Helping You Run Your Condo or Homeowners Association Legally and Efficiently

MARCH 2015

FEATURE

Here's how to minimize an interruption in services when changing managers.

Ensure Continuity of Operations During Management Transition

Inevitably, a community's on-site manager—an employee of the association—or management company will part ways with the association at some point. If the manager has acted responsibly and fulfilled her duties during her tenure, a transition to new management might be easier than if your association manager is leaving on bad terms because of unprofessional or even illegal behavior. Whether a transition to new management is benign or stems from a negative situation, associations must ensure the continuity of operations in order to uphold covenants with homeowners and minimize an interruption in services.

Nature of Management Determines Action

Board members and other association professionals involved in a management transition should familiarize themselves with two scenarios and how they could play out.

Scenario #1: Departure of on-site manager. Even during periods of time when it seems like things are going smoothly, boards should make sure at least one other person knows what's going on in the office. This could be the board's treasurer, secretary, or president, or a reliable office staff member. "It's critical that more than one person knows the general status of operations and how to access records," says Florida attorney Ellen Hirsch de Haan. You can keep track of what's going on in the office by holding a quick weekly meeting to touch base with the manager. "Maintenance of records and access to them is key," notes Hirsch de Haan. (Remember that some states have a requirement that certain records be maintained and available for inspection by homeowners.)

There also is a technology aspect to this issue that boards should take into account, Hirsch de Haan points out. "So much information is online rather than in a filing cabinet; boards should never allow the manager to be the only person who can access information in an electronic format," she stresses.

(continued on p. 2)

IN THIS ISSUE

Feature: **Ensure Continuity of Operations During Management Transition** 1

Cutting Costs: **Use Member Volunteers to Rein in Community Costs** 6

➤ **Model Letter:** Inform Members of Volunteer Opportunities in Community (p. 8)

DEPARTMENTS

Recent Court Rulings 9

➤ Associations' Letter of Intent Was Enforceable Contract

➤ Order to Modify Condo Floor Wasn't Harmful

PRODUCED IN CONSULTATION WITH

Management Transition

(continued from p. 1)

Under amiable circumstances boards can give the on-site manager sufficient notice and severance pay as an incentive to train an incoming manager and prepare reports with the full information that the board and new manager will need. But what about a departure under negative circumstances? “If you’ve been proactive enough as things have gone along, it won’t be an issue, but in the real world that doesn’t always happen,” says Hirsch de Haan. Try to get at least the following items before the manager leaves:

- Meeting notes;
- Correspondence;
- Reports;
- A current list of all aspects of operations; and
- Financial information.

If the manager is fired or leaves in a hurry before revealing passwords and the location of information, the board will have to reconstruct everything and could be forced to call an IT company to access the management office’s computer and reclaim passwords. “It’s important to do damage control,” says Hirsch de Haan. You could face a situation where you are required to maintain specific records and they don’t exist because of incompetent staff or because they were thrown away by a vindictive employee, she says. “Generally, if someone has a copy of records aside from the manager, you’ll be in better shape,” she adds.

(continued on p. 3)

