



Community Association Management Insider®

Helping You Run Your Condo or Homeowners Association Legally and Efficiently

MARCH 2018

FEATURE

A community smoking ban can prevent fires, health problems, and time-consuming complaints—as well as raise property values.

IN THIS ISSUE

Feature: Pass Anti-Smoking Bylaw to Extinguish Related Risks in Community . . . 1

▶ **Model Bylaw:** Take Proper Steps to Ban Smoking in Community 3

DEPARTMENTS

Crime & Security: Spring into Action After Community Experiences Crime 5

▶ What to Put in Incident Report 6

▶ **Model Letter:** Keep Members Informed About Criminal Activity 8

Recent Court Rulings: Member Can't Prove Nonmembers Were Voting at Meetings 8

Risk Management: Minimize Risks Posed by Members Who Use Building Rooftop . . . 9

▶ **Model Letter:** Warn Members, Guests Who Use Condo Roofs 11

In the News: Association Avoids Open Dialogue for 'Open House' Signage 12

PRODUCED IN CONSULTATION WITH



Pass Anti-Smoking Bylaw to Extinguish Related Risks in Community

As time goes on, even more information emerges about how dangerous smoking is not only for smokers, but also for those exposed to secondhand smoke. Secondhand tobacco smoke—Environmental Tobacco Smoke or ETS—has been classified by the Environmental Protection Agency (EPA) as a “Group A” carcinogen, a known cause of cancer. Smoking is also a fire hazard, leading to possible property damage; cigarettes or cigars that haven’t been completely extinguished can spark flames. And tobacco smoke also annoys nonsmoking members and their guests, resulting in more complaints that you have to address.

It’s common for prospective homeowners who are considering buying in the community to ask about whether it’s a nonsmoking property. This is especially important in smaller properties like condominium buildings, where smokers might linger outside the building or in limited common areas. So another positive reason for a ban is increased property values.

If it’s within your association board’s power to ban smoking, you should seriously consider proposing a ban in either part or, depending on what type of community you have, all of the community. Here’s how you can accomplish this.

Take Proper Steps in Line with Governing Documents

Because of the risks involved with smoking, many community association boards feel that it’s their responsibility to ban smoking in their communities. Some boards feel that putting an end to smoking in common areas is enough, while others try to prohibit smoking in members’ units as well. If you decide to do one or both, you should write an effective bylaw so that you can enforce a no-smoking policy.

Although you could probably ban smoking in common areas just by passing a rule, a bylaw is better because it requires a vote of the

(continued on p. 2)

MARCH 2018

Anti-Smoking Bylaw

(continued from p. 1)

members. This will give you a stronger mandate to enforce the smoking policy, and members will appreciate being included in the decision. To extend your smoking ban to members' units, on the other hand, you probably don't have a choice, and will have to hold a member vote and pass a bylaw. That's because you probably don't otherwise have the authority in the governing documents to regulate this type of member behavior within their units.

Pick Smoke-Free Locations

A good anti-smoking bylaw will help you implement a ban on smoking at your community, but what you put in the bylaw will be determined by where you want to ban smoking there. In the past, communities banned smoking only in the common areas, but in recent years banning smoking anywhere in the community has become more prevalent—including within members' units. This is more likely to happen where smoking, even within the confines of a unit, affects other units, such as in single, high-rise buildings.

Think about what's most likely to work in your community. For example, you'll have to consider your community's physical layout. If it's comprised of single-family homes on fairly large lots, you probably don't have a valid reason to ban smoking that's confined to a member's unit. In that case, you can ban smoking in all common areas, but shouldn't try to ban it within units. However, if your community is comprised of units that share a common ventilation or HVAC system, or a common wall that's not a cinderblock firewall, it's reasonable to extend the ban to smoking within members' units.

(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, J.D. **Executive Editor:** Heather L. Stone **Director of Marketing:** Peggy Mullaney

COMMUNITY ASSOCIATION MANAGEMENT INSIDER [ISSN 1537-1093 (PRINT), 1938-3088 (ONLINE)]
is published by Vendome Group, LLC, 237 West 35th St., 16th Fl., New York, NY 10001.

Volume 17, 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: epurcell@vendomegrp.com. Call: Elizabeth Purcell 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.

