Community Association Management *Insider*®

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INSIDE THIS ISSUE

Condo Association and Member Sued Over No-Kid Rental Ad

Members at a Florida condominium community violated federal housing law by refusing to rent units to tenants with children, according to a lawsuit filed by Fair Housing Center of the Greater Palm Beaches.

The nonprofit group sued the association, the former president of the association, and a member. The member had placed an ad on craigslist offering her two-bedroom unit for rent. "Sorry no kids," the ad read.

Because the community is not an age-restricted community, it can't dictate tenants' ages, the suit alleges. The member's attorney said she thought the condos were an over-55 community.

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FEATURE

Specify Limits in Management Contract to Minimize Manager Burnout

The most common cause of burnout among association managers is the number of meetings that a manager must attend. Many of these meetings occur after typical work hours, and for managers who are responsible for a large portfolio of associations, the time commitment involved can have a significant impact on a manager's personal life.

Manager burnout is a serious issue for both management companies and community associations. A state of emotional, mental, and physical exhaustion will prevent an otherwise excellent community manager from performing her job at the necessary high level, and a

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LEGAL COMPLIANCE

Post Required Federal Signs for Association Employees

Federal laws require employers including community associations and management companies to post signs explaining legal information to their employees. Failure to post the signs can cost as much as $10,000 per violation. Fortunately, compliance is easy. The signs are available free of charge from the government agencies that oversee the sign-posting laws.

Although you may believe that you already have all these signs, it may not be enough. Many have been updated over the past few years, so you should make sure that you are posting the latest version in order to be in compliance with the law. It is important to note that your state may impose additional posting requirements. For information regarding your state's posting requirements, contact your state's Department of Labor.

❖ FEDERAL MINIMUM WAGE SIGN

Who must post sign. Anyone who has one or more employees.

Content. The content of the notice is prescribed by the Wage and Hour Division of the Department of Labor (DOL). The sign exhibits the current federal minimum wage and explains who is eligible for it. The sign must also include language explaining federal child labor

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Minimize Manager Burnout (continued from p. 1)

spent manager will eventually find work elsewhere. From a management company's viewpoint, this is not a desirable occurrence because it can take a long time to find a good replacement. And both the management company and the association the manager had served will feel the loss of continuity and possible diminished services for several months after a manager leaves until a replacement comes up to speed.

Fortunately, community associations and management companies can help to reduce manager burnout by putting mutually acceptable limits on the number of association meetings a manager must attend. If your management company does not currently set reasonable meeting limits for managers in your management contracts with associations, you can use the following talking points when convincing your association clients to shift from nighttime meetings to meetings held during business hours. We will also give you a Model Contract Clause: Limit Number and Duration of Meetings, which you can use to incorporate those limits into your management contract now or when your management contract is up for renegotiation.

Communicating the Advantages to Limits

If your current management contract does not impose any sort of limits on the number or times of meetings that require the manager's attendance, you should start communicating the problem to the board members and try to shift meetings to earlier times.

Emphasize productivity. You can frame the problem in terms of productivity. Like the association manager, many board members have been working all day and by the time evening arrives, board members are tired and are not at their productive best. Board members may be more inclined to shift meeting times when they are reminded of the tasks that need to be accomplished and the energy required to sit through a two-hour board meeting, especially after a long day at the office.

Test the concept. To ease the transition, until management contract renewal, test the concept of daytime meetings by conducting one such meeting per quarter. You might want to consider a breakfast board meeting since many board members will have time to attend on their way to work. You can offer to provide a continental breakfast for the members as an incentive.

Specify Limits in Management Contract

Ideally, an association will have warmed up to the idea of meetings held during the day by the time the management contract renewal comes around. You can point to more efficient and productive meetings and the general well-being of the association manager. To help you implement reasonable restrictions, here are guidelines to include in your management contracts.

Limit number of meetings requiring manager attendance. According to Kirk Bliss of Community Management Concepts, requiring atten-

dance at four meetings, plus one annual meeting of the entire association membership, per year is reasonable.

