

Community Association Management *Insider*[®]

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New Law Sparks Maryland Associations’ Activism

Prompted by Baltimore County bills passed in September that affect owners of homes in Baltimore’s planned communities and their homeowners associations, the Reisterstown-Owings Mills-Glyndon Coordinating Council (ROG) is encouraging the county government to change how it does business. ROG, which meets monthly to discuss community association issues, is comprised of area community association leaders. They believe that a new law relating to auxiliary house structures undermines community associations’ authority, and they recently met to discuss their initiative to change how broad bills that greatly affect associations go through the legislative process.

Leaders complained that the legislation, which creates a two-year permit

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FEATURE

Draft Fair Housing Code of Conduct for Maintenance Staff

It’s sometimes unnecessary to give community maintenance staff members the same training as other types of staff receive. But all community employees are required to abide by the Fair Housing Act (FHA). That’s why it’s important for community association managers to make sure that every staff member, including maintenance workers, who comes into contact with the community’s members knows how to comply with the rules.

If an association fails to give its maintenance staff fair housing training and a member believes that a maintenance worker’s conduct violated fair housing law, the manager could receive a discrimination complaint. You can prevent such complaints at your community—and avoid a potential lawsuit against the association—by setting a fair housing code of conduct for maintenance workers and properly training them on how to follow it.

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BEST PRACTICES

Encourage Positive Campaigning with Candidate Code of Conduct

In most associations, any member in good standing has the right to run for the board of directors. But just because a member follows community rules and pays assessments on time doesn’t mean that he’ll run an above-board campaign and treat his opponents respectfully. While they’re excellent examples of democracy in action, community association campaigns for the board of directors can turn vicious, with candidates using negative speech and advertising to discredit their opponents. And there are other consequences besides candidates having their reputations questioned. Members who become disillusioned by candidates’ immature behavior might withdraw from association life altogether, costing your association qualified volunteers for the board and committees.

Setting a code of campaign conduct and asking all board candidates to voluntarily sign a written pledge to abide by that code can minimize damage to candidates’ reputations and repercussions for your association.

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Code of Conduct (continued from p. 1)**Fair Housing Basics**

The FHA makes it unlawful to discriminate in housing—including the provision of maintenance services—based on race, color, religion, sex, national origin, familial status (that is, families with children), or disability. In addition, some state and local laws offer fair housing protections based on other characteristics, such as marital status, age, sexual orientation or identity, and source of income (such as government assistance).

The way to handle certain fair housing issues with maintenance workers isn't always clear cut—especially when the FHA doesn't *specifically* ban a certain type of action. For example, sexual harassment isn't specifically banned under the FHA. However, creating a sexually offensive environment constitutes sexual discrimination, which the law *does* prohibit.

For example, a female member could claim that a maintenance staff worker's—or even your—conduct interfered with her ability to enjoy her rights under the FHA. That's why it's important to educate maintenance workers about how to avoid not only situations that are expressly banned by the FHA, but also behavior that isn't specified but can create a situation that's tantamount to banned activity.

It's also important to tell your workers to be aware that they should abide by the code of conduct when interacting with all members, not just those members who traditionally complain about certain behavior. For example, harassment can be a problem especially for women, but in some cases for men if perceived sexual orientation is an issue, notes management expert and *Insider* board member Clifford J. Treese.

Implement Code of Conduct

Education is a crucial part of the solution to fair housing compliance problems, says fair housing attorney and trainer Nadeen W. Green. But teaching your maintenance staff about fair housing law isn't

New Law Sparks Activism (continued from p. 1)

process for so-called “in-law apartments” in communities and restricts their use to grandparents, parents, and children, was pushed through during the summer when community groups were not meeting and therefore couldn't object to the bill. At the urging of Baltimore community association leaders who learned about the bill over the summer, it was tabled during those months, but passed in September.

Under the current Baltimore County legislative structure, bills can't pass into law until 28 days after introduction. But associations have suggested that broad zoning bills, such as the in-law apartment legislation, should have to go through the county planning board's two-month review process.

enough because that doesn't necessarily teach them exactly how they're expected to *behave* according to the law. Give specific rules, with examples, to maintenance workers. Even if your rules don't cover every possible scenario, you can cover the most common mistakes and how to avoid making them.

Incorporate these rules into a fair housing code of conduct that instructs maintenance staff on how to behave around members and gives examples of how those rules work in practice, advises Green. Your code of conduct, like our Model Policy: Require Maintenance Staff to Follow Fair Housing Rules, should cover these six rules. Remember to provide maintenance workers with examples of how failing to follow the code of conduct could end in a lawsuit.