BOARD OF ADVISORS

Joseph E. Adams, Esq.
Becker & Poliakoff LLP
Naples & Fort Myers, FL

David J. Byrne, Esq.
Herrick, Feinstein LLP
Princeton & Newark, NJ

Kathryn C. Danella, pcam
Boca Pointe Community Assn., Inc.
Boca Raton, FL

Richard S. Ekimoto, Esq.
Ekimoto & Morris, LLLC
Honolulu, HI

Robert M. Diamond, Esq.
Reed Smith LLP
Falls Church, VA

V. Douglas Errico, Esq.
Marcus, Errico, Emmer & Brooks, PC
Braintree, MA

Paul D. Grucza, CMCA, AMS, PCAM
The CWD Group, Inc. AAMC
Seattle, WA

Ellen Hirsch de Haan, Esq.
Wetherington Hamilton, PA
Tampa, FL

Benny L. Kass, Esq.
Kass, Mitek & Kass, PLLC
Washington, DC

Tammy McAdory, CMCA, AMS, PCAM
Kiawah Island Community Assn.
Kiawah Island, SC

P. Michael Nagle, Esq.
Nagle & Zaller, PC
Columbia, MD

Ronald L. Perl, Esq.
Hill Wallack LLP
Princeton, NJ

J. David Ramsey, Esq.
Becker & Poliakoff LLP
Morristown, NJ

Loura K. Sanchez, Esq.
HindmanSanchez PC
Arvada, CO

Tom Skiba
Community Associations Institute
Alexandria, VA

Clifford J. Treese
Association Data, Inc.
Pleasanton, CA

Editor: Elizabeth Purcell-Gibney, J.D. **Executive Editor:** Heather Ogilvie **Production Director:** Kathryn Homenick **Director of Operations:** Michael Koplin

COMMUNITY ASSOCIATION MANAGEMENT INSIDER [ISSN 1537-1093 (PRINT), 1938-3088 (ONLINE)]
is published by Vendome Group, LLC, 216 East 45th St., 6th Fl., New York, NY 10017.

Volume 14, Issue 9

SUBSCRIPTIONS/CUSTOMER SERVICE: To subscribe or for assistance with your subscription, call 1-800-519-3692 or go to our website, *www.CommunityAssociationManagementInsider.com.* Subscription rate: $370 for 12 issues. **TO CONTACT THE EDITOR:** Email: *egibney@vendomegrp.com.* Call: Elizabeth Purcell-Gibney at (212) 812-8434. Fax: (212) 228-1308. **TO PLACE AN ADVERTISEMENT:** Please contact Heather Ogilvie at *hogilvie@vendomegrp.com* or call (212) 812-8436.

DISCLAIMER: This publication provides general coverage of its subject area. It is sold with the understanding that the publisher is not engaged in rendering legal, accounting, or other professional advice or services. If legal advice or other expert assistance is required, the services of a competent professional should be sought. The publisher shall not be responsible for any damages resulting from any error, inaccuracy, or omission contained in this publication.

© 2015 BY VENDOME GROUP, LLC. All rights reserved. No part of *Community Association Managment Insider* may be reproduced, distributed, transmitted, displayed, published, or broadcast in any form or in any media without prior written permission of the publisher. To request permission to reuse this content in any form, including distribution in educational, professional, or promotional contexts, or to reproduce material in new works, please contact the Copyright Clearance Center at *info@copyright.com* or (978) 750-8400. For custom reprints, e-prints, or logo licensing, please contact Donna Paglia at (216) 373-1210 or *dpaglia@vendomegrp.com.*

Management Transition
(continued from p. 2)

PRACTICAL POINTER: Be aware that recovering financial information is especially important because bank accounts must be reconciled. Time is of the essence when financial records must be recovered.

Scenario #2: Departure of management company. It's important for the board to understand its rights when its relationship with an outside management company ends. Otherwise, a management company could end up taking actions it's not entitled to. In Florida, there is a manager licensing law that makes it illegal for a management company to hold onto association records after it no longer works for the association. "Under the Florida licensing law, all records belong to the association and when there is a change in employment the management company is required to turn over the records regardless of whether there is a dispute—even if it is a payment problem," Hirsch de Haan notes. (Make sure to check for individual state-specific laws that apply to your association.)

Ideally, at the outset of the relationship the board negotiated terms and conditions in its contract with the management company that allow the board to stay on top of things, such as a monthly reporting requirement. Don't be afraid to ask the management company to provide draft minutes so you can recreate records later if you must, warns Hirsch de Haan. She recommends building into the management contract whatever reporting requirements the association wants and how much time it wants to spend with the outside manager.

It's important to understand that the management company works for the association, so don't be afraid to designate whatever level of disclosure or detail the board feels is useful. But don't micromanage; the board doesn't need to sit down every day with the manager. "When setting reporting requirements, find a reasonable balance," says Hirsch de Haan. A weekly report or even simply a log sheet of the manager's actions might suffice. It'll at least give the board a level of comfort that tasks and goals are being accomplished. And thanks to technology, there's no need for a whole room of filing cabinets; you can ask for electronic files, which are quick to obtain and easy to keep.