Of course, your community might have variables that make required attendance at more meetings reasonable. Larger communities might require more frequent meetings, especially if they offer a lot of high-maintenance amenities such as tennis courts and swimming pools that need more oversight. Also, communities that need significant restoration or rehabilitation tend to require more meetings to check restoration progress or select among various bids.

Schedule daytime meetings. Requiring managers to attend night meetings adds to manager burnout. The better approach is to treat association meetings that the manager must attend as you would treat any other business meetings by requiring them to be scheduled during normal business hours.

However, you should not require *annual meetings* to be scheduled during regular business hours. Typical members have not volunteered for the board, and they should be able to participate in their community without having to leave work too early.

Set time limits for meetings. Each meeting requiring the manager's attendance should not last longer than two hours. Some management contracts limit the total number of meetings as well as the total cumulative hours per year that the manager must spend in meetings, rather than just limiting each meeting to two hours. This is a mistake, says Bliss. Although the intentions are good, this solution does not reflect the personal needs of the manager. It only complicates the recordkeeping. Rather than forcing the manager to keep track of the total annual meeting hours, the management contract should simply limit the length of each meeting to two hours.

Charge hourly fee for meetings that exceed limits. It is fair for a management company to receive extra compensation for any meeting that exceeds the contract limits. You can supply the details of the fee in the contract clause.

A fee has two benefits. First, it encourages a board to weigh the cost of an additional meeting against its need for it. Second, it allows a manager to earn additional income to compensate for her additional work. This has a positive emotional impact on the manager and reduces the risk of early burnout.

MODEL CONTRACT CLAUSE

Limit Number and Duration of Meetings

Here is a model clause that you can use to help combat manager burnout within your management company. It sets limits on the number and duration of meetings a manager must attend. Be sure to show this clause to your attorney before adapting it for your own use.

MEETINGS

a. **Number of Meetings:** The manager or other representative of [*insert name of management co.*], collectively, the "Manager," shall attend five (5) Board and/or membership meetings per year, which includes the annual meeting of the members.

b. **Meeting Times:** All meetings that require the Manager's attendance must be held Monday through Thursday and begin no later than 5:30 p.m. The only exception to this is the annual meeting of members, which shall begin no later than 7 p.m.

c. **Duration of Meetings:** All meetings that require the Manager's attendance shall last no longer than two (2) hours each.

d. **Hourly Fee for Meetings that Exceed Parameters of This Contract:** The association agrees to pay an additional fee of $[*insert amt.*] per hour to [*insert name of management co.*] should any of the following occur:

   (i) An additional meeting requiring the Manager's attendance is held in excess of the five (5) meetings provided for herein;

   (ii) A meeting requiring the Manager's attendance begins at any time after 5:30 p.m., other than the annual meeting of members, or is held on a day other than Monday through Thursday, including the annual meeting of members.

   (iii) A meeting requiring the Manager's attendance exceeds two (2) hours in duration, including the annual meeting of members.

Insider Source

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For more information, visit:

www.communityassociationinsider.com

Search Our Web Site by Key Words: board meeting; annual meeting; management contract

Federal Signs (continued from p. 1)

laws and the overtime provisions of the federal Fair Labor Standards Act. Under the act, employers are required to pay covered nonexempt employees a minimum wage of not less than $7.25 per hour. This rate became effective July 24, 2009.

Location. You must post the sign in a conspicuous place where employees are likely to see it.

How to get sign. For a copy, contact the DOL at (866) 487-9243 or go to*: www.dol.gov/elaws/posters.htm.*

Most recent version. The latest version of this sign was issued in July 2007.

❖ EQUAL EMPLOYMENT OPPORTUNITY SIGN

Who must post sign. Anyone with 15 or more employees.

Content. The sign explains the various federal antidiscrimination employment laws, including the Civil Rights Act, the Americans with Disabilities Act, the Age Discrimination in Employment Act, and the Equal Pay Act.