Rule #1: Treat all members the same way. Tell your staff to avoid giving some members preferential treatment. Members who aren't favored by staff could interpret that as being discriminatory behavior.

Example: You make repairs for members that you know well without requiring them to fill out the maintenance request paperwork required by association policy, but you ask other members to submit the paperwork before you'll make repairs. Because you've treated some members differently, it could open the association up to a discrimination charge.

Rule #2: Don't fraternize with members. Remind your maintenance staff that a worker who gets overly involved with community members might cross the line between friendly service and harassment.

MODEL POLICY

Require Maintenance Staff to Follow Fair Housing Rules

You can adapt this Fair Housing Code of Conduct for use at your community. It instructs your maintenance staff on how to act around members. Show this code of conduct to your attorney before implementing it.

FAIR HOUSING CODE OF CONDUCT

ABC Community Association follows all federal, state, and local fair housing laws. All members of our maintenance staff shall at all times conduct themselves according to this Fair Housing Code of Conduct. Failure to do so may result in termination of employment.

1. **Treat all members the same way.** You may want to give better service to members with whom you're friendly. While you may feel that giving certain members special treatment is harmless, you're actually opening up the association—and yourself—to liability for discriminating against the members who don't get special treatment. So perform every task as if you were doing it for the same member.
2. **Don't fraternize with members.** Be friendly with all members, but don't be friends with any of them. You may not know how the member feels about the relationship. A member you believe to be a true friend may think of you only as a friendly maintenance technician. If you take the relationship a step too far, you might violate fair housing law.
3. **Don't enter a unit unless a member lets you in.** When you make a scheduled service call, knock loudly and call out to let the member know you are there. Do not enter the unit until the member lets you in.
4. **Don't be alone in a unit with a minor child.** Except in case of an emergency, you should NEVER be alone in a unit with a member's minor child. If faced with this situation, notify a supervisor immediately and reschedule the maintenance appointment.
5. **Respect members' privacy.** Do not touch or comment on the items in a member's unit. Just be polite, do your job, thank the member, and leave.
6. **Enter unit in team for emergency service when member is away.** If emergency repairs are needed in a unit and the member can't be there, workers should enter a unit together, if possible, to avoid or minimize later allegations of damage or theft.

Example: You frequently see a particular female member around the community and often talk about the weather and current events. You ask her out to lunch. But if your attempt to take her on a date makes her uncomfortable, she could sue both you and the association for sexual harassment.

Rule #3: Don't enter a unit unless a member lets you in. Review with your maintenance staff the rule that they shouldn't go into

members' units unless they are invited in. If a member is surprised by an unknown worker or is found in an embarrassing situation when he thought he was alone, he could complain that he was harassed.

Example: After knocking on the door to a unit and getting no answer, you let yourself in to make some requested repairs. A female member, wrapped in a towel, walks into the room you're in. She

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Code of Conduct

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had been in the shower but didn't hear you knock. The intrusion was an accident, but she may think that you acted inappropriately and file a sexual harassment lawsuit.

Rule #4: Don't be alone in a unit with a minor child. Emphasize to your maintenance staff that—unless it's an emergency—maintenance workers should never enter a unit if the only person home is a minor child. A parent may later claim that something inappropriate took place and, because children are susceptible to parental pressure, the child may confirm a claim that isn't true. Instead, maintenance workers should immediately notify a supervisor of the situation, and the supervisor should make a record of what happened, including why the maintenance worker refused to enter the unit. The maintenance appointment should be rescheduled for a time when an adult will be at home.

Example: You knock on a member's door for a scheduled maintenance visit. The member's young daughter is the only one home and invites you to make the requested repair. Even though the repair was requested and you've been invited in, you shouldn't go inside. That's because someone may later claim that something inappropriate took place and file a lawsuit. (Although it may not be a fair housing-related discrimination claim, it could still put your association at serious risk, so this rule should be part of the code of conduct.)

Rule #5: Respect members' privacy. Maintenance workers may offend members by commenting

on or complimenting their possessions, or otherwise snooping around.

Example: You tell a member that a piece of art in his unit strikes you as odd. If the piece of art has religious, cultural, or personal significance, you might offend the member and inadvertently commit a fair housing violation.

Rule #6: Enter unit in team for emergency service when member is away. Security is a big issue with members who are concerned that maintenance workers could damage or steal their belongings if they make repairs when no one is home. But if emergency repairs are needed in a unit and the member can't be there, there is a solution. "Two workers should enter a unit together, if possible, to avoid or minimize later allegations of damage or theft," says Treese.

