



Community Association Management Insider®

Helping You Run Your Condo or Homeowners Association Legally and Efficiently

APRIL 2017

FEATURE

The management and governance of a master association differ from the management and governance of a traditional association.

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Appreciate Differences When Managing Master Associations

At first glance, an association’s structure and management seem straightforward. A planned community or condominium building typically has a set of governing documents, a board of directors who make sure that the rules and regulations in those documents are followed, and a manager who, with her staff, oversees maintenance, compliance, and organizational aspects of the community. But that’s not always the structure. Some communities have more than one association that oversees them, or some portions of a community but not others might have two associations. These setups will affect your management style and the practicalities of your job. But as long as you’re aware of this, you should be able to manage them in a way that’s best for the board of directors, members, and your staff. Here are the challenges you’ll face—and some solutions to help you get and keep your footing.

Understand Structure of Organization

If you’re new to community association management, or you don’t work in an area where master associations are common, you’ll need to get up to speed on how they work. “A master association is formed to maintain, repair, replace, and govern property when the use of the amenities on the property is shared by several different communities, each of which has its own association,” explains Florida attorney Ellen Hirsch de Haan. She says that a master association can be formed for an association in which there is a sub-association that has its own association and a few homes do not have a separate sub-association. “In that situation, the master is the only association for a portion of the homes, and a master association for any homes that are also subject to their own sub-association. A master association can be made up of homeowner associations, or condominium associations, or a mixture of the two,” notes Hirsch de Haan.

Additionally, the master association has its own board of directors and manager for the property for which the master is responsible.

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A sub-association would have its own board of directors to administer its particular community.

Appreciate Differences from Traditional Setup

The management and governance of a master association differ from a traditional association, so if you've always managed stand-alone communities or a single condominium building you'll need more information to do your job properly.

When there are multiple sub-associations within a master association, the various governing documents will describe how each of the boards will be elected or selected. "Sometimes the members of a sub-association elect a representative to the master board when they are electing the sub-association board," Hirsch de Haan points out. She adds that, "Sometimes, the board of each sub-association is authorized to select its own representative to the master association, and, occasionally, there is an at-large election for the master board in which all members of any of the subs can vote on the candidates running for the master." Other differences include the fact that some master documents include architectural control over all of the subs. So both the sub-association documents and the master documents would apply in the subs. Also, both the master association and the sub-association levy assessments against each home or unit in accordance with the applicable governing documents for each type of association.

When it comes to your job, the manager may work for all the subs in addition to the master, or the manager may simply work for the master. "The scope of the manager's duties should be made very clear," stresses Hirsch de Haan.

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Many things stay the same even when a master association is involved. The boards are the boards, and all boards are governed by the same laws in their respective states. So the governance structure is pretty much the same. There may be weighted or representational voting on a master board, in which the director has the number of votes that represent how many units or homes are in his association. Or, each director may have one vote. In some instances, each sub-association might have two directors, and the vote may be divided between them in the master association bylaws.

Handle Legal Issues as They Arise

As with any association, legal issues could arise and complicate the management of a master association, as well. So how can you and the board of directors—or multiple managers and boards of directors—handle them? And what is the association's attorney's role here?

“If a manager is working for both the master and the sub-association, a conflict of interest could arise if there is a dispute between the two,” Hirsch de Haan warns. Also, when both associations have the authority to assess, lien, and foreclose, the issue of priority of lien arises. “It is important for the manager to maintain a strictly professional relationship with both association boards, and to know when to step out of the way if it looks like there is going to be a dispute. The manager may feel awkward, but sticking to the managerial duties and staying out of the politics will help,” she advises.

There is a solution for lien priority. The lien priority may be set forth in the state law, or in the governing documents. But, if not, the two associations can enter into a subordination agreement, in which one or the other of the associations will proceed with the collection and foreclosure, and then share recovery money with the other association.

“The association's attorney would draft any agreements, and interpret the documents and the law to determine the proper procedures,” says Hirsch de Haan, who practices law in Florida, where there are two separate laws that govern associations and condominiums. If there are some or one of each in the manager's portfolio, keeping the laws straight is a must, she emphasizes.

Expect Confused Buyers

A big issue with master associations is the buyers themselves. Many buyers have no idea what they bought into, or that they are members of two different associations. “In Florida, we also have Community Development Districts (CDD), which have some jurisdiction for roads and drainage within a large subdivision,” says Hirsch de Haan.