© 2018 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 Heather Stone at (212) 812-8436 or hstone@vendomegrp.com.

MARCH 2018

Anti-Smoking Bylaw

(continued from p. 2)

Draft Your Bylaw Effectively

To be effective, the smoking ban bylaw, like our *Model Bylaw: Take Proper Steps to Ban Smoking in Community*, should base the ban on the nuisance provisions in your governing documents. Virtually all governing documents ban members from doing anything that would be a nuisance or annoyance to others in the community. Since secondhand smoke is a known carcinogen, smoking in common areas, where members congregate, is certainly an annoyance to members who don't smoke and is likely to fall within the legal definition of "nuisance." And in communities where members' units share common walls or ventilation systems, smoking is a nuisance even when confined to a member's private unit, because smoke often seeps through the walls. In both situations, the association has not only the right to ban smoking—it has the responsibility.

The bylaw should also state exactly where smoking is banned. Cigarettes probably come to mind when discussing smoking, but you should also specify that members may not smoke cigarettes, cigars, or pipes in banned areas. And,

(continued on p. 4)

MODEL BYLAW

Take Proper Steps to Ban Smoking in Community

The following bylaw bans the smoking of cigarettes, cigars, and pipes in common areas and, if you choose to extend the ban in your community, within members' units as well. The bylaw is effective because it makes members responsible for the smoking of their guests, provides for a fine to enforce the policy, and says that if the association must sue the member to enforce the policy or collect a fine, the loser of the lawsuit will have to pay the winner's legal costs. Check with your attorney before adapting this Model Bylaw for use in your community.

SMOKING TOBACCO PRODUCTS OF ANY KIND PROHIBITED IN COMMON AREAS [optional: AND MEMBERS' UNITS]

The smoking of tobacco products of any nature or description in the community by members, their family members, tenants, guests, or invitees constitutes a nuisance and therefore is prohibited at all times in the common areas [optional: and individual units] of Shady Acres Community Association. This prohibition against smoking includes all common elements, including but not limited to lobbies, hallways, stairwells, elevators, storage areas, laundry rooms, or any other component of the common elements. [Optional: It also includes smoking within members' individual units.] The prohibition against smoking is effective immediately upon the recordation of this Amendment. Members shall be responsible for the conduct of their family members, tenants, guests, and invitees. Infractions of this provision shall, after notice and a hearing, incur a fine of not less than Two Hundred and Fifty Dollars (\$250) per occurrence, and any fines so levied shall become a lien against the unit and shall be collected in the same manner as an assessment. The Board of Directors is also specifically empowered to bring suit against the member for all infractions of this provision, and the suit may seek to enjoin further violations, collect any fines levied hereunder, or both. In the event legal action is necessary to enforce this provision, the prevailing party shall be entitled to an award of all costs and all attorney's fees actually incurred in the enforcement hereof, including costs and attorney's fees incurred prior to the commencement of litigation.

MARCH 2018

Anti-Smoking Bylaw

(continued from p. 3)

depending on where your association is located, you might want to include marijuana as being part of the smoking ban. Your location will determine whether this is an issue; marijuana might not be legal in your area anyway.

To make your new policy effective, the bylaw should ban smoking by members and their guests. Sometimes, it's a guest, not a member, who is smoking.

In communities that ban smoking within members' units, this means that the members must not allow anyone they've invited into their unit to smoke. Make members responsible for the behavior of their guests, whether that guest is smoking within the member's unit or in a common area. By having the authority to fine a member for her guest's behavior, you'll give the member an incentive to take the initiative and control that behavior.

Put Teeth in Your Policy

It's important to give the association the authority to fine members for violating the policy. Any policy will be more effective if the association has a way of enforcing it. Despite your best efforts to explain your policy in advance to your members, and despite your authority to fine members, some members might still violate the policy. So say in your bylaw that, if the association must sue to enforce its policy, or if it must defend itself in court against a member who has challenged it, the loser of the lawsuit must pay for the winner's costs and legal fees.

Facing Member Opposition to Smoking Ban

Sometimes when associations try to implement a smoking ban, they face opposition from members. If this is an issue at your community, don't drop the idea of a smoking ban. Instead, realize that you can overcome this by proposing a remedy or remedies acceptable to all parties.

