COMMUNITY MATTERS

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Association Books, Records and Documents that Members are Entitled to Review

by | John T. Lueder, Esq.

Directors and managers often run into a situation where a member of the community wants to review all of the association's books, records, and documents. What must the association legally provide? The answer: It depends.

We usually begin with a review of the bylaws. The bylaws for most associations provide that members may review documents to the extent permitted by the Georgia Nonprofit Corporation Code (or "Code"). Section 14-3-1602 of the Code states that a member may inspect and copy the following:

(1) the articles of incorporation and all amendments to the articles;
(2) the bylaws and all amendments to the bylaws;
(3) resolutions adopted by the association's membership or board to change the number of directors;
(4) resolutions adopted by the association's membership or its board that relate to the characteristics, qualifications, rights, limitations, and obligations of the members;
(5) the minutes of membership meetings (such as the annual meeting and special meetings of the members) and any executed consents evidencing all actions taken or approved by the members without a meeting for the past three (3) years;
(6) all communications to members within the past three (3) years;
(7) a list of the names and business or home addresses of the current directors and officers;
(8) the association's most recent annual registration delivered to the Georgia Secretary of State;
(9) excerpts of the minutes of board meetings and committee meetings;
(10) the association's accounting records; and
(11) the association's membership list.

In regard to the documents listed above in categories (9), (10), and (11), the Code states that a member may review them if the member has satisfied the following four conditions:

(i) the member's request is made in good faith and for a proper purpose reasonably related to the member's legitimate interest as a member;
(ii) the member describes with reasonable particularity such purpose and the records the member desires to inspect;
(iii) the records are directly connected with that purpose; and
(iv) that records are only used for the purpose.

This means that while many boards may decide to publish the minutes from board meetings as a matter of routine, that is not required under the Nonprofit Corporation Code. Instead, a member only has a right to review excerpts of the board meeting minutes if the member first satisfies the four conditions above.

Also, while members may review accounting records if they satisfy the four conditions above, the Nonprofit Corporation Code does not define accounting records. Our firm's position is that accounting records include balance sheets, general ledgers, and income statements. Our position is that underlying contracts and invoices are not accounting records and are not required to be provided. In addition, while members are entitled to copy the documents they are entitled to inspect, the members can be charged reasonable copying costs.

There are times when a member will ask for each and every point of contact of members, including names, addresses, and email addresses. They may say they want the "membership list" that the association maintains, and they are aware that the association sends out regular email blasts and newsletters to the community. However, the Code does not require email addresses as part of the membership list. According to the Code, the membership list consists of the record owner's name, the address of record (either the property address or an alternate address the owner designates), and the number of votes each member is entitled to cast at a meeting (e.g., 1 vote per Lot). So, if a member is demanding the association's email addresses for all members, there is no requirement in the Code to provide that.

As stated above, most bylaws allow members to inspect documents to the extent permitted by the Code. If the bylaws are silent as to what a member is able to review, then the Code applies by default. Also, if the bylaws provide that members are entitled to review everything, then a member has a legal right to review all documents, not just those discussed above. Nonetheless, in that event, we would advise that any emails or communications with counsel not be included.

Our experience is that some boards allow members to review more documents than the members are legally entitled to review. Is that a good idea? On one hand, if the board is seeking to be transparent, allowing members to review most everything does accomplish that goal. On the other hand, we have seen many members over the years review documents as a fishing expedition in order to complain to the boards. As a practical matter, a board might want to only provide documents that it is required to provide. If you have questions regarding which documents members should review, your association attorney can assist the board.

Fair Housing Act Violations and How To Avoid Them

by | **Elina V. Brim, Esq.**

A community association fulfills many functions that benefits its members. One such function is covenant enforcement, which enhances property values. However, enforcement actions trigger a range of responses from homeowners, from avoidance of the association's covenant violation notices to aggression towards board members. On occasion, there is a threat of litigation or a threat of a discrimination complaint. This article will provide some examples of claims and general guidelines for dealing with covenant enforcement while minimizing the risks of a successful discrimination complaint.

The federal Fair Housing Act (a federal law applied across the country) and the Georgia Fair Housing Act prohibit discrimination by direct providers of housing whose discriminatory practices make housing unavailable to persons because of race, color, religion, sex, national origin, familial status, or disability. These statutes have been interpreted to apply to community associations, as well.

Covenant enforcement typically starts with a violation letter. Some owners may respond by alleging discrimination. Filing a discrimination complaint is fairly easy. Once filed, the local Department of Housing and Urban Development ("HUD") office normally appoints an investigator to investigate allegations of discrimination. Although HUD regulations provide for a 100-day investigation period and issuance of a decision, such investigations and decisions take much longer due to the sheer volume of complaints. During the investigation process, the investigator interviews the complainant and the association's board of directors and/or manager. The investigator also requests documents to determine the processes used by the association in covenant enforcement matters. After the conclusion of the investigation, a finding of "cause" or "no cause" is issued with respect to the complaint.

A finding of "cause" or "reasonable cause" means there is cause to believe that discrimination occurred. HUD will charge the respondent (in our situation, the association) for violating fair housing laws. HUD sends a letter to all parties, and the case will be heard by an Administrative Law Judge, unless the respondent elects to have the case heard in the federal District Court. In other words, further legal action will ensue when cause is found.

A finding of "no cause" means there is no cause to believe that discrimination occurred, and HUD will close its case.

With the right approach, community associations and boards can successfully defend against discrimination claims. Most discrimination claims are based on a disparate treatment theory, such as applying rules and procedures non-uniformly. Therefore, associations should take actions to ensure that their enforcement process is consistent, routine, and applied uniformly. For instance, if the process calls for two notices prior to the imposition of fines, this process should be followed with respect to each enforcement matter. If the Board has a process for waiving fines, that waiver of fines procedure must be enforced uniformly. For example, many boards waive all or a portion of the fines if the violation is abated. If that is the Board's approach, that should be applied uniformly.

Another commonly seen discrimination claim is one based on disability. The law requires associations to provide a reasonable accommodation for disabled members to allow those members to have equal use and enjoyment of the facilities. This can include, but is not limited to, providing access to a closer parking space, allowing modifications to the lot to remove mobility impediments, or allowing members to keep a service animal that is otherwise prohibited by the covenants. A disability does not have to be apparent. A member must make a request for accommodation before the association's obligation to accommodate is triggered, but the request for accommodation does not have to be in writing. In the context of covenant violations, a request for a reasonable accommodation typically comes after the owner or occupant receives a violation letter. For example, a homeowner may park his or her vehicle in the guest parking space that is closest to the building because of a disability. This may spark a covenant violation letter, initially, and in response, the owner may advise the board that he or she has a disability that requires a closer parking space. In this scenario, the Board should engage in an interactive process with the owner to ensure that the requested accommodation would reasonably accommodate the owner's or occupant's disability.

Discrimination claims can take a lot of time and money. They are also stressful life events for the board members or officers who have to defend against them. When a discrimination case is dismissed, it is important for the parties to put the matter behind them. Board members should not take any actions that can be interpreted as retaliatory. In fact, the Fair Housing Act specifically states that adverse actions against the complaining party could give rise to a retaliation claim. A valid retaliation claim can be brought even if the initial discrimination complaint is dismissed as invalid. Therefore, it is in the best interests of everyone involved to avoid further escalation of conflict between the parties.

Facts giving rise to discrimination claims can vary greatly. It is always recommended that you consult your community association attorney about such claims if and when they materialize. That will ensure that your board takes the right steps to protect your community, its board members and officers, as well as its agents.

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