



Helping You Run Your Condo or Homeowners Association Legally and Efficiently

FEBRUARY 2016

FEATURE

Here's how you can make training stick with members and get them to apply it when appropriate.

IN THIS ISSUE

Feature: Use Targeted Sessions for Board Leadership Training 1

Dealing with Members: Set Policy for Garage Sale Participation 5

▶ **Model Policy:** Host Community-Wide Garage Sale (p. 6)

Repairs & Maintenance: Ask for Member Input Before Upgrading Amenities. 8

▶ **Model Letter:** Announce Upcoming Member Survey (p. 10)

DEPARTMENTS

Recent Court Rulings 4

▶ State Condo Law Controlled Purchase of Units

▶ Board Could Install Chairlift in Common Area

Q&A: Getting Disorganized Meetings Under Control 7

Use Targeted Sessions for Board Leadership Training

Although members on an association's board of directors are volunteers, their roles in the operation of the community are important. Mistakes by board members can lead to liability for the association. But sometimes, especially if they are roped into serving on the board, members don't understand the functions of their positions and the best way to carry out their responsibilities. In order for an association to run smoothly, many association managers and management companies encourage leadership training for the board, in the form of helpful guides that members can keep for reference all the way to hiring professional leadership training speakers.

But is general leadership training enough? During the time between annual leadership training sessions, board members might forget information or not realize that some of that information should be used for specific events or issues that the community is now facing. Here's how you can make training stick with members and get them to apply it when appropriate.

Roll Out Basics as a Clean Start

Especially if there are new board members, you should make sure that any training includes a detailed description of what each board member is responsible for in her role. Going one step further by explaining what the position does *not* entail can be enormously helpful. Some members could assume that something that's left off the list of normal functions for their roles is still permissible. And that's one way that boards can get out of control.

The following are a few basic points that should be reviewed with the board during training:

General role of the board. A homeowners association is a business, and board members should understand that they should treat it as such—making sound financial decisions and complying with applicable laws.



(continued on p. 2)

FEBRUARY 2016

Leadership Training

(continued from p. 1)

Fiduciary duties. Board members owe a fiduciary duty to association members, meaning that they must not put their personal feelings or individual interests ahead of the association's business.

Distinct roles. Each member should understand what her role entails.

Minutes. Keeping minutes correctly is crucial. If there is a conflict later—including legal issues regarding a decision—minutes can show that the board isn't liable. Stress that minutes should reflect what was done at a meeting and not what was said at the meeting.

Parliamentary procedure. If the association uses parliamentary procedure or Robert's Rules of Order, make sure that new board members understand the concept.

Conflict. Inevitably, board members will have to deal with some—or a lot of—conflict. Leadership training can give them some skills to avoid conflict in the first place and minimize it later. Whenever it's possible, do business in the open, avoiding holding an executive session unless it's necessary. Members should constantly remind themselves that the association's interests should come before their own—or a friend who has asked for decisions to be made in his favor. Members shouldn't come to the table with their minds already made up about a particular issue. They should try to see all perspectives before making a decision. Make sure that the board never acts in a discriminatory fashion when making decisions, and make sure that any committees are being fair and consistent when making decisions—for example, the architectural review committee should be objective and consistent when granting variances.

(continued on p. 3)

BOARD OF ADVISORS

Joseph E. Adams, Esq.

Becker & Poliakoff LLP
Naples & Fort Myers, FL

David J. Byrne, Esq.

Ansell Grimm & Aaron, PC
Princeton, NJ

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

Tom Skiba

Community Associations Institute
Alexandria, VA

Clifford J. Treese

Association Data, Inc.
Mountain House, CA

Editor: Elizabeth Purcell-Gibney, J.D. Executive Editor: Heather L. Stone 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 15, Issue 8

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 Stone at hstone@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.

© 2016 BY VENDOME GROUP, LLC. All rights reserved. No part of *Community Association Management 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.