Prioritize What Information to Obtain

The most important operations during a management transition involve money. The new manager and anyone filling in between managers must be on top of accounts receivable, bank accounts, due dates and payment of bills, where money is applied, and the maintenance and pursuit of the association's delinquency list. In a negative situation there may be a time crunch and you'll have to prioritize what information to press for. If it's possible to recover only some of the information you'll need for the transition, determine what's crucial and what's secondary. Think about what the board and new manager can reconstruct on their own and focus on what can't be retrieved without the current manager, says Hirsch de Haan. For example, you can recreate contracts with vendors by contacting them for help and you can ask the bank for statements and returned checks to get a sense of what's been happening financially.

It's easy to get another run of a report, but other items like meeting minutes are going to be a problem. Paying bills is one of the most important tasks during a

(continued on p. 4)

© 2015 by Vendome Group, LLC. Any reproduction is strictly prohibited. For more info call 800-519-3692 or *visit www.CommunityAssociationManagementInsider.com*

Management Transition

(continued from p. 3)

transition. Make sure that utility payments have been made so that street lights are kept on and things like pool and lawn services continue. Luckily, service companies typically will let you know that they haven't been paid and give you the opportunity to pay before discontinuing services.

Unfortunately, one of the most important pieces of information— material alterations and violations that were grandfathered—may not be available, and it could cause problems. If the association has an architectural control committee, you may not be able to reconstruct records as to who has permission to do what to a member's property. Whether changes were grandfathered or whether they were done without approval becomes an issue because in order for the association to enforce rules going forward it has to show that it has uniformly and consistently enforced them in the past.

Members: To Tell or Not to Tell?

You don't have to disclose to members that a negative situation has left the board struggling to keep operations running smoothly. "It's a board judgment call as to what to tell members if documents have to be reconstructed because of a managerial oversight or the quick departure of a manager or management company," says Hirsch de Haan.

There's no need to make members worry, especially because the association might be protected from damage anyway. For example, in Florida, associations must carry fidelity bonding to protect against theft by an employee, which includes an on-site manager. But you should have a policy specifically for the association in addition to the one that a management company typically has. In Florida and other states, an association is required to have insurance coverage for the president and treasurer (because they have the power to sign association checks) and anyone who has access to the association's money. This is state-specific, so ask your attorney about the requirements you need to meet.

Unfortunately, sometimes an incident with a manager necessitates police involvement. But if the investigation is moving forward, it's best to avoid giving out details until the outcome is clear. Obviously, members will know that a new manager or management company will be taking over. But a board should be judicious about what it says regarding the switch; let everyone know in a neutral way that there will be a new manager, says Hirsch de Haan. You can acknowledge that it's unfortunate that the outgoing manager didn't work out, but play up the new manager's experience and positive attributes and encourage members to stop by and introduce themselves—especially to an onsite manager, she suggests.

When it's clear that members know that there was a negative situation or much more investigation is necessary, talk to the association's attorney about whether you should say that irregularities existed, but agree on the best way—or whether to—disclose information about it.

Don't Make the Same Mistake Twice

If you experienced a rushed or negative departure and had a difficult transition to new management as a result, you should be especially aware of how important

(continued on p. 5)

© 2015 by Vendome Group, LLC. Any reproduction is strictly prohibited. For more info call 800-519-3692 or *visit www.CommunityAssociationManagementInsider.com*

Management Transition

(continued from p. 4)

it is to prepare ahead of time for the next transition even if a new manager has just started. If you haven't had the displeasure of dealing with that type of situation, it's still critical to prepare for future management changes.

Every association should routinely update its job description of what the manager or management company is expected to accomplish and do periodic performance reviews so long periods of time don't pass without knowing that problems exist, says Hirsch de Haan. A new manager should have a 60-day performance period before a review and then a review every few months to pinpoint any weak spots to improve.

