

Community Association Management *Insider*[®]

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Member Gets Mixed Messages from HOA, Local Government

A homeowner is being fined by her California association for taking out her lawn, despite requests from local water agencies for residents to do so. A severe drought has affected the area and the homeowner felt that planting mint, which requires very little water to survive, where there once was turf would temporarily solve the problem. But the board of directors demanded at least 25 percent grass. The homeowner planted the mint and is now being fined monthly.

Her municipality, however, has commended her efforts at water conservation. In a public letter, it commented that it was amazed that in one of the worst droughts in the state's history HOA rules still prohibited removing a lawn and installing drought-friendly plants. State law supports the homeowner's landscaping change, it noted. ♦

FEATURE

How to Build Bonds Among Members, Board, and Management

When it comes to daily life in an association—whether it's a condominium building or a community of standalone homes or townhomes—there will always be some members who love association life and some members who realize too late that they don't enjoy being bound by community rules. Community management expert Paul D. Grucza has over 33 years of experience turning the love-hate relationship between associations and their members into a more harmonious union by building a bond among owners, boards, and management staff. Here are his insights for helping members appreciate the benefits of association life more, thereby minimizing the typical discontent that managers often must deal with.

Same People, Same Problems

Community managers have a difficult job in trying to create harmony and cooperation among a group of people who may have nothing more in common than the fact that they chose to live in a particular community.

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RISK MANAGEMENT

Distinguish Between Social Club, Association to Minimize Liability

For some members, part of the appeal of living in a planned community is the feeling that they are part of something bigger than themselves and having the opportunity to interact with other members. That's why it should come as no surprise that the larger the community association, the more social clubs there are likely to be. A group of members can form a club for any number of reasons, from recreation to promoting philanthropic goals. These clubs can create a sense of community and greatly add to the quality of life of your members.

Unfortunately, clubs can also pose serious risks for you and the association. But you can avoid many potential problems by taking the necessary steps to help structure clubs appropriately. The following guidelines may help you to allow social clubs to enhance the quality of life for your members without jeopardizing the association.

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How to Build Bonds (continued from p. 1)

And that doesn't change with the type of housing. "A condo is, in essence, a vertical association—units stacked on top of each other—but with the same issues that arise about people, cars, pets, and common areas and green spaces in communities that happen to be spread out on the ground," says Grucza. "The problems and benefits are by and large very similar," he adds, with most of the complaints stemming from members' lack of understanding or acceptance of the governing documents that guide the expectations for how members will live in the community.

"There is a common problem of people buying into the community without reading or understanding the governing documents," says Grucza. Members are surprised, and then resentful, when they later discover they must follow the rules.

Or, a buyer may be aware that there are rules, but may take the view that while he'll do the minimum of what he has to do, he'll also do other things he wants to do—which may end up violating the governing documents. But whether it's a condo or community, members must follow the same game plan—and they don't always want to, warns Grucza.

To help avoid this problem, it's a good idea to give area brokers a copy of the governing documents to show clients who look at community homes for sale. But keep in mind that, in this market, an association can't require potential buyers to acknowledge that they've read the governing documents and agree to the rules before a sale is approved.

Overcome Differences by Finding Similarities

Grucza points out that the idea behind association life—a controlled environment for living where members can't do certain things—isn't meant to be punitive; rather, rules are for the benefit of everyone. Lawns are mowed, pools are cleaned, and bike paths are manicured for the benefit of the people who live in these communities, ultimately increasing property values because of aesthetics and a structured environment.

Many people appreciate the convenience and are willing to pay for that. But what should you do with members who see rules as a personal affront and don't look at them as an ultimate benefit to everyone? Breaking the "rules don't apply to me" mentality isn't as hard as you think. You can build a bond by working to find *similarities* among those members who are complaining, says Grucza.

"The only commonality among complaining members is that they all chose to live there," Grucza stresses. "Invite members who have minor or general complaints to visit with you in the lobby or clubhouse and sit down and talk about the various complaints as a group—but first start by asking each member what she likes about living in the community. Ask why she moved here. You'd be surprised what you can find out about people in a facilitated discussion, which

in some cases, leads to why they are so unhappy—and then to a solution,” says Grucza. Sometimes, it’s not the same problem they initially complained about.