Example: You answer a call to fix a plumbing problem that could flood a member's unit. The member isn't home, but you let yourself in because it's urgent that you get the leak under control. Later, the member claims that some jewelry is missing from the unit and files a lawsuit asserting that she should be able to keep valuables without fear of association employees taking them. (Again, while such a claim may not involve fair housing law, it's a good idea to include this practical advice in your maintenance staff training.)

PRACTICAL POINTER: When reviewing the FHA and any additional fair housing laws imposed by your state or local government, think about what association policies you could write, if you don't already have them, to help your staff comply with fair housing requirements. This also shows that

your association is taking the extra step to make sure that the law is being taken seriously.

Target Specific Issues

Even after you've created a fair housing code of conduct for the maintenance staff and given them examples of how and why they need to follow the policy, give them training that's targeted specifically to *maintenance* issues, such as how they should act during service calls and other interactions with your members, says Green. And don't stop there—put your maintenance staff through the same fair housing training program that you give the rest of your staff. Being well versed in fair housing law will make them less likely to violate the law.

Without maintenance-specific instructions on how to conduct themselves, workers may not understand how those laws affect them and the work they do. "It's not enough for staff to be only passingly familiar with fair housing laws," says Green. This can lead to trouble, especially in situations where inappropriate conduct can also lead to criminal charges, such as sexual harassment.

Insider Sources

Nadeen W. Green, Esq.: Senior Counsel, For Rent Media Solutions, Atlanta, GA.

Clifford J. Treese: Association Information Services, Inc., Pleasanton, CA; www.associationis.com.

www.communityassociationinsider.com

Search Our Web Site by Key Words:
fair housing; discrimination; liability; maintenance staff

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.

Responding to Vague or Unsubstantiated Complaints

Q A member of the community association I manage complained about a maintenance worker, but it wasn't clear exactly what the employee may have done wrong. The member said that the maintenance worker was doing repairs in her unit and made her feel "creepy" and "scared." She didn't say anything specific that the worker did that was inappropriate, and I've never had any complaints about him. What should I do?

A Although you can't take any chances when it comes to sexual harassment, you shouldn't fire or suspend the worker without pay if there's no proof. But you can't sit back and do nothing, either, says fair housing attorney and trainer Nadeen W. Green. Your best plan of action is to take steps to investigate the complaint, she says.

Speak to the worker and other residents whom he has visited on maintenance calls. And during your investigation, have another employee go on maintenance visits with the worker. Although you should take precautionary measures by not allowing the worker to be alone with female residents until the investigation is complete, don't jump the gun. The first step is investigating the complaint against the worker, not firing him.

Denying "Unreasonable" Accommodation Requests

Q A member came to my management office requesting an accessible parking space because he's disabled. He pointed out his government-issued license plates to prove his disability. But he also asked me to reserve an entire section of the parking lot for his exclusive use. This section is big enough for 10 spots that other members can use. Must I grant his request?

A While you do need to give him an accessible space, you don't have to give him the entire section that he's asking for just because he's disabled. That's because the request is unreasonable. Fair housing law says that you have to make whatever *reasonable* accommodations a disabled person needs to have an equal opportunity to enjoy his home. But it doesn't say that you have to make *any* accommodation a member requests, no matter how unreasonable. It's unreasonable for the member to expect the community to set aside 10 regular parking spaces for his exclusive use, so you don't have to do it.

Insider Source

Nadeen W. Green, Esq.: Senior Counsel, For Rent Media Solutions, Atlanta, GA.

RECENT COURT RULINGS

► Association Not Required to Approve Handicap Ramp for Owners' "Convenience"

Facts: The owners of a custom-built house in a residential development asked the homeowners' association for permission to build a wheelchair access ramp on the front of their home leading to the front door for their disabled son to use. After the owners submitted to the architectural review board several incomplete applications for permission to build the ramp, the association denied the owners' request.

The owners sued the association for discrimination under the Fair Housing Act (FHA), asserting that it had failed to make reasonable accommoda-

tions and modifications to meet their disabled son's needs. The association and the owners each asked a Florida trial court for a judgment in their favor without a trial.

Decision: The trial court granted a judgment without a trial in favor of the association.

Reasoning: The association argued that the owners couldn't prove that denying their accessibility ramp request violated the FHA, because the request didn't meet the standard of "reasonable and necessary," which was required for the association to be obligated to approve the request. Therefore, denying the request wasn't discriminatory, said the association.

