



Community Association Management Insider®

Helping You Run Your Condo or Homeowners Association Legally and Efficiently

MARCH 2019

FEATURE

Be prepared to deal with both individual trespassers and neighboring “tent cities.”

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Minimize Risks Associated with Homeless Presence at Community

More and more community association managers, especially those of HOAs or condo buildings in urban areas, are dealing with the issue of how to handle homeless individuals on or near their properties. The homeless can pose concerns for residents and staff, ranging from creating a nuisance to criminal activity.

As association managers are reporting homelessness on the rise in their areas, Seattle communities have experienced a particularly noticeable uptick. So we enlisted Washington state community association expert and educator Paul D. Grucza to help explain the importance of addressing homelessness affecting your community and how you can do so effectively.

Understand Nature of Problem

The non-profit National Alliance to End Homelessness reports that the January 2017 Point-in-Time count, the most recent national estimate of homelessness in the United States, showed that 20 states have experienced a rise in homelessness, while the overall number of people experiencing homelessness increased nationally by 0.7 percent between 2016 and 2017.

At the time this estimate was calculated, the vast majority of the homeless population lived in some form of shelter or in transitional housing. But approximately 34 percent lived in a place not meant for human habitation, such as the street or an abandoned building. So it shouldn't be surprising that your property could be an ideal place for homeless individuals to find shelter.

In some cities, such as Seattle, there are sanctioned camps—that is, locations set aside by cities where the homeless can go for relative safety. But some unsanctioned camps for the homeless have been established close to associations—for example, in Virginia. These so-called “tent cities” have also popped up in North Seattle, adjacent to some of the properties that Grucza’s company manages.

“A tent city’s close proximity to a residential building creates issues that impact the immediate area, not just the association’s building or

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property,” Gruzca points out. “Trash, human waste, needles, debris, crimes such as robbery or assault, and fire hazards are some major concerns that start within these camps and spread out into the adjoining neighborhood,” he explains.

Use Procedure When Dealing with Homeless

When it comes to the homeless, two scenarios are troublesome for associations: tent cities and individual homeless trespassers on the property. Managers should know how to deal with both.

Gruzca has always been a proponent of meticulously preparing community managers for all potential risks they could face in their professions, but he notes the particular importance of training staff regarding the safe handling of homeless situations. Having heard of assaults and other crimes at communities, Gruzca has developed tools for his managers to avoid these dangers.

“With the increase in the homeless population across the country and especially in larger urban areas, many community associations have had a corresponding increase in issues that come with such a population,” says Gruzca. The main concern stemming from building penetration by those seeking warmth or protection from the elements, or for nefarious actions as well, is security, he says.

Especially in inclement weather, homeless individuals might look for protection, using buildings as a safe harbor. “There have been occasions where the homeless person watches the traffic patterns for the building, and tries to penetrate those patterns, allowing him to get into parking garages or other private spaces,” says Gruzca. “There is the possibility of danger in this situation, which creates fear for residents,” he says.

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That's why it's important for managers who find someone on the property, typically sleeping for the night in a tuck-in cover space, to approach the person carefully, let him know he's on private property, and ask him in an appropriate fashion to pick up any belongings and leave, Grucza explains. In his experience, and that of the managers his company trains, 99 percent of the time, if a homeless individual is asked to move on, he or she will.

But, in the less likely scenario where that doesn't happen, or the homeless person repeatedly comes back to the same building location, managers should know that they can call 911 to ask for neighborhood assistance. In Seattle, for example, law enforcement or a response team will physically remove the person from the property.

As for issues stemming from tent cities nearby, Grucza recommends that managers check what the formal process is for dealing with homeless issues in the area where your property is located. In Seattle, an association must register the complaint through the office of homeless management, which then assigns caseworkers to that particular issue. The caseworker or group will come with police in tow to first talk to the people about moving on and problems that are occurring because of the proximity.