“Half of the management business is sitting down with people and turning negatives into positives,” says Grucza, who stresses that you should always explain to members why there is a benefit to what has been created for them.

Initially, work through issues being discussed in a group by listening; members’ angst may be partly because they feel they aren’t being heard. But explaining the reasons behind rules or policies that members don’t like is key, too. They should understand that the rule serves a useful purpose.

For example, you could explain to a member who is unhappy with the color palette chosen for homes in the community that it will help home values and her ability to more easily sell her home later: a benefit to her and the community. “Help them understand why the source of their discomfort is so displaced,” Grucza emphasizes. He says that this strategy is overwhelmingly successful.

Also, encourage participation in fun community activities. When members get together and enjoy each others’ company, they begin to see the upside of association living—enjoying not only the amenities but also the opportunity to form friendships.

Grucza says that when you can help develop positive feelings about the association, minor problems go away of their own accord. Use scheduled movie nights, a community barbecue, and other group activities as opportunities.

Occasionally, no matter what a manager or the association says,

a member will never understand or agree to the rules, in which case you can consider advising her to rethink whether living in the community is the right decision for her.

PRACTICAL POINTER: Don’t let a group get-together turn solely into a complaint session. For serious or individual complaints—or an appeal of a violation notice—managers or board members should hold whatever type of private session is mandated by the governing documents or seems appropriate.

Open Lines of Communication

Building a bond between members and the board may be trickier. “A board has the opportunity to set the expectations for the community, but board members sometimes become power hungry and dictatorial,” says Grucza. That mentality can create an “us versus them” atmosphere. Grucza recommends three tactics that can restore balance:

Train board. Consistently train board members to avoid power plays. Training sessions should focus on demonstrating to them why they are there—that is, what it means to be a board member in this particular environment and what their specific and dedicated role is.

Refocus overzealousness. Sometimes, and especially with retirees, board members treat their position like a second career, attempting to run the community like a business. “Take that energy and rechannel it in the proper fashion,” says Grucza.

Demand availability. Boards also need to be available to members and avoid becoming exclusionary. “When a board takes on a defensive posture—avoiding mem-

bers—it creates an issue,” says Grucza. While these are volunteer positions, board members should understand that it is a real and serious role they are choosing to take on and they must be available accordingly.

Turn Meetings into Microcosm of Community

Management, members, and board members must attend association meetings, so turn them into an opportunity to create goodwill among the groups.

Grucza notes that the old model—seating board members at a table at the front of the meeting room—creates an adversarial environment. It’s important that members realize that board members are also members of the community who need to follow rules and pay assessments. Grucza has changed the dynamic of his meetings by seating board members and association members at round tables throughout the room. He says that creating a mini-community within a meeting takes away the adversarial mentality and allows people to engage more.

Inevitably, there is a gap between most association boards and members, but the ambience of a meeting room can make a surprising difference in the way people communicate and react, eliminating the barriers to building a bond. How can you soften the environment of your meetings?

Change lighting. Something as simple as the lighting in a room can make a difference in how people react. If you can, avoid harsh fluorescent overhead lighting that makes everyone feel as if they are under a spotlight.

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How to Build Bonds

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Don't seat adversarial parties across from one another. "If people in confrontational situations are turned so they are facing each other from a 90 degree angle, there's a better likelihood of resolution," says Grucza. Seat dissenting members conversationally to create an opportunity for success when there are issues to be hammered out.

Create comfortable environment. Building a good relationship among the board,

management, and members sometimes comes down to amenities and decor, Grucza notes. Take into account what a meeting area looks and feels like. Ask whether it's welcoming. Grucza provides complimentary water for attendees and sets out any new information about the community and a sign-in sheet with a thank you note.

"We make members feel comfortable coming into the environment and, if they have an issue, we do everything we can as management to help them better understand what will happen when they talk with the board," he adds.