Surveying members before proposing the ban can help you gauge the level of support and opposition to the plan. The more smokers residing in the community, the less likely the ban will be approved.

If you believe that the majority of members would oppose a smoking ban, you can otherwise limit smoking in common areas. You can come up with creative solutions to potential stalemates. For example, you can exempt existing smoking members from the ban—that is, “grandfather” them—and suggest establishing designated areas within the general common areas where they can smoke without bothering nonsmokers and new members to whom the ban applies.

PRACTICAL POINTER: Remember that in all circumstances, prohibiting smoking within a certain distance from units or near children's play areas should be a top priority. ♦

EDITOR'S NOTE: For further guidance in implementing a no-smoking policy, you can download the recording of the one-hour webinar, “*Ensuring Fair Housing Compliance When Adopting a Smoke-Free Policy*,” [here](#).

CRIME & SECURITY

Spring into Action After Community Experiences Crime

It's important for members in your community to feel safe. After all, one of the draws of many associations is security. It's common for communities to have security personnel or, at the least, take practical measures to mitigate crime like installing adequate lighting in common areas and gates at entrances that only members can open. Nevertheless, petty and serious crimes have been reported in planned communities and condominium buildings. This can shake the confidence of members. But how you handle the aftermath of a serious crime when it occurs at your community will determine how safe your members feel in the future. It's also important to answer questions it might raise, such as whether the association's insurance policy will cover related lawsuits. A critical issue for you and the board is the degree to which the association may be held responsible for the crime—as well as any future crimes.

Even if members perceived you as diligent about community safety before the crime occurred, handling such an incident poorly can overshadow your good security track record and cast doubt on whether you can handle similar situations in the future. Don't let a serious crime in your community scare your members or call your management skills into question. Take these steps within 48 hours of any serious crime.

Incident Report Is First Step

One of the most important things for associations to do after a serious crime occurs is to fill out a detailed incident report, as soon as possible, while the facts are still fresh. An incident report is important for two reasons. First, if a crime victim sues the association for failing to adequately secure the community, it's always possible that in trying to put forth the strongest case possible, he might exaggerate his injuries or change his story. A detailed incident report can help contradict flaws, inaccuracies, and distortions in the victim's story. It can also help prove that the lighting, locks, surveillance cameras, and other security equipment were in proper working order when the crime occurred. (*See What to Put in Incident Report.*)

Second, an incident report might be able to protect the association from liability should any future crimes occur. As a general rule, an association has no legal duty to protect its members from the criminal acts of strangers. But that general rule doesn't apply if the association knows about a danger to members but does nothing to protect them, such as warn them. If the association knows about a danger to members, it can be held liable for a subsequent crime if the steps it took to protect them were unreasonable, considering the type of danger and likelihood of it recurring.

(continued on p. 6)

MARCH 2018

Crime & Security

(continued from p. 5)

So when a crime victim sues an association for failing to secure the community, the association usually must prove that its security measures were reasonable under the circumstances. Incident reports can help show what the circumstances were, thereby helping justify the association's decisions. For example, if the only crimes that had previously occurred at the community were crimes against property, like vandalism, it might be reasonable that the association didn't take steps to protect members against violent crimes.

Pick Point Person for Questions

In the hours and days after a crime occurs, members will probably have a lot of questions. If a crime is very serious, local media might also get wind of it. If too many people, such as board members, management company employees, or maintenance staff volunteer information, it could create big problems later for the association if there are conflicting facts put out there. Once a crime has occurred, a lawsuit against the association is always possible. That's why it's crucial for you to control the flow of information.

You may do this by designating one person to act as spokesperson for the association and to answer questions from members and the local media. Whom you choose is up to you, although a senior executive in the management company typically fills this role well. Then tell everyone to refer questions to the spokesperson. If you don't do this, someone without all the facts might say things that could be used later in a lawsuit against the association.

The community's staff and other professionals can acknowledge that they're aware that something happened, but they should refer the people asking questions to the spokesperson who will answer specific questions. And they can say that a letter explaining the incident will be sent to all community members in the coming days.

(continued on p. 7)

► What to Put in Incident Report

Managers should make sure that incident reports are highly detailed. Your reports should include the following items, but also check with the association's attorney to see if your situation would benefit from additional information.

