invalid because the association denied him his due process rights by not allowing him to

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## MODEL LETTER

### Notify Member of Intent to Suspend Privileges

Here's a Model Letter, drafted with the help of New Jersey attorney David Byrne, that you can adapt and use at your community when a member has a delinquent account. The letter notifies the member of the association's intent to suspend the member's privileges unless full payment of past due assessments is made by the end of the notice period. Unless otherwise required by law, this letter should be sent by first-class mail, postage prepaid, to the delinquent member's address as shown in your association books and records on the date specified on the letter. Show this letter to your attorney before using it at your association.

[*Insert date*]

Dear [*insert member's name*]:

One of the many advantages of living in a community association is sharing the costs of certain maintenance, repairs, and amenities that are often too expensive for a single-family homeowner with other members.

To properly maintain common areas, it is imperative that all assessments, whether regular or special, be paid in full and on time. Delinquencies throw the association's entire budget off course and negatively affect all members' property values and lifestyles.

Our records indicate that your account contains delinquencies for more than [*insert time period*] days, with an outstanding balance of \$[*insert amt.*].

This letter is notice of intent to suspend any or all of the following privileges:

1. Voting privileges;
2. Use of the pool, playground, park, club facilities, lake, tennis courts, golf course, and other recreational amenities;
3. Use of the common laundry facilities;
4. Use of the storage facilities; and
5. Parking privileges.

Unless [*insert association name*] receives full payment by the end of the notice period on [*insert date*], the privileges or amenities listed above will be suspended.

Sincerely,  
Joe Manager

## Delinquent Members

(continued from p. 5)

challenge the suspension. The court ruled that the association had given the member adequate notice.

The court also stated that the association board had followed the governing documents, which allowed the board to suspend a member for nonpayment by majority vote of the board. The court further noted that the member had been missing payments for many years, and therefore, the decision to suspend privileges was neither unreasonable nor unforeseeable.

## Bankruptcy Considerations

Suppose a member is delinquent because he is in severe financial trouble. Your association starts the process to suspend his privileges. The member files for bankruptcy. The association is not allowed to continue to suspend his right to use its common area amenities.

According to Byrne, continuing to deny these privileges would be seen by a bankruptcy court as an attempt to collect an amount that is protected by the bankruptcy court. However, if a member stops paying ongoing fees after the

bankruptcy, the association could conceivably deny privileges—but only with the bankruptcy court's permission, says Byrne.

### Insider Source

**David J. Byrne, Esq.:** Stark & Stark, PC, 993 Lenox Dr., Lawrenceville, NJ 08648; [dbyrne@stark-stark.com](mailto:dbyrne@stark-stark.com).

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Search Our Web Site by Key Words: assessments; defaults; delinquencies; privileges

## REPAIRS & MAINTENANCE

### Three Tips for Condominium Roof Maintenance

As winter approaches and erratic weather patterns become more frequent, managers and condo association boards may want to be proactive in keeping their condo building roofs in the best shape possible. Harsh weather conditions, such as heavy rain or snow, strong winds, and extreme temperatures, can cause substantial damage to a building's roof, says Robert W. Lyons, executive vice president of a roofing company and member of the roofing industry for over 25 years.

Unfortunately, many associations worry about their roof only after these conditions cause damage, such as leaks. This reactive approach can lead to premature roof failure and costly interior damage.

You can prevent these problems by adhering to the following three roof maintenance tips. These tips will help prevent significant problems from occurring and allow you to address small problems before they become serious.

#### Tip #1: Inspect Roof Regularly

Almost every roof failure is predictable. Roofs often show signs of aging, deterioration, and other problems long before weaknesses and defects develop into leaks.

Regularly inspecting your roof will help you identify potential problems and address them before they become more serious.

**When to inspect.** You should inspect your roof at the following times:

➤ *Spring and fall.* Most roof damage occurs during the winter. A fall inspection is important, to identify and fix any roof damage before the harsh winter weather begins. And an inspection in the spring is essential, to evaluate the extent of winter damage and to plan any necessary repairs that will take place during the spring and summer.

➤ *After any major weather event.* Major weather events, such

as blizzards, hurricanes, tornadoes, strong winds, or heavy rain or snow, can cause substantial damage to your roof. Inspecting your roof after such an event can help you manage problems before they become serious.

For example, when there is a big snowstorm, the most obvious problem that your roof must deal with is the weight of the snow and ice. As the snow melts during the day and refreezes at night, water that freezes before it can drain adds considerable weight to concentrated areas, creating and exacerbating leaks.

Winter conditions are also responsible for the accelerated expansion and contraction of roof membranes. This may pull the roof's water-tight sealing material loose from sheet metal and any objects that protrude from the roof such as skylights and mechanical equipment. Once the snow and ice are gone after a big snow event, all your roof areas should be closely

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inspected for damage done by the weight and the freeze-thaw cycle.

**Who should inspect the roof?** If no one on your staff is qualified to inspect your roof, consider hiring a roofing contractor or consultant. If you do this, get recommendations for a qualified contractor or consultant from your roof's manufacturer, other owners and managers, or from industry associations such as the National Roofing Contractors Association (NRCA) or the Roof Consultants Institute (RCI).

### Tip #2: Select Qualified Contractor

Once you have decided what repairs to make, you need to hire a qualified contractor to do the work. Generally, you should solicit competitive bids for the job from several contractors.

Also, get recommendations from other managers or condo associations, or from trade associations. But check with your roof's manufacturer before you hire a contractor. Some manufacturers require you to use a contractor that's certified to work on their type of roof, to preserve your roof's warranty.