"While an association may have attorneys, charters, and rules to back up its policies and ideology, sometimes it's a simple matter of whether the environment you cultivate for management, the board, and members to discuss issues together creates an opportunity for success," Grucza notes. ♦

Insider Source

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CUTTING COSTS

Conserve Energy This Winter

It's important year round to take measures to conserve energy in the community and educate members about how they can also help with energy conservation. But it has the added bonus of helping to minimize the typical heating complaints that many managers hear every winter.

Often, these complaints are unfounded or result from easily correctable problems. Provide too much heat, however, and you are just wasting fuel and money. The best bet is to address heating complaints right away, while also controlling your heating costs. And stressing energy efficiency practices on a day-to-day basis, rather than just for heat in the winter, is also important.

You can adapt and use our Model Letter: Give Members Tips for Making Their Units More Energy Efficient, to make it easier for members to help with conservation. And consider taking the following steps.

Install Energy Management System

One successful measure for condominium buildings has been to use technology to balance out the heat in a building and address member complaints regarding inadequate heat. Heat balancing systems basically work by installing wireless sensors in some units in the building that can read the building's inside temperature. In a traditional building, a boiler will start cycling at a set outside temperature and keep supplying heat, even if the inside temperature is within a comfortable range.

The different wireless sensors placed throughout the building also allow the building to operate more effectively for members' comfort. Various sides of a building may be cooler due to greater wind gusts or other natural elements. With these systems, the equipment can be programmed to send more heat to that part of the building.

A centrally heated building can't provide a comfortable 72 degrees on one floor and yet provide greater heat for a single member in a particular unit. You and the building's board must decide the "right" temperature level for the building as a whole, weighing individual demands against collective comfort and peace of mind. But using technology that tracks indoor and outdoor temperatures provides the means of making your entire building more comfortable for members, while identifying and alleviating most problem areas. This reduces fuel costs and increases efficiency, conservation, and sustainability.

Address Members' Heating Complaints

When members complain about inadequate heat, it's best to have a record of the building's indoor temperature to refer to. If you don't have an energy management system, you can still estab-

lish a record of temperatures to determine if there's a problem or if the member's complaints are unfounded.

Take temperature, record results. Give your staff an electronic infrared noncontact thermometer to carry around at all times. If a member complains, the staff person should go to his unit and take the temperature with the thermometer. Readings are taken by pointing the thermometer at an indoor wall or surface.

Share results with elderly or sensitive members. Frequently, members, especially elderly members, feel cold even when their unit is warm. But if you show members that the temperature in the unit is actually at or above a reasonable temperature, they'll usually back down from their complaint. Remember that before you take the temperature of the unit, check for any open windows and ask the member if he has recently left any windows open. Sometimes members will acknowledge that they've left the windows open a crack to let in fresh air. If so, take the temperature after all the windows have been closed. Also, explain to the member that leaving the windows open causes the unit temperature to go down, counteracting the heat the building is providing.

Take multiple overnight readings. If the member isn't satisfied by one temperature reading (for example, she claims that the unit gets cold during the night), you can temporarily install a special device, called a temperature data logger, that measures and records the temperature in the unit at predetermined intervals. This device stores the information in its memory, and you can connect it to a computer to access the informa-

tion. For example, you can set the device to take the temperature at 15-minute intervals over a 24- to 48-hour period.

Check radiator valves, window seals. If a unit's temperature isn't at or above the level decided upon by the association board, check for two common, easy-to-fix problems. Sometimes, the radiator valve isn't turned on. Often a heat problem is due to the simple fact that the radiator valve is in the off position. So check to make sure the valve is turned on. And check whether the window seals are tight. The window seals may be letting in drafts and may be in need of resealing if they aren't.