FEBRUARY 2016

Leadership Training

(continued from p. 2)

PRACTICAL POINTER: Make sure that board members, especially new ones, don't feel that after training they've been left alone to fend for themselves. Encourage board members to approach you to ask questions if they're unsure about an action they're about to take. And stress to them that the association's attorney should be consulted if there are any questions regarding liability or whether an action is compliant with the law. For example, before setting rules or using new policies, they should check with the attorney to make sure that the rules or policies are permissible under governing documents.

Hold Training Sessions When Specific Events Arise

Unfortunately, some boards don't use leadership training. And even if a board does, that doesn't necessarily mean that members will follow or remember it by the time a specific event requiring that knowledge presents itself. So how can you make sure that board members do the right thing?

Community association attorney Richard S. Ekimoto suggests more directed, periodic training that allows the manager to get into even more depth on topics like reading financial statements or what members can't ask in an employee interview. "The manager is in a key position to time these mini-educational moments because he or she is aware when things are coming up," Ekimoto points out. A targeted review is perfect for, among other events, two major items that can be tricky for boards.

Hiring decisions. When the association is interviewing for a new employee and the board is going to be involved in the interview process, providing them with information from the Equal Employment Opportunity Commission (EEOC) or the local civil rights office on what they can't ask makes a lot of sense," he notes.

Financial decisions. When the budget is being prepared, it makes sense to have some materials available or a session on reading and understanding a reserve study, Ekimoto says.

"The benefit of this type of training is that it is focused on something that the directors are currently dealing with and they can apply what they're learning with their own association close to real time," he stresses. Ekimoto says that when it comes to targeted training, the main thing is that the manager has the correct information and is passing on correct information. "The manager can get help from the association's experts who can review materials or even make presentations if it is important enough," he adds.

Ekimoto says that the immediacy of events makes this type of training much more relevant and beneficial. "The directors also don't feel like they're being taught; they feel like they're being helped, which for some gets over the reluctance to learn," he emphasizes. ♦

Insider Source

Richard S. Ekimoto, Esq.: Ekimoto & Morris, LLLC, Honolulu, HI; www.hawaiicondolaw.com.

RECENT COURT RULINGS

► State Condo Law Controlled Purchase of Units

FACTS: Fifty-five units in a Missouri condominium complex went into foreclosure. Delinquent assessments and fines were due on all of the units. A corporation bought the units. It paid the assessments and fees that had accrued after the foreclosure and its purchase, but not before. The association later claimed that it had an assessment lien on all 55 units, because of the pre-purchase outstanding amounts.

The corporation argued that it had relied on provisions in the association's bylaws to the contrary. Specifically, the bylaws extinguished the association's lien in this type of situation. The association argued that the Missouri Uniform Condominium Act conflicted with the bylaws, and that, when there was such a conflict, the statute controlled.

A trial court ruled in favor of the corporation, saying the association was no longer entitled to the units. The association appealed.

DECISION: A Missouri appeals court reversed the trial court's decision.

REASONING: The appeals court determined the association could bring its foreclosure action to enforce liens for outstanding assessments on the units because the bylaws, upon which the trial court relied to rule in favor of the corporation, conflict with the state law.

The appeals court noted that, while it sympathized with the corporation's position that it took title to the units in part relying on the bylaws' provision that the association wouldn't be able to enforce any assessment lien on those units, the state law exists to protect condominium associations and create uniform expectations for buyers and lenders. "Public policy requires that condominium associations have sufficient power to enforce the collection of assessments; otherwise the association will not be able to continue to function and meet its obligations without unfairly burdening the other members of the community."

• *Ventana Owners Assn. v. Ventana KC, LLC*, December 2015

► Board Could Install Chairlift in Common Area

FACTS: A condominium building's board of directors voted to install a chairlift in one of the two stairwells to make the building more handicap accessible. A unit owner objected to the installation and voiced her concerns to the board. However, it applied for a building permit from the city's building commissioner and hired a company to install the chairlift.

The owner claimed that this resulted in an impermissible reduction in the width of the stairway. She said that the chairlift was installed in a manner that dangerously restricts, obstructs, and interferes with her use of the stairway. She claimed that the chairlift was a violation of the Illinois building code and the association's declaration.