"Nobody is a perfect employee, and a great manager could have strengths in one area but weaknesses in another," says Hirsch de Haan. For instance, your manager might get great bids on projects, be a whiz with numbers, help at budget time, and take site inspections very seriously, but lack organizational skills. Don't hesitate to hire an administrative assistant who can organize the office, make sure deadlines are met, and keep track of records. Or if an otherwise great manager has trouble with financial issues, the association could hire an outside financial firm.

"You don't have to teach a manager about an area that she has trouble with if you can create a support system that together gets the job done," says Hirsch de Haan. "Transitioning to a new manager and making sure operations run smoothly during her tenure is a team effort all around," she stresses.

PRACTICAL POINTER: Because it's particularly important for boards to pay attention during a management transition, a checklist of records that need to be kept is very helpful. Within each category of records, break down the specific items you need. For example, under the "financial records" category, there should be a disclosure of the location of copies of "accounts payable and receivable" and the "delinquency reports." Other important items to put on the checklist include:

- ❑ Copies of insurance policies;
- ❑ Amendments to documents;
- ❑ Copies of meeting minutes;
- ❑ Rules and regulations;
- ❑ New buyer packages;
- ❑ An inventory of management office equipment; and
- ❑ Architectural review committee reports.

A checklist will let you know what you're supposed to have when it comes to a turnover in management. This isn't an undertaking that will help you just with a change in management—state statutes might require the association to have some of these items as official records, anyway. The key to making this a useful strategy, however, is to make sure they are updated as needed. ♦

Insider Source

Ellen Hirsch de Haan, Esq.: Wetherington Hamilton, PA, 1010 N. Florida Ave., Tampa, FL 33672; *www.whhlaw.com.*

© 2015 by Vendome Group, LLC. Any reproduction is strictly prohibited. For more info call 800-519-3692 or *visit www.CommunityAssociationManagementInsider.com*

CUTTING COSTS

Use Member Volunteers to Rein in Community Costs

Despite the improving economy, some communities are still facing increased costs associated with the abandoned and foreclosed homes left in disrepair during the economic downturn. They may be faced with the task of maintaining the still-abandoned properties at their own expense, tracking down the lenders that are failing to keep the properties up, or allowing the properties to become both unsightly and, in some instances, dangerous.

To save money, use volunteers within the community to address issues such as these. Increasing an association's number of community volunteers is a great way to build the community and trim costs from the association's budget. But you'll have to consider the following issues—and put some safeguards in place to avoid liability when increasing your reliance on community volunteers to save money.

Define Scope of Volunteer Duties

The board of directors should discuss which useful tasks offer minimal risk of injury to community volunteers and other members while reducing costs. If labor costs are a significant portion of your expenses, your community might want to consider volunteers for flowers and landscaping maintenance such as hedge, tree, and grass trimming. However, the board should consider the risk of injury for each task. For example, permitting member volunteers to trim mature trees may expose the volunteer and other members to too much risk.

More examples of proper uses of volunteers may be minor touch-up painting at the clubhouse; removing trash and waste from the common areas; and light snow removal activities from short walkways. Using a volunteer to plow snow or shovel major walkways is not a good idea, because the risk of injury is much greater for the volunteer and to property.

Make Sure You Have Adequate Insurance

You may be concerned about your association's insurance coverage in the event a volunteer is injured while performing voluntary duties. According to Clifford J. Treese of Association Data, Inc., an injured volunteer may be covered under either a Commercial General Liability (CGL) insurance policy or under a Workers Compensation & Employers Liability insurance policy. All associations should have Workers Compensation & Employers Liability coverage for a variety of reasons. Which coverage is applicable (CGL or Workers Comp) may be a matter of litigation and/or a state agency's determination. The association must review volunteer insurance coverage issues with its insurance agent.