- ✓ The date and time the crime occurred;
- ✓ Location of the crime and lighting conditions at the location;
- ✓ Weather conditions;
- ✓ Photographs and surveillance videotapes, if relevant;
- ✓ The victim's identity;
- ✓ The victim's comments at the time;
- ✓ Whether medical assistance was given and, if not, whether the victim refused assistance;
- ✓ All relevant details about the suspect;
- ✓ Extent of injuries and/or property loss;
- ✓ Descriptions of any vehicles involved;
- ✓ Names and contact information of any witnesses;
- ✓ Identity and badge numbers of any responding police;
- ✓ Police report number;
- ✓ Description of what happened; and
- ✓ The name and contact information of whoever investigated the incident and filled out the incident report.

MARCH 2018

Crime & Security

(continued from p. 6)

Eliminate Security Weakness that Led to Crime

If a defect in a common area over which the association has maintenance responsibilities was potentially a contributing factor to the crime, fix it immediately. Many associations don't do this because they mistakenly fear it might be tantamount to an admission of liability. The fact that an association subsequently fixed a defect in a common area usually isn't allowed to be used as evidence that the association was negligent. But if you don't repair the defect, you could be putting members at risk for future, similar crimes. And if such a crime does recur, the association may well face liability. As with any liability issues, it's always a good idea to seek advice from the association's lawyer.

Tackle Insurance Issues

Make sure you notify the association's insurance company of the crime. Many commercial general liability policies cover the association if it's sued for negligence based on a crime committed by a third party, but if you don't notify the insurance company, you might be giving it a reason under the terms of the policy to deny the claim. Also, if it's possible, ask the insurance company to send someone to conduct a walk-through of the community and to advise whether any potentially dangerous conditions exist. But if you do this, be prepared to fix any dangerous conditions the company finds. Keep in mind that being aware of a dangerous condition and ignoring it can be considered negligence should another crime occur.

Stop Members from Panicking with Informational Letter

As soon as possible after the crime occurs, send all members a letter notifying them of the crime. Out of respect for the crime victim's privacy, don't identify him by name in the letter, however. Also, to comply with language that might exist in the association's insurance policy, the letter shouldn't contain any admission of fault.

Sending a letter is essential because associations owe their members as much communication as possible during such a difficult time. It's also essential because it can help protect the association from liability. Should another crime occur, you want to be able to show that you notified your members about the first crime and urged them to be careful. Warning members of a potential danger is itself a security measure, just like fixing a faulty gate or having a security patrol, and could help to avoid future liability. But if you fail to notify members and another crime occurs, your silence could be regarded by a court as negligence.

Your letter, like our *Model Letter: Keep Members Informed About Criminal Activity*, should:

- Notify members that a crime has occurred;
- Describe the type of crime and where it happened;
- Encourage members to be careful;

(continued on p. 8)

MARCH 2018

Crime & Security*(continued from p. 7)*

- Tell members to report any suspicious activity to the police first, and only afterward—if at all—to the association; and
- Tell members that, ultimately, it's up to them to ensure their own safety by taking precautions and using common-sense safety measures. Stress that guarding against crime can make your entire community safer. ♦

MODEL LETTER**Keep Members Informed About Criminal Activity**

Ask your association's attorney to help you adapt the following example of a letter that you can use to notify association members that a crime has occurred at the community. Try to include specific information, such as the type of crime and where it happened, tips for members to take precautions to protect themselves, and a request that if members notice any suspicious activity, they should report it to the local police.

[Insert date]

Dear Members:

We would like to notify you of an unfortunate incident that recently occurred at the Shady Acres community. On *[insert date]*, a community member was assaulted and robbed along the walk from the parking lot to the building. The Board cares about its fellow neighbors and wants everyone to know what happened and to urge you to exercise caution with respect to your personal safety and the safety of your property. If you notice any kind of suspicious activity, please report it immediately to the police. You should follow up by calling the management office, but please call the police first. Time is of the essence. Please feel free to contact the management office if you have any questions.