(continued on p. 5)

FEBRUARY 2016

Recent Court Rulings

(continued from p. 4)

The owner sued the association, asking a court to order it to remove the chairlift. The association asked a trial court for a judgment in its favor without a trial. The trial court ruled in favor of the association. The homeowner appealed.

DECISION: An Illinois appeals court upheld the trial court's decision.

REASONING: The appeals court found that the building commissioner hadn't abused his discretion in granting the permit, and therefore, the permit was valid and in compliance with all applicable codes. Moreover, the appeals court explained that it couldn't substitute its own judgment for that of a governmental body performing a discretionary act.

The court further found that the portion of the declaration that the owner relied on was inapplicable because it related to unit owners who encroach on common spaces, but not to the board's decision to alter a common area. The board didn't violate the declaration. ♦

- Dolecek v. Green Valley Estates Condo Unit, December 2015

DEALING WITH MEMBERS

Set Policy for Garage Sale Participation

The trend towards buying vintage items or “upcycling”—that is, using old items for a new purpose—has made garage sales popular again. Garage sales can benefit the association and members in several ways, so consider hosting one. It's a great way to give members a chance to meet one another and to promote community spirit. But it also serves a practical purpose: It enables members who are running out of space in their homes or condo units to earn some money while clearing out items they no longer want.

Whether a garage sale is big or small, open to the entire surrounding neighborhood or an intimate community-only event, it's important to plan for it in advance. This includes coming up with a policy members must follow in order to participate in the sale. Your policy, like our [Model Policy: Host Community-Wide Garage Sale](#), should set a deadline for signing up for the sale. It should also require them to tell management what they plan to sell (or the general nature of the items up for sale, if specific items haven't been determined yet, such as “housewares” or “retail clothing”).

Remember to reserve the right to ban the sale of inappropriate materials. Also require members to use the chairs and tables provided by the association for the sale and to review and sign a floor plan showing where tables will be set up for the sale. If you plan to charge members for table and chair rentals or refreshments or entertainment, tell them the cost ahead of time and ask that they prepay.

Give Members First Shot at Items

If you plan to open the sale to the public, consider having a private sale for a set time period before the public sale. That way, members get the benefit of buying

(continued on p. 6)

FEBRUARY 2016

Dealing with Members

(continued from p. 5)

really desirable items or those with sentimental value because they are friends with the seller, before people who have no connection with the community can take them home.

Draft Disclaimer

As with many association events that you hold, there should be liability considerations. Make sure that you put a disclaimer in the policy. It's important to say from the start that the management team or association employees will not be responsible for the loss or condition of items bought or sold at the garage sale. Check with your association's attorney to make sure that nothing in the governing documents prohibits this kind of sale, and find out if you should use a waiver to protect the association from liability for any negative outcomes from the sale. ♦

MODEL POLICY

Host Community-Wide Garage Sale

Hosting a garage sale can help members clear out their units and make some money while doing it. It also serves as a social function, if you serve light fare and drinks or have entertainment. But such an event—especially if it's open to the public—could get out of hand if you don't set rules governing the way that members need to behave in order to participate in the sale. Show this policy to your attorney before adapting it for your community, and ask about whether you'll need to take any extra precautions, such as having members of the public sign a waiver before entering the sale.

GARAGE SALES

1. On *[insert date]*, *[insert community association name]* will hold a garage sale, between the hours of *[insert time period, e.g., 12 p.m. and 5 p.m.]*. Members who want a table at the garage sale must sign up in the manager's office no later than *[insert date]*.
2. Members must tell management what items, or the category of items, e.g., housewares, they intend to sell. Management reserves the right to ban the sale of inappropriate merchandise at the garage sale.

[Optional: Use #3 if charging for tables]

3. Management will rent a table and chair for each member seller. Members are responsible for reimbursing management for the cost of the rental no later than *[insert date]*. The cost for one table and chair is \$*[insert amt.]*.
4. Participating members must sign up on a floor plan in the management office no later than *[insert date]*. Table assignments are final. Management will make accommodations for members with special needs. Copies of the floor plan will be distributed to members prior to the sale.