(continued on p. 7)

© 2015 by Vendome Group, LLC. Any reproduction is strictly prohibited. For more info call 800-519-3692 or *visit www.CommunityAssociationManagementInsider.com*

Cutting Costs

(continued from p. 6)

A CGL policy will contain an exclusion for bodily injury that would be covered under your state's applicable workers' compensation laws. And workers' compensation is governed by each state's own classifications. Therefore, a member volunteer may qualify for workers' compensation if injured while performing duties for the association. Typically, a salary or a contract indicates whether or not someone works for the association, but ultimately, it is the state administrative body that determines whether someone is an employee, says Treese.

Absent issues as to whether an injured volunteer is an employee, the bodily injury part of the CGL or the Medical Payments part of the CGL should provide coverage. And all associations should carry Workers Compensation & Employers liability insurance. This not only covers the volunteer situation; it is primarily for the contractor who, for any reason, does not have workers' compensation coverage at the time of the injury.

Should You Use a Volunteer Waiver?

If your community is increasing its reliance on volunteers to help save money, your association may consider having the volunteers sign a waiver as an additional safeguard against liability. But before going this route, associations need to consider the value of the volunteer waiver, says Hawaii attorney Richard Ekimoto.

In Hawaii, for example, waivers are going to be narrowly read, meaning that they probably won't apply in all the situations one might think they would. "Waivers are not always effective, so it's really important to make sure that you have insurance that covers them if they are injured," Ekimoto stresses. "It makes sense to consider it, but a lot depends on the culture of the community and what the work is," Ekimoto points out.

Also, the association has to take into account whether people would be willing to volunteer if they had to sign a particularly broad waiver or any waiver at all. Not only can a waiver be seen as a deterrent, at the same time, an association can make a reasonable judgment that it's inappropriate to penalize volunteers by making them waive their potential claims in advance, particularly if most of them are covered by insurance. Ekimoto has had volunteers ask why they have to sign waivers when the members don't ask directors or committee members to sign waivers before they serve.

Ask your association attorney about how you should handle the issue of waivers. If you decide to use one, your letter, like our Model Letter: Inform Members of Volunteer Opportunities in Community, should include an explanation of the scope of a volunteer's duties and how volunteering can help maintain community property values and keep association fees low. It'll give members the information they need to make the decision to help—and an incentive to do so. ♦

Insider Sources

Richard S. Ekimoto, Esq.: Ekimoto & Morris, LLLC, 888 Mililani St., 2nd fl., Honolulu, HI 96813; *www.hawaiicondolaw.com.*

Clifford J. Treese, CPCU, ARM, CIRMS: President, Association Data, Inc., 720 N. Marquis Way, Mountain House, CA 95391.

(continued on p. 8)

© 2015 by Vendome Group, LLC. Any reproduction is strictly prohibited. For more info call 800-519-3692 or visit www.CommunityAssociationManagementInsider.com

Cutting Costs

(continued from p. 8)

MODEL LETTER

Inform Members of Volunteer Opportunities in Community

Here's a model letter to send to all members, informing them of volunteer opportunities in your community. Ask your association's attorney to help you adapt it for your community's specific volunteer needs and let you know if the volunteer tasks expose the association to liability.

[*Insert date*]

Dear Member:

The Shady Acres Community Association invites you to get involved in your community! Our productive group of dedicated volunteers generously donates its time and talents to assure the continued success of our community association, and in turn, keeps our association fees as low as possible and our property values as high as possible, especially in these tough economic times.

As a volunteer, you will help to support and promote an appreciation of your neighborhood. Each area of volunteer assistance is a vital part of the continuing operation of the association. Volunteer opportunities exist throughout the year. Whether you can donate your time on a regular basis or only occasionally, we invite you to put your own interests, special skills, and talents to work for the community.