Location. You must post the sign in a conspicuous place where notices for employees and job applicants are generally posted.

Penalty. The Equal Employment Opportunity Commission (EEOC) can fine you up to $100 per violation for not properly posting the sign.

How to get sign. For a copy, contact the DOL at the above telephone number.

Most recent version. The latest version of the sign was issued in August 2008.

❖ JOB SAFETY AND HEALTH PROTECTION SIGN

Who must post sign. Anyone with one or more employees.

Content. The sign explains that employers must provide their employees with a safe work environment, free from recognized hazards, and they must comply with Occupational Safety and Health Administration (OSHA) regulations.

Location. You must post the sign in a conspicuous place where notices for employees are generally posted.

Penalty. The law sets no fine for not posting the sign.

How to get sign. For a copy, call the local OSHA office or (800) 321-6742, or visit *www.osha.gov/Publications/poster.html.*

Most recent version. The latest version of the sign says "OSHA 3165-12-06R" in the lower right-hand corner.

❖ EMPLOYEE POLYGRAPH PROTECTION ACT SIGN

Who must post sign. Anyone with one or more employees.

Content. The sign explains that under most circumstances employers cannot require their employees to take a lie detector test. In rare and controlled circumstances, the act permits polygraph testing of certain employees who are reasonably suspected of involvement in a workplace incident such as theft or embezzlement that resulted in specific economic loss or injury to the employer. In these instances, the lie detector tests are subject to strict standards for the conduct of the test, including the pretest, testing, and post-testing phases. An examiner must be licensed and bonded or have professional liability coverage. And the act strictly limits the disclosure of information obtained during a polygraph test.

Location. You must post the sign in a conspicuous place where employees are likely to see it.

Penalty. The Secretary of Labor can bring court action to restrain violators and assess civil money penalties up to $10,000 per violation, including failure to post the sign.

How to get sign. A copy of the sign can be obtained from the DOL.

Most recent version. The sign was last updated in June 2003; "WH Publication 1462" appears in the lower right-hand corner.

❖ FAMILY AND MEDICAL LEAVE ACT SIGN

Who must post sign. Anyone with 50 or more employees.

Content. The sign must explain that covered employers are required to provide up to 12 weeks of unpaid, job-protected leave to certain employees for certain family and medical reasons.

Location. You must post the sign in a conspicuous place where notices for employees and job applicants are generally posted.

Penalty. The Wage and Hour Division of the DOL can fine you up to $100 per violation for not posting the sign.

How to get sign. A copy of the sign can be obtained from the DOL.

Most recent version. The latest version was revised in January 2009; "WHD Publication 1420" appears in the bottom right-hand corner. This latest version incorporates a rule that became effective on Jan. 16, 2009. The rule provides for special military family leave for employees to care for a related service member or employees who need to manage their affairs while the family member is on active duty in support of a contingency operation.

❖ UNIFORMED SERVICES EMPLOYMENT AND REEMPLOYMENT RIGHTS ACT SIGN

Who must post sign. Employers of service members returning from a period of uniformed service, including those called up by the reserves or National Guard.

Content. The sign explains the reemployment rights of individuals who voluntarily or involuntarily leave employment positions to undertake military service or certain types of service in the National Disaster Medical System.

Location. You may provide the notice by posting it where employee notices are typically placed.

Penalty. There are no citations or penalties for failure to post the sign. However, an individual could ask the DOL to investigate and seek compliance, or file a private enforcement action to require you to provide the notice to employees.

How to get sign. For a copy, call the DOL at (866) 487-2365 or go to *www.dol.gov/vets/programs/userra/USERRA_Private.pdf.*

Most recent version. The latest version was published in October 2008.

For more information, visit:
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Search Our Web Site by Key Words: employment; labor laws; sign-posting requirements

Q & A

The INSIDER *welcomes questions and comments from subscribers. You can submit your questions through the "Ask the Insider" feature of our Web site,* www.communityassociationinsider.com.