She works with a townhome community that has a homeowners' association, and the roads and parking are governed by the CDD. There, the front entry gates and the clubhouse, pool, and other amenities are under the master association. Sometimes, the townhome association members come to the board meeting and have to be told they are in the wrong place for their particular concerns and grievances.

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So it's very helpful if the manager (with the attorney's help) can put together a memo that shows which association has responsibility for which property, and what activities require approval of which association, Hirsch de Haan recommends.

Keep Pros and Cons in Mind

There are upsides and downsides for the manager and board of directors who are part of a master association. Hirsch de Haan urges managers to be sure they understand the scope of their duties and authority, and those of the sub-association, and where the differences and overlap are. A major point to remember is that conflict of interest is a real concern if a manager works for the master and one or more of the subs. But, despite having to adjust your management style, working with a master association is as rewarding and challenging as working with a condominium, cooperative, or homeowners association that stands alone. ♦

Insider Source

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IN THE NEWS

Highest Industry Credential Awarded to Community Association Professionals

Community Associations Institute (CAI), the leading authority for community association education, governance, and management, has awarded the most prestigious and respected designation—Professional Community Association Manager (PCAM)—to 86 community association professionals. The PCAM designations were earned between July 1 and Dec. 31, 2016, and the recipients joined the more than 2,800 total managers who have earned the prestigious PCAM designation. For the first time, the PCAM case study was administered outside the United States—in Dubai, United Arab Emirates. Following the Dubai case study, five new recipients qualified to receive the designation.

In addition to the PCAM designation, these 265 career-enhancing credentials were earned during this time frame:

Association Management Specialist (AMS)—186 association professionals were awarded the AMS, the second level in the career development track. There are now more than 7,750 total AMS recipients.

Large-Scale Manager (LSM)—one association professional was awarded the LSM, a specialist designation that allows PCAM designees to specialize within their profession. There are now more than 100 community managers with this credential.

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Reserve Specialist (RS)—10 association professionals were awarded the RS, a specialist designation that prepares professionals to reserve plan extensively for communities. There are now more than 330 professionals with this designation.

Educated Business Partner (EBP)—68 association professionals were awarded the EBP, a designation that empowers both businesses and professionals to be even more competitive in the marketplace. There are now more than 230 professionals with this distinction.

CAI Vice President of Education Dave Jennings said that CAI is proud to offer to high-performing professionals a place to turn to as a source for training and education. “Their commitment to excellence and prestigious achievements within their field is notable and we are dedicated to leading the industry to new heights of expertise in all aspects of association governance and management,” Jennings added. ♦

RECENT COURT RULINGS

► Homeowner’s Retaliation Claim Against Association Failed

FACTS: A homeowner in a planned community that was situated on a lake witnessed an employee of the community’s hired landscaping company spraying fumes without wearing protective clothing or a face mask. The homeowner complained to the association and also made a report to the state’s department of agriculture, regarding “an environmental and public health incident.” According to the homeowner, the board of directors and management staff had willfully failed to take any safety precaution to prevent this incident.

The homeowner later claimed that the association’s management retaliated against him because of his association with and advocacy on behalf of the adversely affected African-American landscaping employee. Specifically, the homeowner said that the board and management have “conspired among each other” to subject him “to a pattern of racially-motivated retaliatory acts consisting of intentional refusal to provide [him] with contractual services he has under the association’s by-laws.” The retaliatory acts included failure to maintain or landscape the homeowner’s property. The homeowner sued under Section 1981 for “refusing to provide contractual services,” premised upon his assertion that intentional failures to provide contractual services to him were motivated by an intent to retaliate against him, because of his statutory protected objections to what he reasonably perceived was a racially motivated violation of the African-American employee’s contractual rights.

The board and association’s management staff asked a trial court to dismiss the claims.

DECISION: A New Mexico trial court ruled in favor of the association.

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REASONING: The trial court noted that Section 1981 “encompasses a complaint of retaliation against a person who complained about a violation of another person’s contract-related right.” To state a claim of retaliation under Section 1981 the plaintiff must, at the outset, show: (1) that he engaged in protected opposition to discrimination; (2) that a reasonable person would have found the challenged action materially adverse; and (3) that a causal connection existed between the protected activity and the materially adverse action.