Take Preemptive Steps

"In our industry, there's very little training provided to managers on how to deal with people on an interpersonal level, so there is a resulting challenge in dealing with the homeless problem, which affects the aesthetic, cleanliness, and safety of the association," Grucza says. "Human nature takes us immediately to a reactive mode, where the first thing we do is make it someone else's problem by calling the authorities. But managers need to step back and take the human element into consideration," he says.

Managers should think about the fact that there are reasons that brought the person to the area or building in the first place. A homeless individual didn't just pick this building because it was the first building on the block. So, if possible, use a softer approach when asking him to move on and find out why he came here. The information you get can help you take some practical steps at your community to make the property less appealing as a place for a transient person to spend time.

For instance, in some cases, a homeless person is looking for an outlet to charge a phone or use portable heaters. Managers can close off outlets by locking them down in such a way that only building staff can access them. Another attraction to certain communities is whether residents or staff will offer handouts, food, or other help. So make sure that you advise them to not make transient individuals comfortable there. Grucza instructs managers to send alerts to residents as a safety advisory. Like our [*Model Letter: Keep Community Residents in Loop After Homeless Incident*](#), your letter to residents should emphasize that residents shouldn't engage with homeless individuals at the property and should call 911 if they feel they are in danger, plus provide other helpful information.

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Follow Protocol When Situation Arises

There are steps that community managers should take to ensure their safety and the safety of residents when dealing with a homeless individual at the property. The first step is to do a visual analysis before engaging with a homeless individual in the community, says Grucza. He notes that managers should listen to their instincts. If it seems like making contact isn't safe, ask for assistance from the safety of the manager's office. Facility managers should take these actions, says Grucza:

- Be vigilant when walking the grounds to inspect for potential intruders who may be camped out nearby;
- Determine the location of the person at or near your building;
- Carefully approach that person and advise him of the need to leave, or contact 911 for assistance before approaching if there is suspicious behavior;
- Always be courteous, but be firm in your commands to vacate the area;
- Work with the community manager to develop a building communication advising residents and staff of the situation; and
- Advise residents *not* to engage with or provide anything to the person(s) at or near the building.

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MODEL LETTER

Keep Community Residents in Loop After Homeless Incident

After finding a homeless individual in the community you manage, it's helpful to send a letter to residents assuring them that the association is aware of the problem, has taken care of it, and will continue to monitor the situation. The letter is also a good opportunity to advise residents about how their actions can help and to warn them against residual dangers, like health hazards left behind.

Dear Residents:

We wish to advise you that recently a homeless individual has been found sleeping in the stairwell adjacent to the building entrance. Building staff has been advised of his presence, and we have asked the individual to leave. We are asking that residents not engage with this person, and not provide any food, money, or beverages to him as that will only encourage the person to return.

We must also remind everyone to be careful upon entering and exiting the building so that security and safety are not breached. Building management has reached out to the appropriate officials to get assistance to this person, and if he is found at the property again, police officials will be called.

We are also checking for debris and needle items, so, if you see such items, do not touch them, but report them to the concierge desk so that appropriate arrangements for safe handling and cleanup can be made.

We are carefully monitoring the situation on a daily basis. Thank you for your understanding.

Sincerely,
ABC Community Association Management

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Follow Up After Area Is Clear

Your role as the manager in a situation dealing with a homeless individual doesn't end after the person has left the property, Gruzca stresses. "Debris, waste, needles, and other items left behind by homeless individuals in buildings, in garages, or elsewhere on the grounds can be hazardous to residents and staff," he says. Training managers and staff in the safe handling of hazardous materials is key to avoid infection or other risks.

Additionally, Gruzca trains facility managers to sanitize the area—for example, a stairwell or plaza—that has been used for shelter, getting rid of debris and cleaning surfaces. It's important to let staff know that there are procedures to follow. For instance, staff should have the phone number for a needle task force and should be instructed not to throw needles into building waste. "No association building is equipped for the proper disposal of medical waste, but managers can make sure that the information for appropriate services is available," he says.