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Recent Court Rulings (continued from p. 5)

The court noted that the FHA defines unlawful discrimination as “a refusal to make reasonable accommodations in rules, policies, practices, or services, when such accommodations may be necessary to afford a person equal opportunity to use and enjoy a dwelling.” It pointed out that to prevail on an FHA claim, the owners would have to establish that: (1) they or their son is handicapped within the meaning of the law and that the association knew or should have known this fact; (2) an accommodation or modification is necessary to afford their son equal opportunity to use and enjoy the housing; (3) such an accommodation is reasonable; and (4) the association refused to make the requested accommodation.

The court stated that there’s no dispute that the owners’ son is “handicapped” and is entitled to reasonable accommodations and modifications under the FHA. Additionally, it’s clear that the association knew or should have known of his disability, said the court. The court focused on whether the owners could meet the remaining elements necessary to succeed on an FHA claim: necessity, reasonableness, and refusal to make an accommodation or permit a modification.

The court determined that the owners couldn’t succeed on their FHA claim because “plaintiffs in a housing discrimination lawsuit must satisfy the ‘necessary’ requirement by demonstrating a direct link between the proposed accommodation and the equal opportunity to be provided to the person with a disability.” The court pointed out that at the time the owners made the ramp request, their home had a wheelchair access ramp that permitted their son to enter and exit the home through the garage. They also had a walk-out basement constructed to accommodate his disability.

The court said that “there is no dispute that the current ramp provides the owners’ son with full and unassisted access to the home, and the owners have not shown any evidence that placing a new ramp on the exterior of the home would directly ameliorate the effect of the disability in a way that the current ramp does not While having an additional ramp on the front of the home may be preferred by the owners, it cannot be said to be causally connected to ameliorating the effect of their son’s disability,” the court concluded. Because the proposed new ramp was not necessary, the association’s denial of the request for it was not discriminatory, ruled the court.

■ Scroggins v. Lee’s Crossing Homeowners Association, et al., September 2011

Best Practices (continued from p. 1)

Weigh Pros and Cons of Code

Instead of engaging in a spirited, fair debate about community issues, candidates often resort to name-calling, rumor-mongering, and personal insults. But before you go to the trouble of setting a code of campaign conduct, decide whether such a code is right for your community and understand that to be effective, members must sign a pledge to follow it. Otherwise, they aren’t bound to abide by those rules.

Although enforcing the code against candidates who violate it could be difficult, if it’s written and applied fairly, a code of conduct could have a positive effect on communities. For example, it

will make clear to the voting community the types of behavior that are and aren’t appropriate, which could help discourage inappropriate behavior, says association manager and *Insider* board member Tammy McAdory. Also, setting a code will give first-time candidates a guide to use for their campaign, she notes.

Be aware that certain aspects of your code could be subject to interpretation and lead to problems. For example, if the code asks candidates to behave in accordance with basic rules of civility and respect, someone will have to decide what’s respectful and what isn’t, which could cause problems if others don’t agree with that person’s decision. You’ll have to weigh

your options: Even though campaigns can get disorderly and even vicious, setting and enforcing the code could cause a different kind of tension that has the potential to linger long after the campaign is over. Think about whether, in the long run, it’s best to let the opposing candidates police the process through their campaign literature and speeches, and let the members decide through their votes whom they want representing them.

Ultimately, you’ll have to decide for yourself whether to establish a code of campaign conduct at your community. Your decision will, in part, depend on how badly candidates at your community behave, and what you think the cost of such behavior is

to community participation and leadership. Ask your attorney for his or her opinion. He or she may have had personal experience with this type of issue or be able to offer advice about how to draft a code and pledge.

What Pledge, Code Should Say

If you decide to set a code of campaign conduct and to ask candidates to sign a written pledge to abide by it, your pledge, like our Model Policy: Ask Board Candidates to Sign Campaign Conduct Pledge, should ask candidates to follow seven rules during the campaign.

Rule #1: Behave in accordance with basic rules of civility and respect. This is the most important principle to infuse into candidates' campaigns. But your association must be equally diligent in ensuring that all candidates—incumbents as well as challengers—are held to the same standard. Fair enforcement and a true commitment to democratic ideals are essential if you want to transform your community elections into something better than they are now, McAdory notes [Policy, par. 1].

Rule #2: Stick to the issues and avoid negative behavior. It's okay for campaigns to be spirited and competitive. But they should focus only on community-related issues, says McAdory. Toward that end, candidates should avoid rumor-mongering, name-calling, and personal insults. If a candidate believes that another candidate is, or has been, involved in wrongdoing, she should be willing to substantiate her allegations before making them public.