[Optional: Use #5 if sale will be open to the public]

5. The garage sale will be open to the public. Members are invited to a one-hour private sale beginning at *[insert time, e.g., 11 a.m.]* on *[insert date]*.
6. Management is not responsible for the loss of any items bought or sold at the sale. Nor is management responsible for the condition of any items bought or sold at the sale.

Q&A***Getting Disorganized Meetings Under Control***

Q The board of the association I manage has been conducting meetings that aren't very effective and are unnecessarily long. The president has served on the board for several years and has become frustrated with the situation. How can I help her to streamline meetings and get control over the board members who drag out the agenda?

A Planning and educating board members on what is expected of them is critically important for successful meetings. Talk with the president about using the following strategies for dealing with board members who don't seem able to focus.

First, point out to the president that she should make sure that the material for board members to make informed decisions is given to them several days prior to the meeting, whenever that's feasible. To do that, she might have to set deadlines with vendors who submit materials that the board needs to review.

Urge the president to tell board members that they should read relevant materials *before* the meeting. She can stress to them that it's difficult to be effective—and it lengthens meeting times—when board members aren't familiar with the issues.

Warn the president that allowing board members to deviate from the agenda and have tangential conversations draws out meetings and takes the focus off the issues that need to be resolved at the meeting. (She can let members know that she'll make a list of other items that the board members are concerned about and address pertinent problems or concerns at the next meeting.) Remind her that it's important to keep things on track; the ultimate goal is to make a decision on the issues that are the subject of that particular meeting.

Additionally, if the board doesn't already use Robert's Rules of Order, suggest that they check out the method.

If those strategies fail to help with time management, let the president know that she can try to set a specific time limit for board discussion of issues.

Remind the president that some board members, especially in an aging-in-place community, might be serving on the board and attending meetings as a way to socialize if they are retired or don't have family members who visit. The meetings might be giving them a longer time to get out. Providing light snacks at a place where board members can casually gather after a meeting is adjourned could fill that void.

For information about using Robert's Rules of Order and other methods for streamlining meetings, see "Use Parliamentary Procedure to Run Effective Association Meetings," available on our website [here](#). ♦

REPAIRS & MAINTENANCE

Ask for Member Input Before Upgrading Amenities

If your association has decided that it has the funds to upgrade current amenities or add new ones, you should find out what's most important to members before determining where the money should be spent. In a community with families, a playground or playroom might be important to members. A swimming pool might be a welcome addition to a community in a warm-weather environment. Age-restricted community members might want a better club room where they can socialize or spend time with their extended family during visits.

Community members also want to feel that they have some input when it comes to the amenities that their assessments pay for, and that the community reflects their interests. And they want to look forward to using those amenities. There are two ways to find out what the membership's priorities are. Consider the following before determining which method is right for you.

Determine Feasibility of Projects

Typically, board members are much more aware of the factors and implications of a decision than the average member, and so they're better informed and able to make a clearer decision. Boards can obtain budget estimates for alternative projects, consult experts such as architects or designers to prepare alternative concept drawings for unused spaces in the community, and get feedback from area real estate experts as to how much a certain amenity would enhance the value of the community. But once the practical decisions have been weighed by the board, and you know that certain projects actually are feasible, get feedback from members.

Method #1: Hold a Special Meeting

Member input can be obtained through a special meeting of the membership, or through a member survey. But, if a board has a distinct preference between two alternatives, it may be better not to do a survey. At a meeting, membership input can still be obtained and the board's preferred option can be thoroughly discussed. If necessary, professionals can be brought in to explain the benefits. Even if the majority of members who attend a meeting doesn't support the board's preference, at least the opposition isn't as formalized as it is with a survey—and the board can still get the benefit of the members' concerns and alter the proposal to address those concerns.

Method #2: Draft Effective Survey

If the board has done the requisite research and feels that a special meeting won't be effective, it's time to start crafting appropriate questions for a survey. Follow two rules to get the best results:

(continued on p. 9)

Repairs & Maintenance

(continued from p. 8)

Target the right population. It may seem obvious that the population you are surveying is made up of the members of the association. Actually, it depends on what questions you are asking. If you want feedback on the level of some type of service, such as window washing at a condominium building, then you would want to ask the members of the relevant group.