### ► For More Information

Here are two roof industry associations you can contact to get more information on roofs and roof maintenance, and to get the names of qualified roofing contractors and consultants:

#### National Roofing Contractors Association (NRCA)

10255 W. Higgins Rd., Ste. 600  
Rosemont, IL 60018  
(847) 299-9070  
[www.nrca.net](http://www.nrca.net)

#### Roof Consultants Institute (RCI)

1500 Sunday Dr., Ste. 204  
Raleigh, NC 27607  
(800) 828-1902  
[www.rci-online.org](http://www.rci-online.org)

### Tip #3: Keep and Record Roof-Related Information

You will gather a lot of important information about your roof and its maintenance history through your roof inspections. You should keep the following information because some of it could help you defend yourself in a lawsuit:

- Roof's leak history, including where leaks occurred, when they were reported, and when, how, and by whom they were repaired;

- Roof warranty information, including the warranty expiration date and any special requirements needed to maintain the warranty; and

- Roof work done by HVAC contractors or other subcontractors, including where and when it was done, and the condition of the roof both before and after the work.

This information is important because contractors, if not properly supervised while working on your roof, can damage it. And that damage may not be immediately noticeable. If a leak later develops, you will be able to determine whether a contractor caused the leak, and if so, to seek reimbursement from him for that damage.

### Insider Source

**Robert W. Lyons, FRCI:** NU-TEC Roofing Contractors, Inc., 519 Crater Ln., Tampa, FL 33619; [www.nutecroofingfl.com](http://www.nutecroofingfl.com).

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roof inspection; roof maintenance

## RECENT COURT RULINGS

### ► Association's Arbitration Procedure Ruled Valid

**Facts:** A member sued to challenge her association's decision to eliminate street parking. The association asked the court to require arbitration and to postpone the lawsuit until the matter could be settled through arbitration. The trial court denied the association's request, finding that the association's arbitration provision in its governing documents was unenforceable. The association appealed.

**Ruling:** An Ohio appeals court reversed the trial court's decision.

**Reasoning:** The trial court had determined that the association's arbitration provision is unreasonable and unfair to the member. Under the provision, the

member could not select the arbitrator and had to pay the arbitration costs regardless of the outcome of the arbitration.

The appeals court found that state law protections made the association's arbitration provisions reasonably fair. It noted that the provision specified that the arbitrator must be independent. Therefore, if the member felt that the arbitrator was not independent, the member could request that the court appoint a new arbitrator under state law. Also, state law can set aside an award if there is evidence of partiality by an arbitrator.

- Reno v. Bethel Vill. Condo. Assn., September 2008

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## **Recent Court Rulings** (continued from p. 7)

### ► **Member Can Transfer Ownership of Home to Son**

**Facts:** An elderly member transferred ownership of her home to a trust that she had set up. Under the terms of the trust, the ownership of the home would transfer to the member's son at the fifth anniversary of the trust's establishment or when the member died, whichever occurred first.

The association argued that the transfers were required to be submitted to the association for review and approval or rejection in accordance with the governing documents. When the member's son had submitted the application, the membership committee rejected the application without explanation. The son then filed a lawsuit, asking the court to reject the association's position. The trial court granted the association a judgment without a trial in its favor, and the son appealed.

**Ruling:** A Florida appeals court reversed the trial court's decision.

**Reasoning:** The appeals court ruled that the two transfers involved in this case were gifts. The association's governing documents imposed a membership application process for the sale, purchase, and lease within the community. The court stated that the governing documents clearly do not impose such requirements for the gift of the home.

■ Webster v. Ocean Reef Cmty. Assn., September 2008

### ► **Member Can Use Garage as Recreation Room**

**Facts:** An association sued a member for violating community building restrictions. The member converted his garage to a recreation room without board approval and in violation of the governing documents. The governing documents provide that all homes are to be used for "none other than single family residential purposes with usual and appropriate outbuildings and a private garage."

In converting the garage, the member removed the garage door, put Sheetrock on the walls and ceiling, and added insulation to the walls of his garage. The trial court ordered the member to restore his garage to a condition in which it could be used for parking cars. The member appealed.

**Ruling:** A Louisiana appeals court modified the trial court's judgment to allow the member's recreation room.

**Reasoning:** The appeals court ruled that although the member was in violation of the community's governing documents, the building restrictions were interpreted too strictly. In effect, property owners were allowed to use their property as they saw fit.

While the governing documents required each home in the community to have a garage, the appeals court ruled that nowhere is there a requirement that the homeowner park his vehicle in the required garage. A homeowner's decision to place items in his garage, behind a functioning garage door, is beyond the reach of the governing documents, the court stated. Therefore, the member needs only to restore his garage door to an operable condition.

■ Sherwood Lake Assn. v. DeAngelo, September 2008

### ► **Association Can Amend Governing Documents**

**Facts:** A member sued a condo association for discrimination under the Fair Housing Act. The dispute started when the member challenged an amendment to the community's governing documents limiting the number of times a member could lease a unit to three times. The member asked the trial court to prevent the association from implementing the amendment before the actual trial begins. The member argued that this amendment would have a racially discriminatory impact on potential renters.

**Ruling:** An Indiana district court denied the member's request.

**Reasoning:** For the court to postpone implementation of the amendment before a trial, the member needed to show a likelihood of winning the discrimination claim. For a successful claim, the member needed to show evidence of discriminatory intent on the part of the association. A previous renter of the member was of Indian descent and another member had complained of the smell of curry from the unit.

However, the court ruled that the manager's report to the owner about his renter's cooking odors carried no sign of bigotry. The report to the owner was a business-related factual statement and not evidence of discrimination. The court ruled that none of the board's actions amounted to evidence of intentional discrimination.

■ Clark v. Oakhill Condos. Assn., September 2008