



COMMUNITY MATTERS

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News and Trends in Community Association Law

Articles:

- **What is Heating Up in Your Neighborhood?**
Nuisances and What to Do About Them
- **Hi, I'm On the Board! ...But What Do I Do?**



What is Heating Up in Your Neighborhood? Nuisances and What to Do About Them

by | **David C. Boy, IV, Esq.**

What do incessantly vocal dogs barking, cigarette or marijuana smoke, loud vehicles, blaring speakers, noisy parties, and smelly food have in common? All are examples

of common “nuisances” reported to associations’ boards of directors. Although neighbors are certainly annoyed, do these behaviors constitute a “legal” nuisance? And, if so, what can an association do to stop them?

Under Georgia law, “a nuisance is anything that causes hurt, inconvenience, or damage to another and the fact that the act done may otherwise be lawful shall not keep it from being a nuisance. The inconvenience complained of shall not be fanciful, or such as would affect only one of fastidious taste, but it shall be such as would affect an ordinary, reasonable man.” What distinguishes a nuisance from a simple inconvenience is the substantial and unreasonable interference it causes to a property owner. This question may ultimately need to be answered by a judge or jury.

In addition to whether the conduct constitutes a nuisance under Georgia law, associations need to determine whether enforcement action can be taken under their governing documents. Most governing documents contain a general nuisance provision restricting noxious or offensive activity or any activity which may be or may become an annoyance or nuisance. In 1999, in the case of *Douglas v. Wages*, the Georgia Supreme Court ruled that the following nuisance provision within covenants was too vague, indefinite and uncertain for enforcement: “[n]o noxious or offensive activity shall be erected, maintained or conducted upon any lot or any party thereof, nor shall anything be done thereon which may be or may become an annoyance or nuisance in the neighborhood.” The Court’s rationale was that owners and

occupants would not know in advance what specific actions would constitute a nuisance and thus constitute a violation of their governing documents.

Following *Douglas v. Wages*, associations have sought to create enforceable nuisance provisions by including restrictions on specific conduct and activities such as excessive screaming, shouting, loud music that can be heard in the normal course of activities within another unit or lot, smoking or odors which can be smelled from another unit or lot, loudly barking dogs, harassing board members or association staff, or unreasonably loud vehicles. There are many other examples that can be included in the governing documents to address and restrict specific activity. The key to being legally enforceable is that the restriction must be reasonably spelled out and specific and not vague and left to whimsical interpretation.

In 2021, the Georgia Court of Appeals revisited the issue of nuisance provisions within restrictive covenants in the case of *McBrayer v. Governors Ridge Office Park Association*. The association in this case alleged that invitees of the owner’s medical clinic were “loitering, littering and bodily voiding” in the office complex, which constituted a nuisance both under Georgia the covenants’ nuisance provision.

First, the Court in *McBrayer* looked at whether the alleged conduct constituted a nuisance under Georgia law. The evidence showed that the “loitering” at issue, only involved companions of the medical clinic’s patients who waited in their cars while

patients received treatment. The Court held that this did not meet the definition of the crime of loitering under Georgia law, and thus did not constitute a nuisance. However, to the extent that invitees to the clinic were “littering, urinating, or defecating in common areas,” the Court found that such conduct could form the basis for nuisance liability if properly supported.

Next, the Court in *McBrayer* reviewed whether this conduct constituted a violation of the covenants. With regard to loitering, because the conduct did not meet the definition of the crime of loitering, the Court found that it did not fit within the definition of nuisance under the covenants. As to littering and bodily voiding, however, because the covenants specifically identified those as prohibited conduct, such conduct would constitute a violation if properly supported by evidence.

There are at least two takeaways for associations from *McBrayer*. First, a violation of a law or ordinance by an owner may constitute a nuisance under Georgia nuisance law and under a nuisance provision within covenants. Even though certain conduct may not be specifically restricted within governing documents, it may violate a local ordinance or state law and, thus, constitute a nuisance. Second, it is still important to include prohibitions of specific conduct within governing documents. This can be done through an amendment to a declaration of covenants or potentially through the adoption of rules and regulations by the board.

Do you have a nuisance heating up in your community? Contact our firm, so we can help. ❖

Hi, I'm On the Board! ...But What Do I Do?

by **Haley H. Bourret, Esq.**



Congratulations! You have been elected to serve on the board of directors of your community association! If you have never served on a board before, or if you are not

familiar with the administration of community association business, you may be asking yourself what to do next. Consider these steps when you are first starting out as a director:

Contact your fellow directors and schedule an organizational meeting. Keep in mind that some governing documents require this meeting to occur within a specific number of days following the annual meeting at which your election occurred. The organizational meeting serves as an opportunity for current and new directors to get to know one another and for you to discuss what skills and ideas you can contribute and bring to the board. It is also recommended that you appoint the officers of the association (i.e., President, Vice President, Secretary, and Treasurer), if applicable under the governing documents and to schedule regular meetings of the board for the remainder of the year. This is also a great time to discuss the board's big-picture goals for the year and to establish expectations for responsiveness and communication to members of the association.

Familiarize yourself with the community and your association's governing documents. To do so, you may ask: Is your community subject to the Georgia Condominium Act or the Georgia Property Owners' Association Act? Do you have copies of all relevant governing documents, and are you generally familiar with them? What current challenges is your community facing, and how might you be able to address those while serving on the board?

What resources (i.e., legal counsel, community managers, insurance agents, etc.) could you use to address those challenges?

Understand your roles and responsibilities as a director. What are your rights as a director, and do you have any specific responsibilities as an officer? For example, if you have also been appointed to serve as the Secretary, what are your responsibilities with respect to community meetings, retention of records, and communications to the members?

Review the fiduciary duties that directors, officers, and committee members owe to the association: the duty of care and the duty of loyalty. Consider having the association's legal counsel review these duties with everyone serving as a director, officer, or committee member.

Review the association's financials, including the annual budget, current balance sheets, upcoming expenditures, delinquency reports, and the association's reserve account. Is the budget adequate to meet the community's operating costs? Is there an updated reserve study to assist in funding the reserve account? You may consider meeting with your community's property management agent, if any, when reviewing the financials.

Consider scheduling a meeting with the association's legal counsel. You may use this as an opportunity to discuss current delinquencies or ongoing covenant violations occurring in the community. Alternatively, you may request that counsel

provide a training seminar to refresh everyone on the roles and responsibilities of officers, directors, and committee members. For clients under our firm's standard or modified retainer agreements, an attorney will meet with the board of directors at the location of the board's choice without charging attorney's fees on a once per year basis during business hours Monday through Friday or evening hours Monday through Thursday, including via Zoom or similar online platform if that is your preference for the meeting. The board meeting may address any legal matter or may be used as a customized training seminar.

The steps above are, of course, general recommendations and not an all-inclusive checklist. Depending on the needs of your community, you may need to shift your focus to more urgent issues initially, such as pending litigation or a water leak, before you can address more long-term concerns. Balancing the urgent with the everyday can be challenging, but having a solid understanding of your community's needs, the governing documents, and your responsibilities as a director or officer will serve as an excellent foundation. Please reach out to your association's legal counsel should you have questions about any of the recommendations above. ❖



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