MODEL LETTER

Give Members Tips for Making Their Units More Energy Efficient

[Insert date]

Dear *[insert member's name]*:

Making your unit more energy efficient year-round can help reduce your utility expenses and help the environment, but it's especially important during the winter months when there is an opportunity to save on heating costs. Here are some measures you can take to improve energy efficiency in your unit:

- ◆ Properly insulate walls, water lines, and water heaters, and put weather stripping on doors and caulk around exposed pipes. Properly insulating these areas can save you money.
- ◆ Use ENERGY STAR products and appliances, such as refrigerators, dishwashers, laundry machines, air-conditioning units, storm windows, and other household products. Appliances with the ENERGY STAR label use significantly less electricity and/or water than comparable new appliances. And ENERGY STAR windows are much more efficient than the average window.
- ◆ Use low-flow faucets, showerheads, and toilets. Low-flow faucets and showerheads use 1.5 gallons of water per minute, instead of the 2.5 gallons per minute that standard models use, but the water comes out with greater force so that it feels just as strong as a standard model.

We hope you find these energy-saving tips helpful. Please feel free to call the management office with any questions.

Yours truly,
Jane Manager

Minimize Open Window Effects

One rough way to check if your building is overheated is to see how many windows are open. This is a common problem. When you overheat units, members will open windows in their units or in stairwells. This wastes fuel and money.

Because the cost of supplying fuel for heat and hot water for a multiple dwelling can be the biggest expense an association faces, it's worth it to have your staff periodically check during the winter months how well the radiators are working, how hot the units are, and whether windows are being left open for hours at a time while the heat is on. ◆

Risk Management

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Why Problems Arise

Often, clubs exist as organizations independent from the association. They collect their own fees, organize their own events, and may even have strict membership criteria. However, private clubs and associations often have a more intertwined relationship. These social clubs may freely use your association's name, they may rent your clubhouse facility to host events, and association staff may lend a hand in setting up club activities.

This relationship can sometimes blur the lines of who is liable if an accident happens at an event or some sort of fraud becomes apparent in the running of a club. The concern for managers and association boards is that the association will be ultimately responsible or will have to expend time and resources proving that it wasn't at fault. The association's insurance coverage most likely doesn't extend to clubs and their numerous unregulated activities. Also, volunteer officers of an unincorporated club may sue the association after discovering that they may be personally liable in the event of a lawsuit against their club.

Make Clear Club, Association Distinctions

It's important to make and record a clear distinction between the club and the association. You need to be able to show that the clubs in your community are not sponsored by the association or operated by it. The association needs to be able to show a separation of operations and finances.

To minimize an association's liability, the club can become properly incorporated as its own entity, adopt its own bylaws, maintain separate financial records, and have separate bank accounts.

To ensure that clubs are operating independently of an association, New Jersey attorney Jennifer Loheac recommends maintaining a "club file." Associations should annually request the following documentation:

- Copies of documentation with the club's legal name, current bylaws, and a membership list;
- A certificate of insurance covering general liability and naming the association as an additional insured;
- Copies of any necessary licenses or permits for activities such as selling or serving alcoholic beverages or playing bingo;
- An annual list of proposed activities requiring reservation of association property; and
- Annual certification by the club board acknowledging compliance with all legal and tax requirements.

Require Appropriate Insurance Coverage

Clubs may not be covered by their insurance policies for lawsuits arising out of bodily injury or property damage. And the association's policy covers only the "named insured." Liability policies cover only entities and activities owned, controlled, and managed by the named insured. So, where private clubs exist independent from the association, under most association policies, neither the club nor the association would be protected for the club's activities.

Another concern is that as clubs develop and grow in membership, they frequently schedule trips or host outings off-site. Most associations' insurance coverage doesn't extend to activities held off the property. Similarly, certain clubs venture into activities that include hiring performers or workers who may not be covered under the association's worker's compensation policy.

Therefore, it's important for private clubs to obtain their own general liability protection. Inform members that certain club activities, particularly those events held off the premises, are probably not covered under the association's policy.

Make Club Aware of Tax Liabilities

Clubs and organizations may be subject to tax on income such as dues and outside fundraising amounts. If the club operates as an independent entity, then it can receive a tax exemption from the Internal Revenue Service (IRS) if it meets certain requirements to qualify as a "social club."