For more information about homelessness across the nation and helpful resources, see www.endhomelessness.org and talk with local law enforcement for advice on how to handle homeless individuals in your community. ♦

Insider Source

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Q&A

Making Sound Determination for Use of Private Information

Q The association I manage has compiled a list of owners' private email addresses to send official communications, such as meeting notices or information about developments in the community. Occasionally, I get a request to use this email list for other purposes. Are there rules or guidelines regarding the disclosure of email addresses?

A Yes, managers must be very careful when determining when the use of an owner email list is appropriate. Technological advancements have made it easier than ever for association boards to get messages quickly and effectively to members, and for members to communicate with each other—but this can be a slippery slope. While email and even an association blog or online newsletter could help you as a manager keep your community operating efficiently and remind members that you're actively involved and ready to help, some forms of this communication involve obtaining and using members' personal information.

Making a determination about whether you can use personal information, such as the owner email list, isn't always easy, though. One typical and tricky issue is the use of an owner email list for political purposes. For example, say your association's annual meeting is coming up, and there are several seats up for election. You discover that the president of the association is emailing the owners

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and telling them which candidate he thinks they should vote for, and which ones he's not going to vote for.

Whether this is legal will largely be state specific—that is, the legality will be based on where your community is located. So you should check with your attorney about state-specific issues you should be aware of before taking any action that uses personal information.

For example, the administrative rules under the Florida condominium statute prohibit the election package mailed out by the association to identify incumbent candidates or otherwise attempt to sway the election. The inclusion of such materials can render the election void.

However, the board president, like any other unit owner, has “free speech” rights, including the right to “politic” for the candidates of his or her choice. Despite those rights, the email addresses of unit owners are considered “protected information” under the Florida condominium statute and are not available for access by other unit owners unless the owner whose email address has been given out has signed a consent form.

Therefore, if your owners have allowed their email addresses to be made public, the president acted within his rights; if not, and your state's law is like Florida's, this could be an abuse of information that's been held in trust for an improper purpose. Even if your attorney says that this wouldn't invalidate the election, the board should inform the president that this action was improper and shouldn't happen again.

Remember that, if the board considers the violation egregious enough, the board always has the right to remove a person as the president, with or without cause, at any time. ♦

RECENT COURT RULINGS

➤ Association Improperly Fined Homeowner

FACTS: A homeowner in a planned community was asked by the association to plant grass on a portion of his property to cover exposed soil. The homeowner notified the association by letter that grass wouldn't grow on that area, but that he would plant a flower bed to cover the exposed spot. He didn't receive a response to the letter and didn't formally get permission from the association to install the flower bed, which was required under the declaration of covenants.

Without warning, the association began assessing the homeowner weekly \$100 fines for this violation. The homeowner later applied for and received permission for the flower bed to stay on his property, but the association demanded that the fines assessed prior to the approval be paid.

The homeowner sued the association, seeking a declaration from a trial court that the association didn't have the right to fine him for failing to seek prior approval to establish a flower bed on his property when they later approved it. He asserted that the declaration of covenants didn't authorize fines under the

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Recent Court Rulings

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circumstances. The association asked the trial court for a judgment in its favor without a trial.

The trial court denied the request for a declaratory judgment and ruled in favor of the association. The homeowner appealed.

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

REASONING: The appeals court agreed with the homeowner that the \$100 fines were void as being "contrary to the declaration and, therefore, arbitrary and capricious." The appeals court noted that a declaration of covenants is a contract and must be enforced as such, according to its provisions.