But if you want to know about the experience of living in the community, then you want to get the impressions of everyone living there, renters and members alike. Knowing the target population and their motivations will not only assist you in gathering meaningful answers, but also help you interpret the results. Also, if you manage a large community, consider surveying representative samples.

Avoid generic questions. Asking open-ended questions won't help you if you're looking for answers regarding a specific project. But, likewise, it's important not to draft questions in a way that forces members to give a yes or no answer when additional information is really necessary for the board to make a decision. And be careful not to draft questions in a way that coerces members to agree to something they don't want.

Give Options for Participation

To encourage participation, preface the survey with a letter. Like our *Model Letter: Announce Upcoming Member Survey*, yours should explain to members the purpose and importance of the survey, encourage them to respond, and remind them of the deadline for responding. An easy way to increase responses is to award prizes to members based on random drawings of returned surveys.

Another way to increase participation is to make the surveys as convenient as possible for the members to fill out. In a community where the population tends to be more tech savvy, online surveys are cost effective and easy for you and your staff. But if you're dealing with an age-restricted community, consider offering paper surveys and online surveys. The letter to members should specify that they can choose to use either method.

PRACTICAL POINTER: An online survey software program such as SurveyMonkey (www.surveymonkey.com) offers associations a variety of questionnaire design formats that are fairly easy to use. Members' responses to each survey item are recorded electronically, and summary data are immediately available for review.

Announce Results

If, for some reason, the board cannot go with what the owners indicated was their preference, the board should be ready to explain its decision in a proactive way. For instance, if you request input on the color scheme and you have to drop the first choice because the expert has recommended against it, you should explain that to the owners before you implement the decision.

Clear communication at all stages of a survey is essential to minimize any backlash from the members. You should consider holding an information meeting

(continued on p. 10)

FEBRUARY 2016

Repairs & Maintenance

(continued from p. 9)

after the survey is completed and the results are processed. Doing this avoids speculation that the board is acting contrary to the wishes of the members. However, the board isn't obligated to provide such information.

Informational meetings offer members who disagree with the board's goals or a particular proposal a way to voice their concerns. Ultimately, it should be communicated that the board has the power to make decisions on behalf of the association. Of course, if it wishes to specially assess the membership, then the membership is usually given the opportunity to vote on that issue. But where the bylaws don't give the members a right to vote on something, they don't have a right to decide the issue in place of the board.

Information gleaned from surveys is only one aspect of the decision-making process. Surveys are advisory to the board, and association boards should expect some resistance to any idea that's implemented. Being able to clearly communicate the survey results and the reasoning behind the ultimate decision will go a long way toward minimizing dissent in the community. ♦

MODEL LETTER

Announce Upcoming Member Survey

Before conducting a survey, you should announce it and explain the purpose of the survey to members. Adapt the following letter to send to the members of your community you wish to survey. The letter conveys the importance of the member's participation.

Dear Member:

This is the 2016 Member Survey that the association mentioned on the Shady Acres' Association website. Your participation is very important, and your answers will be used by the Board of Directors to help improve the services and amenities offered by the association. The only way an organization such as ours can accurately learn how to better serve its members is by obtaining feedback from a large representative sample, so we hope that you will take a few minutes to complete the questionnaire [*insert method, e.g., online or on paper*]. Instructions will follow.

In order to ensure independent analysis as well as member confidentiality, we have contracted with a market research company to receive completed surveys and to tabulate and analyze the results. The results will be anonymous. Your Board of Directors will use these survey results to help make decisions about potential projects, such as [*insert projects, e.g., expanding the clubhouse, constructing a playground*] over the coming year.

We would appreciate your completing the survey by [*insert date*]. Your timely completion will enable us to compile the results and quickly make decisions and begin the planning stage of any projects.

If you have any questions about why we are conducting the survey or how the results will be used, please contact me at [*insert tel. # and email address*]. Thank you very much for your thoughtful help. Remember, your opinion counts!

Yours truly,
Jane Manager