

On the Board: Doing Better

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MANY COMMUNITY association board members have a strong desire to make their communities better places to live. For those who are both optimistic and strategic about the changes they can make in their communities, there are a few “must have” items that should be on your radar.

Updating governing documents. An outdated set of documents is akin to having a navigation system in your car that hasn’t been updated in years: You’ll wind up somewhere but often not where you want to go.

In the most highly functioning communities, the governing documents are regularly reviewed and amended to ensure compliance with recent statutory changes and to avoid liability. For example, if your community was, at one time, designated as Housing for Older Persons but prior boards failed to enforce age restrictions, your current board could be subject to a discrimination claim. Rules created years ago that target children in pools, exercise rooms and common areas also can present a red flag to Federal Housing Administration investigators.

In addition to removing “bad” rules, updating your documents allows you to add in some “good” rules you may currently lack, including:

- New tools to collect delinquent amounts owed to the association, including interest and late fees in the highest amounts permitted by law
- Language that will allow your association to incorporate changes to pertinent statutes into your documents
- Clearer language regarding your approval process for sales and leasing

If your documents haven’t been reviewed and updated in the past five to seven years, they are well overdue for an overhaul. You might come up with some excuses to put it off, but don’t say it’s too expensive or too difficult. You can take baby steps by first reducing your amendatory threshold and then tackling the other amendments.

However, associations shouldn’t attempt to amend documents on their own. Countless homespun amendments need to be rewritten by an attorney (and resubmitted to the membership for approval) because the board or manager amended the wrong document, failed to take into account conflicting provisions or failed to follow the statutory requirements for presenting an amendment to members.

Creating timely and visionary rules.

The time to create a rule is before you need it. A growing number of communities have owners and occupants who are embracing the latest technology, and association leaders must be prepared with rules.

If your board hasn't been discussing some of the trends on the horizon and whether your community could benefit from new rules, what are you waiting for?

It's only a matter of time before a resident operates a drone within your community or plugs an electric car into a common area electrical outlet. It also might be time to address wearable technology, such as Google Glass, and renewable energy sources.

Having a reasonable rule in place before the activity occurs is something highly functioning boards do routinely and dysfunctional boards would never even consider.

Creating protocols for electronic communication.

While the stereotype of the stodgy old condominium board member who's out of touch with technology persists to this day, I haven't met a board member or owner in years who doesn't have at least a functioning e-mail address.

Most board members use e-mail as a primary form of communication amongst themselves, with their manager and with residents. What most boards don't have is a comprehensive and reasonable protocol designed to make such communication more effective and less frustrating.

Your board needs to decide who will respond to e-mails sent by residents, what the tone and content of those responses should be and what constitutes a reasonable response timeframe. There also should be a clear identification of matters that require a phone call or items that would be better addressed at a meeting.

Every e-mail policy should clearly prohibit board member voting by e-mail; such votes need to occur at a duly noticed and open meeting in most instances. In Florida, the shared ownership statutes were amended recently to prohibit voting by e-mail but to acknowledge (finally) that communicating via e-mail is acceptable.

It's not unusual for an owner to e-mail all board members a complaint, a request to inspect the documents or an inquiry about parking that requires a substantive response. Naturally, many of these e-mails are far from brief; the request to inspect the documents is hidden in paragraph 11, and the parking question doesn't come until paragraph 19.

In the absence of an e-mail policy, all board members or none could respond to the message, or the resident could receive conflicting responses, making future enforcement efforts on parking more difficult and the possibility of complying with document inspection requests in time less likely.

The wrong response also has the potential to destroy attorney-client privilege, harm an ongoing litigation matter or simply inflame a situation. The right tone or a more nuanced response might be necessary. An e-mail policy is a must-have for every community association board.

Designing a system of checks and balances.

Fraud can take hold in a community when the conditions are ripe. The fraud triangle, as it's often called, consists of financial pressure, opportunity and rationalization. By the time fraud is uncovered, it's usually been occurring for two or more years, and its long-term effects can be devastating.

Board members can safeguard their community's finances and prevent fraud with a system of checks and balances. In fact, not having such a system in place may become a problem for your directors' and officers' and employment practices liability insurance carriers. You don't need to set up an elaborate or costly anti-fraud program, but your board does need to apply some common sense.

At a minimum, you need to have two signatories on checks, and your treasurer or other board officer needs to obtain bank statements directly from the bank instead of through an intermediary. Your board also needs to review all charges on the association credit card as well as the payees on all checks issued by the association each month. Names of payees should be scrutinized; it is far too easy to confuse a legitimate company with a fictitious one.

If your board, and your treasurer in particular, has abdicated these duties to an association employee over the years, it's time to take back the reins.

Whether your board accomplishes one of the foregoing goals or all four, you'll be well on your way to making your community a better place to live.

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