But the trial court said that the homeowner’s claim didn’t satisfy the first requirement, and therefore his Section 1981 retaliation claim against the association and management staff couldn’t survive. The complaint failed to allege the violation of another person’s contract-related right and that such violation was race-based. The complaint did not, as it must, identify an impaired contractual relationship, or even allege a contractual relationship with the African-American employee and defendant. Such facts are necessary to demonstrate that the homeowner engaged in protected opposition to race-based discrimination—that is, that he was retaliated against for complaining about the violation of another person’s contract-related right.

- Muller v. Pearson-Chavez, February 2017

➤ Association Couldn’t Rely on Declaration to Cut Down Berm

FACTS: Two homeowners with a townhouse in a planned complex sued the association for making alterations to and performing work on a protective berm located in the complex’s common area near their lot. They alleged that the alterations to the berm resulted in a loss of seclusion and privacy for their lot, thus lowering its value. The homeowners asserted six causes of action for: breach of contract, breach of fiduciary duty, intentional damage of property, negligence, trespass pursuant to state law, and an accounting. A New York trial court ruled in favor of the homeowners, and the association appealed.

DECISION: A New York appeals court upheld the trial court’s ruling.

REASONING: On appeal, the homeowners asserted that the association “negligently, recklessly and/or intentionally razed” the protective berm in violation of the association bylaws as well as its declaration, and that, as a result of the destruction of the berm, their property “is no longer secluded and protected” and has “decreased in value.” Additionally, the homeowners alleged that their “use and enjoyment of their property has been reduced due to the lack of privacy and seclusion.”

The appeals court rejected the association’s contention that it’s entitled to a dismissal because it acted within the authority afforded to it pursuant to the bylaws and the declaration. To the contrary, the homeowners alleged that the association violated various provisions of the bylaws and the declaration, and those allegations are not flatly contradicted by the evidence, nor are they vague and conclusory, said the appeals court. ♦

- Choromanskis v. Chestnut Homeowners Assn., Inc., February 2017

RISK MANAGEMENT

Tread Carefully When Faced with Sex Offender in Community

The safety and security of the community you manage should be a top priority. You're faced with many challenges when trying to keep your community safe and secure. You can take care of many cut-and-dried problems on your own or with help from your staff, if you can get the association to approve your recommendations. For example, investing in certain types of landscaping can increase visibility at the property and reduce blind spots where intruders could commit crimes unnoticed. Or you could install a surveillance system in your parking lots or common areas.

If you keep up with the news, you may feel inundated by reports of sex offenders, and primed to protect members in your community. The potential danger involved if a sex offender moves into your community is controversial—and a misstep on your part when addressing this situation can be disastrous for you and the association. Members' reactions could range from fear to harassment of the individual. And if you improperly warn members about the sex offender, you could be in deep trouble.

Your first instinct may be to warn members of his presence, but if your information turns out to be inaccurate, you could be sued for defamation of character. Even if your information is accurate, giving it out could be a violation of state law. On the other hand, if you don't warn your members and the sex offender later attacks someone, the victim could sue the association.

With such high stakes, you must proceed with care when you find out that a sex offender is living in your community. Here's what you need to know if you encounter this situation.

Accuracy Is Crucial

Just because you've heard that a sex offender is living in your community doesn't mean it's true. And if you spread untruths, you could be sued for defamation of character. That's especially likely if it can be proven that you were reckless in not confirming the accuracy of the information. But you can avoid liability for this. It's important to confirm the accuracy of the information before taking any other action.

The most reliable way to confirm the information is through states' sex offender registry websites. The information provided on these sites varies from state to state, and may depend on how dangerous the state perceives the sex offender to be. You can also confirm the information through your local police. The exception is if the information came directly from an official source, like your local police department, then you needn't confirm it. But if it came from

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someone who says he saw it on a state sex offender registry website or spoke to the police—or if the information came by word of mouth—confirm it.

The importance of consulting with your association's attorney through the whole process can't be emphasized enough. States have different rules regarding if and when information about sex offenders can be disclosed to the public. For example, some states allow information about sex offenders to be shared freely, while others don't allow information about sex offenders to be shared at all. And in some states, the information that can be shared with others depends on how dangerous the state views the person to be. So ask your attorney what rules apply in your state. This will help you determine whether you can warn members of the sex offender's presence in your community.

Determine Threat Level

To the extent possible, determine the level of threat the sex offender poses to your community, but don't make an independent determination about this. Boards and managers shouldn't be making judgment calls. Instead, they should refer to the state law enforcement's threat levels to help them make this determination. In many states, sex offenders are categorized according to their risk of re-offending.