Board Members Serving as Committee Chairs

Q Is it true that the vice president of the executive board often chairs the architectural review committee? Could you provide any pros and cons of having a board member serve as a committee chair?

A The chair of the architectural review committee is designated either by the association's governing documents or by appointment by the board. Hawaii attorney Richard Ekimoto has not seen any governing documents that designate the executive vice president of the board as the chair of the architectural review committee, but it is certainly possible for the governing documents to so provide.

Normally, one of the benefits of having a board member on the architectural review committee is that the board member can serve as a liaison between the committee and the board. One of the drawbacks of having a board member on the committee is that it detracts from the ability of the board to serve as an appeals body for the architectural review committee, says Ekimoto.

Under some governing documents there is a right of appeal from a decision by the architectural review committee to the board, adds New Jersey attorney David Ramsey. And having a board member on a committee might raise suspicions in the community, points out Maryland and Washington, D.C., attorney Benny L. Kass. He notes that it is always a good idea to get as many owners as possible to serve on various committees. Since many owners are by nature suspicious and distrustful of their elected board, it helps to diffuse any suspicion by having non-board members serve on various committees—especially one as important as the architectural review committee.

Even though having a board member serve on a committee is discouraged, a committee still needs to communicate and interact with the board to act in a manner consistent with overall board policy, and a board might still want direct "eyes and ears" at the committee level. Massachusetts attorney V. Douglas Errico offers one way to achieve this, and still maintain total independence of the board for potential

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Q&A (continued from p. 5)

appeals. He suggests having a board member attend all architectural committee meetings or even serve as a nonvoting committee member.

Curfews for Children

Q There have been problems with children spray painting and otherwise vandalizing buildings at night in the community that I manage. To stop the graffiti and vandalism, I'd like to propose a curfew and prohibit children under the age of 16 from being outside after 10 p.m., unless accompanied by an adult. Is this legal?

A No. Fair housing laws prohibit you from discriminating against families with children. Your plan to restrict the activities of children falls within this prohibition. Even though you may have a legitimate business reason for the curfew, the curfew still violates the law.

The problem with a curfew for children is that it targets particular people, instead of particular behavior, says San Diego attorney Ted Kimball. You would need to apply the curfew to everyone, not just children, because adults are just as capable as children of spray painting graffiti.

The only kind of rule you can impose that singles out children is one designed solely to protect them from harm. And to do so, you will need to prove that children are at risk and that your policy is the least restrictive way to adequately protect them. An example is a rule preventing children under a certain age from swimming unsupervised.

Insider Sources

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RECENT COURT RULINGS

➤ Association Entitled to Attorney Fees

Facts: A condominium member asked the court to remove a lien for unpaid assessments filed by the association. At issue was whether the owner was liable for condominium assessments from the date of the unit's purchase at a tax sale through the date the owner's right to redeem the property expired. The trial court ruled for the condo association for the amount of unpaid assessments as well as reasonable attorney fees actually incurred. When the member appealed, the association asked the trial court for attorney fees incurred in defending a judgment on appeal. The trial court denied this request.

The association appealed on this issue. The association claimed that the trial court made a mistake by concluding that it was not entitled to recover attorney fees incurred on appeal and in failing to hold a hearing on the amount of attorney fees incurred.

Ruling: A Georgia appeals court ruled for the association.

Reasoning: Generally, an award of attorney fees is not available unless supported by state law or contract. Here, the appeals court found that the Georgia Condominium Act allows a condominium association to recover reasonable attorney fees. And the court found that the bylaws for the association authorize assessments against owners to include reasonable attorney fees.

■ Springside Condo. Assn., Inc. v. Harpagon Co., May 2009

➤ Association May Be Liable for Guest's Slip-and-Fall

Facts: A guest sued a condo association for injuries sustained in the association's parking lot. The accident occurred while she was attempting to help a physically disabled friend stand up from the ground after he allegedly slipped due to the presence of ice. As the guest was assisting her friend to his feet, he allegedly slipped on the ice again and fell on top of her, causing injuries.