We currently have an immediate need for routine maintenance and landscape volunteers. There is no major work involved with routine maintenance and landscape volunteer positions. You will be a part of a small group of other volunteers. As a landscape volunteer, your duties will be to plant flowers and trim hedges, small trees, and grass. As a maintenance volunteer, your duties mainly will be to repair or replace very small items, which could include:

- Light bulbs in [*common areas, e.g., the clubhouse and pool*];
- Minor electrical work, such as switch replacement at the [*common area, e.g., the clubhouse*];
- Minor plumbing, such as replacing toilet flappers at the [*common areas, e.g., the clubhouse and pool*];
- Minor touch-up painting at the [*common area, e.g., the clubhouse*]; and
- Minor damage repair, such as replacement of toilet paper holders at the [*common areas, e.g., the clubhouse and pool*].

In some cases, we will schedule outside help when such help is needed, such as replacing the lights or pumps. As a volunteer, you would bring to the attention of the Board any major repair issues that would require hiring professionals. And you would bring to the Board's attention any and all items that are not repaired within 30 days, so that a professional can be hired.

To be added to the volunteer list, please contact the manager or any officer of the Board. We appreciate all the volunteers who help maintain the value of our community and keep our homeowners' association fees as low as possible!

Sincerely,
Shady Acres Community Association

© 2015 by Vendome Group, LLC. Any reproduction is strictly prohibited. For more info call 800-519-3692 or *visit www.CommunityAssociationManagementInsider.com*

RECENT COURT RULINGS

➤ Associations' Letter of Intent Was Enforceable Contract

FACTS: A condo association asked a trial court for a determination that it was the owner of 39 of 67 parking spots that were located between its condos and some townhouses that were part of a homeowners association. The condo association alleged that starting in 1985 and continuing through 2008, it believed that it held title to all 67 parking spaces, but discovered in 2009 that it did not, in fact, own title to the spaces. It argued that, during the 20-plus years, it obtained title to 39 parking spaces through adverse possession as a result of its exclusive use and maintenance of those parking spaces, or in the alternative, that it obtained an easement by prescription or by necessity.

The condo association also asserted that, in 2010, the HOA began interposing ownership rights to all of the parking spaces by posting prohibitory towing signs and painting curb markers. The HOA denied the condo association's claims.

As the trial date approached, the HOA and the condo association tried to negotiate a settlement agreement. In a joint motion to continue the trial date, they requested a second settlement conference, stating that they had attended a settlement conference before a judge and "made progress in the discussion but reached a point which exceeded the authority given to the corporate designee" of the HOA.

As another trial date drew near, a second settlement conference was held, whereupon the parties filed another joint motion to continue the trial date, which included the following: "The parties came to an agreement in principal regarding this dispute, however the parties need more to time to memorialize the terms of the agreement which includes the preparation of a lease for a term of 99 years. The parties believe that said agreement will be drafted and properly executed no later than 90 days from the date of this motion." The HOA and condo association said that once the agreement was properly executed, they would file a motion to dismiss the lawsuit.

The HOA and condo association signed a letter of intent outlining their agreement. But problems arose, and the HOA asked a court to enforce the settlement agreement to implement the letter of intent. The HOA claimed that, in accordance with the letter of intent, it successfully obtained the requisite votes of the members of its association and, thereafter, sent a proposed lease to the condo association's attorney for review and execution. The condo association didn't respond to the email containing the proposed lease, and, subsequently, disavowed the letter of intent. The condo association responded to the motion, asserting that the letter of intent wasn't enforceable and that it objected to terms included in the proposed lease.

The trial court granted the HOA's motion to enforce the settlement agreement embodied in the letter of intent the parties executed after the lawsuit was filed. The condo association appealed.

(continued on p. 10)

© 2015 by Vendome Group, LLC. Any reproduction is strictly prohibited. For more info call 800-519-3692 or *visit www.CommunityAssociationManagementInsider.com*

Recent Court Rulings
(continued from p. 9)

DECISION: A Maryland appeals court upheld the trial court's decision.

REASONING: The appeals court held that the letter of intent was an enforceable contract to which the parties intended to be bound, because it "included all the material terms and they were definite." The letter of intent was an unambiguous, enforceable contract.