A club cannot be considered "automatically" tax exempt. Clubs should apply for tax-exempt status using IRS Form 1024. Without this approval, the club or organization is at risk that fundraising receipts and dues may be subject to income tax. Once approved, tax-exempt organizations are required to file annual forms with the IRS and may also be required to file in the resident state.

Another aspect of tax liability is sales tax. Items purchased by clubs are subject to sales tax in the same manner as any other business organization. If sales tax isn't charged, the club may be required

to pay use tax with respect to the purchase and will then have to file the necessary sales tax forms. There are specific compliance rules surrounding these issues, but it's important for the clubs to be aware of, and comply with, applicable regulations. The sales tax implications are dependent on the state where the club operates, but may apply to both independent clubs and those under the auspices of the association.

Ask for Financial Reporting

An association may want to allow smaller social clubs in the community that do not wish to incorporate or file their own taxes to operate under the standards set by the association. If this is the case, the board must have full knowledge of these clubs' financial activity to ensure that any income or sales tax implications of their

activities are handled by the association.

Problems for clubs in this category can occur if:

- The club treasurer, other club board member, or club member misplaces or misappropriates funds;
- Funds are used for political contributions;
- Club/activities funds are not reported—either by the club or by the association where it operates;
- Funds are used for unauthorized or illegal purposes;
- Funds are spent for purposes unrelated to the club's activities; and
- No documentation is maintained by the club to support the financial activity.

Loose financial reporting and controls by a small club operating under an association's umbrel-

la have spillover effects for the association. Unintended expense or loss may be imposed on the association.

Technically, all small club activity should be reported on, and included in, the association's financial statements and in connection with the annual audit. The only situation where this does not need to occur is in the case of clubs operating under a national organization, such as a local chapter of a national charity. In that instance, they are independent of the association and are not required to be included in the financial statements. ♦

Insider Source

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RECENT COURT RULINGS

► Homeowners Can't Sue Association Twice for Same Claims

Facts: A couple living in a planned townhouse community granted a limited power of attorney to their daughter to allow her to vote on their behalf at association meetings and to communicate with the association when necessary. The power of attorney essentially gave their daughter the same rights and privileges as if she owned their townhouse. As her parents' representative, the daughter filed several complaints—including fraud and breach of fiduciary duty—against the association over the course of several years, leading to protracted litigation that ended in the court ruling in the association's favor each time.

Later, the homeowners attempted to sue the association for several of the same claims their daughter had earlier as their representative. The association objected, arguing that those claims had already been determined by a court and could not be brought

again simply by naming the homeowners as the plaintiffs when their daughter had already litigated the same claims on their behalf.

Decision: A North Carolina court ruled in favor of the association.

Reasoning: The court determined that two doctrines—res judicata and collateral estoppel—which were created “for the dual purposes of protecting litigants from the burden of relitigating previously decided matters and promoting judicial economy by preventing needless litigation”—applied to this case.

Under the doctrine of res judicata, or “claim preclusion,” “a final judgment on the merits in a prior action will prevent a second suit based on the same cause of action between the same parties or those in ‘privity’ with them,” said the court. Under the doctrine of collateral estoppel, or “issue preclusion,” “parties and parties in privity with them—even in

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Recent Court Rulings

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unrelated causes of action—are precluded from retrying fully litigated issues that were decided in any prior determination and were necessary to the prior determination,” it pointed out.

Like res judicata, collateral estoppel applies only if the prior action involved the same parties or those in privity with the parties and the same issues. In general, privity involves a person with the same interest as another that also represents the same legal right previously represented at trial. For example, a person with power of attorney is in privity with the party that granted that power of attorney to him.

Here, the homeowners allowed their daughter to reside in their townhome and granted her a limited power of attorney “to request financial records, to vote proxy in association matters, and to attend association meetings on the homeowners’ behalf.” She also was deemed to be their agent through a limited power of attorney, granting her the same right as them. The court determined that the evidence indicates that a privity relationship exists between the daughter and the homeowners. Therefore, they were precluded from suing the association for the same claims that their daughter had, hoping for a ruling in their favor the second time. ♦

- Brawley v. Elizabeth Townes Homeowners Assn., August 2014

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