Yours truly,
Jane Manager

RECENT COURT RULINGS

➤ **Member Can't Prove Nonmembers Were Voting at Meetings**

FACTS: A homeowner in an association claimed that there were nonmembers of the association who were paying assessments and casting votes at member meetings. He asked a trial court for a declaration that this violation of governing documents was taking place and an injunction, ordering the board of directors to put an end to the practice. The trial court denied these claims, concluding that the homeowner failed to identify the nonmembers or prove how many existed.

The trial court also found that the homeowner lacked standing to assert this claim. Although he claimed that having nonmembers voting and paying assessments could subject him and other homeowners to a lawsuit stemming from decisions that had been influenced by those votes and things paid for

(continued on p. 9)

MARCH 2018

Recent Court Rulings

(continued from p. 8)

by the assessments, no lawsuit had ever been threatened or filed. “Thus such speculation is insufficient to establish standing,” said the trial court. That is, the homeowner didn’t meet the requirements to even bring a case against the association.

The homeowner appealed.

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

REASONING: On appeal, the homeowner argued that he presented sufficient evidence that there are six nonmember lots, nonmembers satisfy the quorum requirements at meetings, and nonmembers have voted on increasing assessments. But the appeals court agreed with the lower court and the association that he had presented insufficient evidence as to which homeowners were nonmembers of the association and failed to provide other necessary documentation to support his claims.

The appeals court pointed out that the trial court had ruled against the homeowner based on the speculative nature of his claims. The appeals court also spelled out that “merely the possibility of legal injury on the basis of a hypothetical state of facts which have not arisen and are only uncertain in the future,” is not enough for an injunction or declaratory relief. ♦

- Hall v. Southcreek Homeowners Assn., February 2018

RISK MANAGEMENT

Minimize Risks Posed by Members Who Use Building Rooftop

With spring comes warm weather that brings members outside to enjoy it. Especially in city areas, which tend to have many condominium buildings, there’s limited outdoor space, so members and their guests might try to create some recreational space on building rooftops—sunbathing, barbecuing, or just cooling off from their hot units. Unfortunately, allowing people on the roof of your condominium building can create problems for you and the association. For example, if a member or guest gets seriously injured or causes costly property damage, a court may rule that you’re liable for the injuries or damage because you let members and guests use the roof. You can avoid this risk, though, if you consider banning members from using the building in this way.

Understand Seriousness of Situation

If you allow members and their guests to use their roof, you’re looking for trouble. That use can lead to the following problems for an association:

Liability for injuries. If a member or guest gets hurt while on your roof—or falls off your roof—you could be held liable for his injuries. And a judge may order you to pay a hefty amount to compensate the victim for his injuries and

(continued on p. 10)

MARCH 2018

Risk Management

(continued from p. 9)

suffering. While an association in this situation sometimes gets lucky and isn't liable for the injuries, it's not worth taking a chance.

Liability for damage or injury caused by roof defects. Letting members and guests use their roof adds unnecessary wear and tear to the roof, which could shorten its life and create defects. As a result, your insurance premiums could increase. And if, say, a roof defect leads to a leak that damages members' property in the units below the roof, the association could be held liable for that damage.

Word Your Rule Effectively

To help avoid such risks, encourage the board to pass a rule barring members and their guests from using your building's roof. The rule you set should bar members and their guests from using the roof for any reason except an emergency. Ask your attorney about adapting this Model Language:

Model Language

Members and their guests are strictly prohibited from accessing, storing personal belongings on, or using the roof for any purpose, except in an emergency.

Notify Members of New Rule

As with any new rule that's been passed, you should send members a letter informing them of the new rule and attach a copy of the rule to your letter. But if you know or suspect that members are using your roof, it's a good idea to post a copy of your roof rule in conspicuous places, such as by the entrance to the stairs leading to your roof or on the roof-access doors. That way, members and their guests may think twice before going up to the roof. And this extra step may save lives and prevent liability.

Unfortunately, simply having such a rule may not be enough to prevent members from using the roof anyway. So before you spend time and money on a lawsuit, you should know what to do if members violate your no-roof rule. Take these two steps to enforce the rule:

Step #1: Speak with member. You may find out that a member has used your roof for a reason other than an emergency. For instance, a maintenance staff member may have spotted members sunbathing when he inspected the roof. Or a member in a top-floor unit may have complained to you that someone has been playing loud music on the roof, and further investigation proved it was a member and her guest. As soon as you find out about a member's use of your roof, talk to the member about his actions.