The appeals court pointed out that, in only two out of approximately 27 covenants does the declaration itself provide for any penalty or other action by the association in the event of a violation. Specifically, the covenants for landscape installation and landscape maintenance—under which the homeowner's actions fall in this case—don't mention imposing fines at all. The appeals court concluded that the association failed to establish that the fines imposed against the homeowner were done so in accordance with the terms of the declaration. Thus, the homeowner wasn't required to pay them. ♦

- Abdullah v. Winslow at Eagle's Landing Homeowners Assn., February 2019

RISK MANAGEMENT

Prevent Manager Burnout at Your Community

To keep their community associations running smoothly, managers deal with issues that run the gamut from day-to-day administrative tasks and overseeing other staff members so they fulfill their roles, to working with the board on major issues like finances or capital improvement projects, to name just a few functions. Because the manager's role involves handling so many tasks, there's a big risk for burnout. And frequent turnover of managers doesn't bode well for association boards, residents, and staff. Here's how you can help the managers in your company weather job-related stress that could drive them out of a community association position.

Understand How Fatigue Develops

Not all managers leave their positions as a result of becoming frustrated; many continue their careers but constantly work beyond their comfort levels, either by extending their workdays or taking work home with them. But you might not realize why manager burnout is a serious issue for both management companies and community associations.

First, a state of emotional, mental, and physical exhaustion will prevent an otherwise excellent community manager from performing her job at the necessary high level, leading to mistakes and turnover, both of which may impact members. Second, constantly finding competent replacements and

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training them takes up valuable time and resources. The good news is that there are ways to avoid the two major sources of burnout—technology overload and excessive meetings.

Beware of Overwhelming Technology

One of the major contributors to manager burnout is managing electronic communications. Hundreds of email messages can accumulate in a manager's email inbox. Don't let emails overwhelm your managers. Advise them to set aside a fixed period of time each day to review the emails and let the association board know they'll be responding to emails at a certain time each day. Sorting emails into folders and using them to update a task list is helpful. Managers should also be reasonable about setting deadlines by which they'll complete a task. Emphasize to managers in any training your company does that a manager should be aware of what's on her to-do list and shouldn't set herself up to fail by committing to unreasonable deadlines.

Designating a liaison person is a good idea as well. A manager can require the board to assign one person to contact her with assignments and communications, so she isn't trying to please seven individuals on one board or juggle contradictory instructions. Specifying one director who's designated to communicate with the manager, and who conveys the board's instructions, is invaluable in saving the manager's mental health regarding the job.

Limit Meetings in Several Ways

You can also help reduce manager burnout within your management company by putting mutually acceptable limits on the number of association meetings a manager must attend. A major source of manager burnout is the number of meetings that a manager is required to go to. Many of these meetings occur after typical work hours, and—particularly for managers who are responsible for several associations—the time commitment involved can have a significant impact on a manager's personal life.

Communicating with the board is key in putting a stop to untenable demands. If your current management contract doesn't impose any sort of limits on the number or times of meetings that require the manager's attendance, you should start communicating the problem to the board members and try to shift meetings to earlier times. Take the following steps:

Emphasize productivity. You can frame the problem in terms of productivity. Like the association manager, many board members have been working all day and by the time evening arrives, board members are tired and not at their productive best. Board members may be more inclined to shift meeting times when they're reminded of the tasks that need to be accomplished and the energy required to sit through a two-hour board meeting, especially after a long day at the office.

Test the concept. To ease the transition, until management contract renewal time, test the concept of daytime meetings by conducting one such meeting per

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quarter. You might want to consider a breakfast board meeting that board members will have time to attend on their way to work.

Ideally, an association will have warmed up to the idea of meetings held during the day by the time the management contract renewal comes around. You can point to more efficient and productive meetings and the general well-being of the association manager. To help you implement reasonable restrictions, follow the limits in our *Model Clause: Ensure Realistic Workload for Managers*, which provide solutions to the burnout problem.

Include four limits in your contracts. You should include these limits in your management contracts with associations where your company's managers will be employed.

