COMMUNITY MATTERS

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News and Trends in Community Association Law

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From Conflict to Compromise: Strategies for Settlement in Community Association Disputes

by | **Brittany R. Brock, Esq.**

Community association disputes can escalate quickly. What begins as a disagreement over a missed assessment, covenant violation, or maintenance responsibility can eventually lead to a lawsuit. Once litigation begins it can place added financial and emotional strain on everyone involved. Stress and tension from the litigation process can make it harder to maintain the sense of cooperation and a positive community atmosphere. It is estimated that between 90% to 97% of civil lawsuits end in settlement rather than taking the case to trial. Compromise is the most common way to resolve community association disputes.

Reaching a compromise in dispute resolution means that both sides make mutual concessions to find a fair middle ground. In a legal setting, community associations should work closely with their attorneys to discuss their priorities and goals in each case. Associations are not required to agree to a settle for less than they are owed; however, it is often beneficial to understand the strengths and weaknesses of each party's position so that an informed decision can be made about the direction of the litigation. The more knowledge the association has about a particular matter, the better positioned it will be to determine what a satisfactory resolution would be for a case.

Filing a lawsuit does not preclude associations and owners from settling their disputes. In fact, settlement negotiations primarily occur during the litigation process. Once litigation has begun, the opposing parties often decide to work together toward a reasonable resolution. Regardless of how settlement discussions come about, there are steps that associations can take to lessen their exposure, control costs, and resolve disputes before trial.

1. Know your litigation goals and strategy.

Associations should work with their attorneys to identify their priorities in each legal dispute. Open communication will help the attorney to formulate a strong legal strategy to support the association's goals. Whether the association's goal is to collect delinquent assessments or resolve covenant violations, or both, there should be a clear objective in mind.

The Association's Board should be able to articulate what would be considered an ideal resolution, while also considering what outcomes may be acceptable as the case progresses. Open and honest communication between the Board, its attorney, and community manager about expectations is essential to developing an effective strategy.

2. Identify and relay information early.

Settlement negotiations often begin after each side has participated in discovery. Discovery is the legal process by which each side in litigation produces evidence, documents, or other information that is relevant to the dispute. Once the parties have had a chance to review the evidence, they are in a better position to evaluate strengths and weaknesses of their respective cases. This evaluation can significantly affect how willing each party is to consider settlement.

3. Be aware of costs and benefits of each potential outcome in the negotiation process.

It is crucial for the Board and the association's attorneys to discuss their case and the association's position so that they can make informed decisions throughout the negotiation process. Not all disputes are alike, and even small variations in facts and evidence can affect the potential outcome of a case. The Board should therefore consider not only what it hopes to achieve, but also the potential costs, risks, and benefits associated with each possible outcome.

Working with an experienced and knowledgeable community association attorney can provide valuable insight during the dispute resolution process. Together, the association's attorney and community association manager can help the Board evaluate its options and determine which negotiated resolution is in the association's best interests.

If this dispute resolution process is ultimately unsuccessful, and negotiations breakdown, the Association can proceed with its case and allow a judge or jury to determine the outcome. Attempting to resolve a dispute before trial can provide significant benefits. Settlement may reduce legal expenses, limit the uncertainty associated with trial, preserve relationships within the community, and allow the Association to have greater control over the final outcome.

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Break It Up: Association Involvement in Member Conflict

by | **Elizabeth Modzeleski, Esq.**

An association's board of directors is responsible for administering and upholding the association's governing documents, and this responsibility often includes enforcing rules and regulations regarding the use of property in the association and the conduct of association members. It is not uncommon for a member of an association to report a violation occurring in the community or occasioned by another member of the association to the association's board of directors for review and potential enforcement action. Sometimes, however, a member will seek the association's involvement in a member-to-member conflict, alleging violations of the association's governing documents and demanding certain actions be taken by the association. What should the association do? Should it involve itself and take enforcement action in relation to the member complaint?

When a member of an association requests or demands the association's involvement in a conflict involving another member, the association must first evaluate whether there exists a violation of the association's governing documents. To answer this question, the association must determine: (a) whether the governing documents prohibit the complained of activity or condition, and (b) whether evidence exists to prove the occurrence of a violation.