The association asked the trial court to dismiss the case without a trial on the basis that the alleged icy condition did not cause the injuries, but rather it was caused by the guest's act of helping her disabled friend stand up without waiting for assistance. The association also claimed that there was no ice or snow in the area where the guest and her friend fell. The trial court granted the association's request, and the guest appealed.

Ruling: A New York appeals court reversed the trial court's decision and reinstated the guest's lawsuit.

Reasoning: The appeals court ruled that the association failed to prove that no dangerous condition existed. Although the association submitted testimony from the snow removal contractor and a board member that there was no snow or ice in the area of the injury, the association also submitted the guest's testimony that there were patches of ice in that area. In view of this conflicting evidence, the association failed to demonstrate the absence of a triable issue.

■ Mazzio v. Highland Homeowners Assoc., June 2009

➤ Members Didn't Violate Community's Lease Restrictions

Facts: An association asked the court to declare that some of the leases executed by its members were void. The complaint asserted that the leases violated leasing restrictions of the association's bylaws. The members then countersued, asking the court to declare that the restrictions were invalid.

The trial court denied the association's request to dismiss the member's counterclaim and declared that the leases were not void. The association appealed.

Ruling: A New York appeals court agreed with the trial court's ruling.

Reasoning: The members had demonstrated that the association exceeded the scope of its authority in enacting the amendments to the bylaws that prohibited or restricted leasing without first amending the association's declaration. Therefore, the amendments to the bylaws were void.

■ Strathmore Ridge Homeowners Assoc. v. Mendicino, June 2009

➤ Association's Contract with Member Deemed Unenforceable

Facts: A Colorado condominium association proposed a renovation project that included creating and selling two new condominium units. The association members voted unanimously to build and sell the two new units, and the members agreed that the new units would be offered for sale through a private auction to the members first.

A member bid successfully on a unit and entered into a purchase and sale contract with the association for the unit. A few months later, the association sent a letter to its members informing them that the amount of the special assessment depended on whether two-thirds of the members voted to approve the contracts for the two new units. Less than 67 percent of the members voted to approve the contract, and the purchasing member sued to have the sales contract honored.

Ruling: A Colorado appeals court ruled against the purchasing member.

Reasoning: The purchasing member tried to argue that once the members approved the sale of the two new condominium units, the association had the authority to enter into the contracts without further attempts to obtain 67 percent approval. However, state law requires 67 percent approval to any agreement to convey common elements, and the contract itself stated that the contract needed to be ratified by two-thirds of the association's members. As a result, the appeals court ruled that the contract was required to be approved by the unit owners to be enforceable.

■ Platt v. Aspenwood Condo. Assn., May 2009

➤ Association Can't Compel Member to Arbitrate Her Fraud Claim

Facts: A member sued her homeowners association and the association's management company for fraud, unfair business practices, and intentional infliction of emotional distress. The member alleged that the association manager had secretly diverted her assessment payments, recorded a false assessment lien claiming the member failed to pay approximately $4,300 in assessments, and made false entries in the association's books that no assessment payments from the member had been received.

The association asked the court to compel arbitration proceedings and to suspend the member's lawsuit until the completion of arbitration proceedings. The association argued that an amendment to the association's governing documents constituted a binding contract to arbitrate between the member and the association. The trial court determined that arbitration was inappropriate, and the association appealed.

Ruling: A California appeals court agreed with the trial court.

Reasoning: The association's arbitration provision expressly excluded disputes concerning a member's failure to pay an assessment. The court ruled that the member's claim regarding diversion of her assessment payments are intertwined with disputes regarding her failure to make such payments, and, as a result, her claims against the association and the manager are outside the scope of the arbitration provision.

■ Seltzer v. The Headlands Homeowners Assoc., June 2009

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