



Ask the HOA Expert

by Richard Thompson

Q **Securing Vacant Homes**
We have a number of vacant homes in our homeowner association. Does the HOA have a responsibility to secure and protect them?

A This is more of an issue in HOAs that have attached or common wall housing like condominiums and townhomes. Most of the damage to vacant units is caused by rodents, freezing pipes that cause flooding, and vandalism. An unheated unit could have pipes freeze which causes flooding to it and neighboring units. This could be disastrous in a high-rise condominium.

Controlling the freezing issue is extremely important in units vacant for long periods of time. While most HOAs have the legal right to have access to vacant units for emergencies, the HOA needs to pre-plan by being aware of specific units which are vacant and know whether they are abandoned or merely temporarily vacant.

If a unit has been abandoned due to foreclosure, the HOA should take proactive measures to ensure that the unit is winterized (pipes, toilets, and hot water heater drained). Beyond that, the HOA is not responsible for damage the unit interior may suffer due to extended vacancy. Abandoned units are usually in some stage of foreclosure, so at some point a lender will take measures to secure and protect their collateral. Until then, the HOA needs to do what is necessary to protect neighboring units.

Q **Updating Old Governing Docs**

Our governing documents are over 20 years old and outdated. What process should we use to bring them up to date?

A You should always use a knowledgeable HOA attorney when amending documents to ensure they comply with proper form and current statutes and get properly recorded. Amendments to the governing documents require an appropriate vote (as defined by the governing documents) of the members which varies sometimes depending on the type of amendment. In other words, some amendments may require a larger or smaller number of “yes” votes. If you plan many or some sweeping changes, break out the individual amendments and vote on them individually.

Q **Conforming to ADA**

Do you have information regarding the Americans with Disability Act and its affect on HOAs?

A In general, HOAs are required to provide “reasonable accommodations” to persons with verified (like a doctor’s letter) disabilities. That means the board needs to allow necessary installations like ramps to a unit or reassign HOA controlled parking spaces to disabled residents for easier access to their unit. The HOA is not required to pay for these installations and can require reasonable quality standards.

That said, if a majority or sizeable number of members have disabilities (like many senior residents who can’t climb stairs), it is certainly permissible to have the HOA pay for and maintain commonly used ramps, handrails, and other installations which many would use.

Q **Foreclosure Special Assessment**

We recently received notice of a \$300 special assessment which is due in 30 days. This special assessment was necessary due to a number of foreclosures that made some past due accounts uncollectible. Why should the other members have to pay for this?

A You are describing a fundamental reality of HOA living: If all members don’t pay their fair share, the rest have to fill the gap. That is why it is so critically important to have an aggressive collection policy that includes filing liens to protect the HOA’s

interests. “Aggressive” means that any amount that is at least 10 days past due should receive a late notice and late fee. Any 30 days past due, should receive a 10 day notice to pay or the matter will be turned over to an attorney for collection. All legal and collection costs should be charged to the delinquent owner. There are other important collection considerations. For a sample collection policy, see www.Regensis.net Policy Samples section.

Q **Committee Selections**

Volunteers are an important part of HOA living. But how does a board deal with owners who are totally negative, derail attempts to reach a consensus, disrupt meetings, and yet want to serve on committees?

A Consensus is not required in an HOA. HOAs are designed to work like a representative democracy. That means that the board is elected and given authority to make decisions. The fact that some members don’t like how the board runs things is no surprise. Welcome to America. The board should respond to their challenges within reason, but not waste time trying to placate them. That can be a full-time job and waste of time considering they are rarely, if ever, satisfied.

The board is under no obligation to appoint anyone that wants to serve to a committee. Committee appointments should make sense and the board typically wants members that will help, not hinder, the board’s

work. For more on this topic, see the Committees section.

The board does not need to tolerate disruptions at meetings. Meetings should be structured so that members have a right to speak during a member forum but not otherwise unless the board president asks for their opinion. If they disrupt a board meeting, they should be asked to leave. If they refuse, the president should adjourn the meeting and refuse to admit them at future board meetings until they promise to behave.

If these folks are going door to door trying to stir discontent, the board should do periodic informational newsletters and flyers to set the record straight. There are some irritating aspects about free speech but truth is truth and lies are lies and fortunately most people can tell the difference. Take heart.

Q Reserve Fund Interest

Our HOA recently established a reserve account which is earning interest income. The board doesn't want the HOA to pay tax on the interest income, so each owner was issued a Form 1099 for a portion of the interest income with instructions to report the interest on their individual returns. The actual interest remains in the reserve account in the HOA's name. Is this proper?

A If the reserve funds belong to the HOA (usually the case), taxes on interest income cannot be passed through to individual members. The HOA is responsible for recognizing and paying the resulting tax.

Rules Enforcement Policy

A rules enforcement policy is needed to ensure compliance with the rules and regulations found in the governing documents and those enacted by the board. This sample resolution can be modified to conform with state and federal statutes and governing documents. Before implementing, it should be reviewed by an attorney specializing in homeowner association law.

Nottacare Condominium

Policy Resolution # ___

Rules Enforcement

WHEREAS Section ___ of the Nottacare Condominium bylaws grants the board of directors with the power to enforce rules found in the governing documents or duly enacted by the board,

LET IT BE RESOLVED THAT the following rules enforcement procedures will be followed:

1. The board of directors (or property manager) is authorized to enforce the rules as outlined in the rules and regulations.
2. Rule violations are to be reported to the board of directors (or property manager) in writing and signed by the complainant. The complaint will be investigated as soon as possible.
3. If the report of violation is accurate, written notice will be sent to the violating member. (If violation is by a renter, notice will be sent to the unit owner.) The first notice of the violation will be regarded as a warning, unless otherwise stipulated in the Nottacare Rules.
4. If the violation continues for more than 10 days or is cured but repeated within 30 days, a Notice of Violation will be issued to the violating member and a fine will be levied against the member as follows until the violation is cured:

Parking \$ ____ /day

Pet \$ ____ /day

Architectural \$ ____ /day

Rules \$ ____ /day

The Violation Fine shall be subject to the Nottacare Collection Policy if unpaid.

Appeal Process. Any member receiving a Rules Violation Notice may submit a written appeal to the board of directors. The member will be given an opportunity for a hearing within 30 days and no enforcement fee will be imposed until after the hearing.

Dated, Signed
President, board of directors

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