But keep in mind that it's equally important for the association to be reasonable in its inter-

pretation of this part of the code. Sometimes, a candidate's character traits are relevant to community issues—for example, if a candidate for treasurer was once convicted of embezzlement. On the other hand, character traits that are personal and unrelated to community issues should be off-limits as campaign topics [Policy, par. 2].

Rule #3: Include name on campaign material. Just as candidates for public office are required to do, candidates for your association's board of directors should place their names prominently on any campaign material they wish to disseminate, suggests McAdory. That way, members can consider the source when reviewing such material [Policy, par. 3].

Rule #4: Use membership list for association-related matters only. In most states, members are entitled to access the association's membership list, which usually includes members' contact information, such as their addresses and phone numbers. Sometimes, members run for the board of directors to get this list for other reasons—for example, to sell their business's products. If your state allows members to access the association's membership list, you can give candidates access to the list, but you should ask them to agree to use it for association-related matters only [Policy, par. 4].

Rule #5: Abide by established rules for phone calls, personal visits.

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MODEL POLICY

Ask Board Candidates to Sign Campaign Conduct Pledge

The following Model Pledge, which spells out a code of conduct, asks candidates for the association board of directors to abide by the association's code of campaign conduct. And it recites the components of the association's code of campaign conduct. Show this to your attorney before adapting it for use at your community.

BOARD OF DIRECTORS CANDIDATE PLEDGE

[Insert date]

As a candidate for the ABC Community Association Board of Directors, I promise to abide by the association's Code of Campaign Conduct, as follows:

1. I will behave in accordance with basic rules of civility and respect.
2. I will strive to stick to the issues and avoid rumor-mongering, name-calling, and personal insults.
3. I will not disseminate any campaign material or message in which I am not prominently identified.
4. I will use the association membership list for association-related matters only.
5. I will abide by established rules for phone calls and personal visits.
6. I will not, through other people, do anything that the Code of Campaign Conduct forbids me to do myself. I will publicly repudiate support from any individual or group who does so.
7. I will comport myself at the ABC Community "Meet the Candidates Night" in a professional, courteous manner, including, but not limited to, remaining seated and quiet while other candidates speak.

Signature _____ Printed Name _____

Best Practices

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Board candidates might want to call or visit association members to get their message out. Some states let associations keep members' phone numbers confidential from other members, says McAdory. Think about prohibiting door-to-door solicitation after a certain hour of night as a security measure, also. If your association has rules regarding phone calls and personal visits, you should ask candidates to agree to abide by them [Policy, par. 5]. Get your attorney's advice before setting any such rules.

Rule #6: Refrain from having other people do things banned by the code. Candidates may try to circumvent their pledge to abide by the code of campaign conduct by asking others to do things that the code bans the candidates from doing. So ask candidates to agree not to do anything through others that they can't do themselves. And ask them to promise that if anyone violates the code of campaign conduct on their behalf, they'll publicly reject that person's support [Policy, par. 6].

Rule #7: Act professionally and courteously at "Meet the Candidates Night." Many associations host a "Meet the Candidates Night" to give candidates a chance

to address the community directly and state their case for why they should be elected to the board of directors. Such events can quickly get out of hand if the participants don't conduct themselves in a professional, courteous way, says McAdory. So ask candidates to agree to behave appropriately at such an event. In particular, ask them to agree to remain seated and quiet while other candidates speak [Policy, par. 7].

Don't Force Signature

Setting a code of conduct and asking all board candidates to pledge to follow it may reduce negativity, but remember that you shouldn't try to *require* candidates to sign it. An association board has no authority to impose requirements for board candidates other than being in good standing, such as agreeing to a set of campaign standards. If you try to force candidates to sign the pledge or you disqualify candidates who refuse to sign the pledge, you may leave the association vulnerable to a lawsuit and maybe even liability.

So after you write up your pledge and code of campaign conduct, ask candidates to *voluntarily* sign the pledge. A voluntarily signed pledge should be legally valid, as long as the code included in it is fairly written.

Also, if a candidate refuses to sign the pledge or violates the pledge after signing it, don't publicize that fact to members. If you do, you'll give the appearance that the association is taking sides in the election. But a candidate's refusal to sign the pledge or violation of it after signing it can become an issue for the campaign that other candidates can publicize to the membership. Because such publicity could hurt a candidate's election chances, the threat of it could encourage candidates to sign and follow their pledge.

PRACTICAL POINTER: If your association's governing documents say that the association can regulate campaign behavior (or if you amend your governing documents by a member vote to say so), you could probably require candidates to sign the pledge. But check with your attorney before doing so.

Insider Source

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