If the complained of activity or condition does not violate the association's governing documents or if there is no objective evidence establishing the occurrence of a violation, then the association's review ends there. It is not the responsibility of an association to mediate neighbor-to-neighbor disputes, and unless there is a violation of the governing documents occurring, the association should not involve itself in these situations. Often, the best thing for the association to do is respond to the complaining member, informing them that the association does not involve itself in neighbor-to-neighbor conflicts and that the member may take independent action to resolve the issue.

If the complained of activity or condition violates the association's governing documents, the association must decide whether it will pursue enforcement action against the violator. The association's board of directors is charged with enforcing the governing documents equally against all members of the association, and it should handle violations of the same kind in the same manner. If the association generally does not enforce a certain restriction, it should not choose to enforce that restriction against only a single member based on the complaint of another member. Similarly, if the association generally does enforce the violated restriction, it should enforce this restriction in the same manner it would for the same violation by any other member. Keep in mind that just because a member reports a violation does not mean the association must take action if doing so would result in selective enforcement of the governing documents or is not in the best interest of the association.

Additionally, there may be situations where it is not safe for the association to involve itself in a certain matter. For example, if a member reports that another member is engaging in threatening and harassing conduct, the matter is likely better handled by law enforcement. Even if the behavior does violate the association's governing documents, it is not advisable for the association to insert itself into a situation that may put the members serving on the board of directors in danger or at risk of harassment. As the victim of this behavior, the complaining member would be the proper party to report the matter to law enforcement.

At the end of the day, it is the job of the board of directors to uphold the association's governing documents and enforce the association's rules and restrictions equally against all members. When a member reports a violation of the governing documents, the board of directors must evaluate the report to determine whether a violation is occurring and whether it will pursue enforcement action against the violator. When a violation is reported in connection with a neighbor-to-neighbor dispute, it is important that the association only involve itself to the extent that it would for any other similar violation.

A community association is not a mediator for neighbor-to-neighbor disputes, and enforcement action by an association in relation to such disputes should only be taken when there is evidence of a violation and enforcement action by the association would not result in selective enforcement or create a danger for the members serving on the association's board of directors.

Do Not Accelerate, Do Not Pass Go:
How To Keep Collecting

by | **Stephen A. Finamore, Esq.**

While the core obligation of homeowners to pay assessments when due remains intact, some of the enforcement mechanisms for ensuring timely payment will be limited by the Georgia Property Owners' Bill of Rights Act, effective January 1, 2027 ("OBR"). One such limitation is the outright prohibition of acceleration assessments.

Most covenants that require payment of assessments by owners contain a provision that allows the association to demand payment of the entire year's assessment when an owner misses any installment due. For example, assume that an association has an annual assessment of $2,400 but that owners are permitted to pay a monthly assessment of $200 on the first day of each month. Assume that an owner fails to pay the January assessment of $200. Most acceleration provisions allow the association to make the entire $2,400 assessment immediately due after notice (usually 10- to 15-day notice).

Acceleration is useful in several ways. First, if an owner can lose the privilege of paying in smaller monthly installments by failing to pay an assessment installment on time, the owner has a powerful incentive to keep current on installment payments. Second, in the context of collection litigation, accelerating the assessments for the year allows the portion of the claim requesting an award of assessments due to be "fixed" for the year in which the award is requested. For example, assume that a motion for judgment is filed in February, including accelerated assessments of $2,400 for 2026. If the Court enters a judgment in September, the principal assessments being sought will not have changed, and the award would include the entire assessment owed for the year. By contrast, without acceleration, the association will

only be permitted to seek assessments through February of 2026 in its motion for judgment. If the Court enters judgment in September, assessments from March through September will not be included in the judgment. Finally, continuing with the example, if the judgment that only includes assessments through February of 2026 is collected in full through garnishment in December of 2026, the collected amount is short by the assessment installments due from March to December of 2026 (using the example numbers, $2,000).

Most covenants provide the board of directors, in its discretion, may make an annual assessment due in installments such as semi-annually, quarterly, or monthly. This means that associations that currently break the annual assessment into installment payments are authorized to simply make the entire assessment due on the first of the year. Doing so will obviate the need to accelerate if an owner falls behind because the entire assessment is already due. Of course, many homeowners may not be able to meet this obligation in one installment. In such circumstances, the board of directors would be free to enter into payment plan agreements with the owner for the balance due.

It is important to consider the prohibition of acceleration when planning next year's budget. Consult your attorney to come up with the strategy that makes the most sense given the circumstances of your community.

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