The appeals court noted that in determining whether a letter of intent constitutes a contract, the terms under scrutiny must be material terms, because a contract, to be final, "must extend to all the terms which the parties intend to introduce, and material terms cannot be left for future settlement."

The failure of parties to agree on an essential term of a contract may indicate that the mutual assent required to make a contract is lacking. Every possible term does not need to be included, however, because even though certain matters are expressly left to be agreed upon in the future, they may not be regarded by the parties as essential to their present agreement, said the appeals court.

"It is quite possible for parties to make an enforceable contract binding them to prepare and execute a subsequent final agreement," it pointed out. And in order that such may be the effect, it is necessary that agreement shall have been expressed on all essential terms that are to be incorporated in the document; that document is understood to be a mere memorial of the agreement already reached," it continued. Essentially, if the document or contract that the parties agree to make is to contain any material term that is not already agreed on, no contract has yet been made; the so-called "contract to make a contract" is not a contract at all, it concluded.

- Falls Garden Condo Assn. v. Falls Homeowners Assn., January 2015

➤ Order to Modify Condo Floor Wasn't Harmful

FACTS: A condominium member replaced the carpeting in his unit with wood floors to alleviate his wife's dust allergies, which worsened since she and the member had moved into the unit. The member didn't ask the condo association for approval to replace the carpet. After the wood floors had been installed, the members who occupied the unit below complained to the association that they could hear constant noise from the unit above.

After the member didn't respond to a letter regarding the floor, the association sent a request for alternate dispute resolution (ADR). The member didn't respond within 30 days, so he was deemed to have refused ADR. The association obtained a preliminary injunction requiring the member to remedy the unauthorized modification of the flooring to "reduce the transmission of noise" to the unit below. The member appealed.

DECISION: A California appeals court upheld the injunction.

REASONING: On appeal the member contended that the superior court improperly balanced the prospective harm to each party—that is, that the neighbors' right to quiet enjoyment of their unit was more important than the member's wife's allergies. The court disagreed because the injunction didn't cause undo

(continued on p. 11)

© 2015 by Vendome Group, LLC. Any reproduction is strictly prohibited. For more info call 800-519-3692 or *visit www.CommunityAssociationManagementInsider.com*

Recent Court Rulings

(continued from p. 10)

harm to the member. The injunction didn't order the member to remove the wood floors and reinstall the carpet. Rather, the injunction ordered the member to cover 80 percent of the wood floor surface with either throw rugs or a soundproof material, which could have been a material that was hypoallergenic.

The injunction also ordered the member to get a proposal for modifying the floors to bring them into compliance with the guidelines established by the association and to submit that proposal to the board of directors—not tear out the floors. The appeals court noted that the member and his wife wouldn't be harmed by the injunction.

The member also claimed that the association had cited an outdated ADR statute in its letter requesting ADR and, therefore, the member wasn't required to respond to the request. The appeals court found no abuse of discretion by the lower court in finding that by not responding to the request within 30 days the member had refused ADR. It said that the statute, although outdated, made it clear that the member was being asked to use ADR and that there was a time limit within which to respond. The appeals court noted that the member was an attorney, and considering his legal experience, the fact that the statute was slightly outdated didn't make its general meaning unclear. ♦

- Ryland Mews Homeowners Assn. v. Munoz, January 2015

CommunityAssociationInsider.com

Never Worry About Losing an Issue Again!

If you like the articles and Model Tools in your current issue, be sure to go to CommunityAssociationInsider.com for instant access to over 5 years of back issues in an easily searchable archive. You'll also get:

- 100s of downloadable Model Letters, Forms, Policies, and other Model Tools that can be put to immediate use at your community.
- Budget, collection, and legal compliance advice from the experts on the INSIDER's Board of Advisors.
- Tips for managing day-to-day operations.
- Concise summaries of the most important court rulings involving community associations and their property managers.
- Direct access to our editorial staff with the ASK THE INSIDER feature.
- And much, much more!

Get the most out of your subscription today!

Go to www.CommunityAssociationInsider.com