- 1. Limit number of meetings requiring attendance.** Requiring attendance at four meetings, plus one annual meeting of the entire association membership, per year is reasonable [Clause, par. 1]. Of course, your community might have variables that make required attendance at more meetings reasonable. Larger communities might require more frequent meetings, especially if they offer a lot of high-maintenance amenities such as tennis courts and swimming pools that need more oversight. Also, communities that need significant restoration or rehabilitation tend to require more meetings to check restoration progress or select among various bids.

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MODEL CLAUSE

Ensure Realistic Workload for Managers

You can adapt the following clause for the management contracts used by your management company. Its provisions effectively prevent manager burnout and help you retain good employees by setting limits on the number and duration of meetings a manager must attend. Show this clause to your attorney before adapting it for your own use.

MEETINGS

- 1. Number of Meetings:** The manager or other representative of [insert name of management co.], collectively, the "Manager," shall attend five (5) Board and/or membership meetings per year, which includes the annual meeting of the members.
- 2. Meeting Times:** All meetings that require the Manager's attendance must be held Monday through Thursday and begin no later than 5:30 p.m. The only exception to this is the annual meeting of members, which shall begin no later than 7 p.m.
- 3. Duration of Meetings:** All meetings that require the Manager's attendance shall last no longer than two (2) hours each.
- 4. Hourly Fee for Meetings that Exceed Parameters of This Contract:** The association agrees to pay an additional fee of \$[insert amt.] per hour to [insert name of management co.] should any of the following occur:
 - (a) An additional meeting requiring the Manager's attendance is held in excess of the five (5) meetings provided for herein;
 - (b) A meeting requiring the Manager's attendance begins at any time after 5:30 p.m., other than the annual meeting of members, or is held on a day other than Monday through Thursday, including the annual meeting of members;
 - (c) A meeting requiring the Manager's attendance exceeds two (2) hours in duration, including the annual meeting of members.

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2. **Schedule daytime meetings.** Requiring managers to attend night meetings adds to manager burnout. The better approach is to treat association meetings that the manager must attend as you would treat any other business meetings by requiring them to be scheduled during normal business hours [Clause, par. 2]. However, you shouldn't require annual meetings to be scheduled during regular business hours. Typical members haven't volunteered for the board, and they should be able to participate in their community without having to leave work too early.
3. **Set time limits for meetings.** Each meeting requiring the manager's attendance shouldn't last longer than two hours. Some management contracts limit the total number of meetings as well as the total cumulative hours per year that the manager must spend in meetings, rather than just limiting each meeting to two hours. Although the intentions are good, this solution doesn't reflect the personal needs of the manager. It only complicates the recordkeeping. Rather than forcing the manager to keep track of the total annual meeting hours, the management contract should simply limit the length of each meeting to two hours [Clause, par. 3].
4. **Charge hourly fee for meetings that exceed limits.** It's fair for a management company to receive extra compensation for any meeting that exceeds the contract limits. You can supply the details of the fee in the contract clause. A fee has two benefits. First, it encourages a board to weigh the cost of an additional meeting against its need for it. Second, it allows a manager to earn additional income to compensate for her additional work [Clause, par. 4]. ♦

IN THE NEWS

► **HOA Landscaping Requirements Are Target of Proposed Legislation**

The topic of lawn watering has drawn the attention of Iowa state lawmakers, who are trying to bring HOA landscaping guidelines within water conservation standards there.

The goal of House Bill 1165, introduced by District 34 Rep. Tina Orwall, D-Des Moines, is to require homeowner associations' landscaping guidelines to comport with water conservation guidelines during a drought.

Many association landscaping requirements often exclude fire resistant or low-water plants. The bill would prohibit associations from fining residents for employing low-water landscaping but wouldn't yet require them to meet conservation standards.

Environmentalists have long been concerned about associations in parts of the country affected by chronic wildfires and droughts that fine homeowners for not watering their lawns during those emergency situations. Experts note that water should be conserved in those scenarios.

Meanwhile, another section of the bill addresses the public sector's use of drought-resistant landscaping and wildfire-ignition-resistant landscaping. ♦