Unfortunately, not all states categorize sex offenders according to their danger to society. In those states, it will be much more difficult to assess the danger posed. That's where it's especially crucial to work closely with your attorney in deciding how to proceed.

Send Warning Letter When Appropriate

If the threat the person poses to the community warrants disclosure and state law doesn't prohibit it, send your members a letter warning them of the presence of a sex offender in the community, but make sure that you show it to your attorney first. You should be aware that if your state limits the information law enforcement personnel can disclose, you should send the letter only if law enforcement personnel would be authorized to disclose information under the circumstances. Your letter, like our *Model Letter: Disclose Presence of Sex Offender in Your Community*, should:

Disclose general information about sex offender. Tell your members that the association has become aware that someone living in the community is considered a sex offender by the state. But don't give out detailed information, even if the state does. For example, don't disclose the name of the offender. That's because giving out detailed information could leave your association vulnerable to liability. There are plenty of ways for members to get detailed information from the state—if it's legal for the state to give it—without the association having to risk liability.

Tell members how to learn more. Encourage your members to familiarize themselves with the threat this person might pose, and tell them how they can

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get more information. For example, if your state has a sex offender registry website, give your members the address to that site. Or suggest that they call the local police department for more information.

Warn members that it's illegal to harass offenders. In your letter, explain that the association has decided to disclose this information so that members can take precautions for their safety, not so that they can retaliate in any way.

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MODEL LETTER

Disclose Presence of Sex Offender in Your Community

You can adapt and use this letter at your community to warn members of the presence of a sex offender there. Note that it provides two optional sentences that you can use to tailor it specifically for your community. The first sentence gives you language to include if the association wants to warn members that it's illegal to harass offenders. Include the second sentence if you don't want to send a copy of the letter to all renters. The letter is also helpful because it tells members that the association can't evict the offender or provide additional security, a common request from residents who are concerned about living near a sex offender. Show this letter to your attorney before adapting it for use at your community.

[insert date]

Dear [insert name]:

The Board of Directors of ABC Community Association has been informed that an individual living in the community is considered a sex offender by the state of [insert state].

We encourage each member to become familiar with the possible threat such an offender may pose, by visiting [insert state] website concerning sex offenders at [insert link to website]. After typing in our community's Zip code, you may be able to find information concerning the identity and history of the offender who lives here. You can also call our local police department at [insert tel. #] for more information. Please carefully note the information on the website or the information you receive from the police. The purpose of this information is to allow you and your family to take precautions that minimize the risks attendant to this offender's presence within our community.

[Optional—include if this accurately reflects the law in your state: Please note that the law specifically makes it a crime to intimidate, harass, or threaten an offender, or otherwise misuse the information.]

There is a significant amount of information available about sex offenders and the protective measures you and your family should take when living in close proximity to an offender. One source for this information is our local police department. Another option is to visit the following website: [insert web address]. Also, you can get information on how to stay safe by contacting our management office.

Please recognize that the association is not legally authorized to seek the removal of this offender from our community. Nor is the association equipped to provide additional security. The best approach is to review the information cited above and take appropriate precautions. If, at any time, you are suspicious of unlawful activity, you should immediately contact the police department or dial 911.

[Optional—include if you're not sending a copy of the letter to all renters: If you do not live in your unit, it's important for you to forward a copy of this letter to whoever is living in your unit.]

Yours truly,
Board President

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Point out that members should not intimidate, harass, or threaten an offender, or misuse the information in any other way.

Advise members to take safety precautions. Tell your members that they should seek information on ways to stay safe when living in the proximity of a sex offender. For example, you could refer them to any relevant websites or to your local police department. If you keep information like this in the management office, invite members to come in and review it.

Explain that association can't evict offender or provide security. Tell members that the association isn't authorized to evict the offender from the community, or to provide police protection or other security beyond whatever it might already provide. Stress that members are responsible for their own safety. And tell them to call the police if they notice any suspicious activity.

Follow Protocol to Send Letter

You may send the letter to all members either at their address in the community or at any alternative address that they've provided if they rent their unit and don't live in the community. If you want, you can also send the letter to renters living in the community so that they're warned, too. If you decide not to send letters to renters at the community, consider adding the following sentence to your letter to members: "If you do not live in your unit, it's important for you to forward a copy of this letter to whoever is living in your unit." This should help you to avoid liability in case a renter is harmed by the offender. In general, the association is obligated to warn only its members; it's up to the members to warn their renters. ♦