Remind the member about the rule that specifically bars members and their guests from using the roof for any reason other than an emergency. And point out that violating this rule could lead to serious consequences.

Step #2: Send "get-tough" letter. If, after speaking with the member, you learn that he has continued to use the roof, send him a get-tough action letter. This letter should be stern and, like our *Model Letter: Warn Members, Guests Who Use Condo Roofs*, should: (1) remind the member about your prior conversation

(continued on p. 11)

MARCH 2018

Risk Management

(continued from p. 10)

with him about his unauthorized use of the roof in which you reminded him that your bylaws specifically bar such activity for any reason other than an emergency; (2) note that despite this conversation, it has come to your attention that the member has continued to use the roof, citing examples of how and when he did so; and (3) warn the member that his continued use of the roof is both a serious safety risk and a material violation of the association's governing documents. Cite the specific portion the member is violating, refer to the specific rule he's violating, and attach a copy of that rule to the letter. And say that if the member continues to use the roof, you'll pursue whatever legal remedies are available to the association.

If a member continues to use the roof after receiving your letter, you may have no choice but to take further action. If you decide to do so, you'll have a strong case. By speaking with a member informally and then sending a warning letter, you can show that the member was on notice of his violation, and that you took reasonable steps to enforce your no-roof rule, rather than rushing to the drastic step of fining him, suspending his privileges, or suing him. Also, if the member continues to use your roof and injures himself while doing so, the fact that you warned him verbally and with a letter will help you defend yourself if the member sues you for his injuries. ♦

MODEL LETTER

Warn Members, Guests Who Use Condo Roofs

Here's a get-tough letter that you can adapt and send to a member who continues to use the roof of the condo building despite your prior warning not to do so. The letter reminds the member of your conversation with him in which you warned him not to use the roof; notes that you've learned that he has continued to use the roof anyway; warns him that his use of the roof for any reason other than an emergency is a serious safety risk and a material violation of the association's bylaws; and threatens legal action if he doesn't immediately stop using the roof. Make sure to ask your association's attorney before using it.

[Insert date]

Dear [insert member's name]:

On [insert date], I spoke with you about your unauthorized use of the roof of the condominium building. Despite that conversation, it has come to our attention that you have continued to use the roof in violation of the Association's bylaws. Specifically, [insert details of violation, e.g., maintenance staff members reported seeing you sunbathing on the roof on weekend afternoons]. Your continued unauthorized use of the roof is both a serious safety risk and a material violation of the bylaws. Section [insert #] of the bylaws requires you to comply with all rules. And as shown in the attached copy of the rules, you are barred from using the roof for any reason other than an emergency. If we learn that you continue to use the roof, we will pursue any and all legal remedies available to us.

Thank you for your cooperation.

Yours truly,
Jane Manager

IN THE NEWS***Association Avoids Open Dialogue for 'Open House' Signage***

An Arizona realtor has had to confront a homeowners association for disposing of his “open house” signs advertising properties he has listed for sale in the community. After discovering a worker from the association’s landscaping company driving away with the signs that had apparently been slated for the garbage, the realtor took video footage of their conversation during which the landscaper cited rules that the signs must comply with. But the association’s manager, in an email reply after the realtor reached out about the signage rules, gave out different guidelines.

According to Arizona law, associations must follow certain rules regarding signage regulation, including that they can’t restrict the usage of open house signs that are commercially produced, don’t exceed 18 by 24 inches, and don’t have an attached rider that exceeds 6 by 24 inches. But they can prohibit or regulate an open house sign that isn’t commercially produced and doesn’t follow size standards.

The realtor noted that he understands the state laws and is more than willing to comply with them, especially since he’s losing anywhere between \$40 to \$60 for each sign the association throws away.

Supposedly, the association feels that open house signs bring down the neighborhood’s worth. The realtor, who feels that open house signage helps to sell homes and create positive demand for the community, doesn’t understand why the association manager feels that way and how he’s justifying dodging a set list of dos and don’ts. He says that by restricting signage, the association is actually restricting demand. The realtor says he’ll continue pushing for answers from the manager. ♦