

CAI Northern Ohio Chapter Quarterly Newsletter

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MESSAGE FROM THE PRESIDENT

Happy New Year! I hope everyone made it through 2021 healthy and had an enjoyable holiday season. And here's to an easy and breezy start to 2022.

The article Top 7 Manager Does and Don'ts provides a list of recommendations for managers to review prior to making decisions on behalf of a community.

A Civil Action outlines the importance of having a Civility Code in each community. The Code might help alleviate some of the negative interactions with owners and other board members.

Let's keep our fingers crossed that 2022 will be a smoother and less stressful year.

Lisa Frisch, President
Northern Ohio Chapter
Community Associations Institute

Top 7 Manager Dos and Don'ts

By Robyn Severs, Esq

Reprinted from *Florida Community Association Journal*, February 2022

Managers are faced with many decisions while operating and managing community associations. To be effective, it is important to prioritize which issues must be addressed and in what order, and to be able to determine which matters need to be referred to legal counsel for further direction. Below is a list of “dos and don'ts” that will aid managers in making such decisions.

1. Proxies

DO open and tally proxies as they come in so there is a running tally on the association's roster as the meeting opens and others sign in.

DO NOT wait until the membership meeting is called to order to open proxies.

2. Violations

DO address every violation uniformly and send a letter to the violator; the letter should be addressed to the owner.

DO NOT address violations by speaking with the violator while on property. **DO NOT** send violation notices via email or place notices on or under doors. The association needs a written record that the violator was provided notice of the violation and an opportunity to cure.

3. Amendments

DO have the association attorney draft and prepare all amendments to the governing documents.

DO NOT have directors or managers draft amendments to governing documents. While it may be helpful to the attorney for the director or manager to give some thoughts on proposed language, the actual drafting should be done by an attorney.

4. Reasonable Accommodation Requests

DO send all requests for the association to make a reasonable accommodation that are received from a disabled resident or guest to the association attorney for review.

DO NOT have managers decide whether a request for a reasonable accommodation from a disabled resident or guest is adequate. The Federal and Ohio Fair Housing Act has specific guidance on what can be asked/done and what cannot, and the association could face severe consequences if it is not done correctly

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5. **Fining**

DO have the association adopt a formal, written policy for the issuance of enforcement assessments and hearings before the fining committee.

DO NOT issue enforcement assessments and/or conduct fining hearings without formally adopted policies that were prepared without the association's attorney.

6. **Board Policies**

DO have the association establish written policies concerning access to official records and response to written inquiries.

DO NOT attempt to enforce any restrictions regarding access to official records or response to written inquiries without formal written policies prepared by the association attorney and approved by the board.

7. **Contracts**

DO have the association attorney review contracts for non-business/legal terms.

DO NOT have the manager or board review contracts.



Do's



Don'ts

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A Civil Action

By Steve Bates

Reprinted from *Common Ground*, January/February 2019

Pity the security officers at The Hills, a gated community with about 2,500 residents west of Austin, Texas. They man two of the four gates to the community and are responsible for ensuring that drivers are cleared to enter. At the two unmanned gates, residents with association-issued RFID tags can cruise through the checkpoints.

Backups are inevitable at the two manned entrances as guards process visitors. And so, unfortunately, are tempers. Guards are cursed at and threatened. One property owner tried to run down a guard with his vehicle, according to General Manager Angela Thielmans, CMCA. A visitor tried to punch another guard. Both offenders were arrested. Not surprisingly, guards started seeking greener pastures.

“We were losing so many security guards who thought, ‘You know, you don’t pay me enough to put up with this. I’m out of here,’” says Thielmans.

In July 2015, The Hills board approved a civility policy requiring that owners and guests treat the guards and other association representatives respectfully. The RFID tags of violators are deactivated for 30 days, during which time they can use only the manned checkpoints, with potentially longer waits. Repeated violations can result in indefinite tag suspensions.

The civility policy has worked like a charm.

The policy notes that “the overwhelming majority of Hills residents are courteous to the security guards,” but it warns that abusive behavior won’t be tolerated. It defines prohibited actions as:

- Failure to treat association representatives in a courteous and respectful manner
- Foul or profane language
- Threats to physical well-being
- Threats of loss of employment

“It’s amazing how the policy curbs this type of behavior,” says Thielmans. Offenders are sent an email notifying them that their RFID tags have been deactivated, along with a copy of the civility policy. More than a dozen tags have been turned off since the policy was adopted in 2015.

“The majority of people that we cut off don’t even reply, because they know they did wrong,” says Thielmans. “A lot of them will say, ‘You act like I’m a child.’ And I say, ‘Well, when you act like one, you’re going to be treated like one.’”

‘Somebody Else’s Problem’

Most community associations haven’t had to deal with problems as severe as The Hills, but many are experiencing disruptions at board meetings, profane and threatening emails, and other behavior that most people would consider inappropriate.

Is strife becoming more common in American society? Public opinion polls show that most people believe that it is. Yet at the same time, most poll respondents say that it’s other people who are causing the friction – not them.

People believe that “incivility is the problem, but it’s somebody else’s problem,” says Daniel Buccino, director of The Johns Hopkins Civility Initiative at Johns Hopkins University in Baltimore, Md. “All the data suggests that people have been concerned about this for a very long time.”

Buccino says things are bad, but they have been worse. “At least people are not dueling each other and punching each other in Congress the way they did in the days before the Civil War.”

He notes that people make sacrifices for the sake of coexistence. It’s an unwritten social contract, in which individuals implicitly agree to practice self-restraint and show respect for others.

A bruising 2018 election season and television reports of leaders condoning violence against enemies have not helped. Says Buccino: “What we may be seeing is a questioning of exactly what we expect from leaders.” That’s as true for community association leaders as it is for elected officials and others in government.

“There persists this dynamic – particularly in community and volunteer associations – of ‘You’re not the boss of me.’ There’s a lot less volunteerism. There’s a lot less engagement in community activities.”

Civility codes make sense for associations, he states. “It’s not unreasonable to try to be clear upfront about what a community’s expectations are.”

Adds Buccino: “These efforts to operationalize some sort of civility codes in communities are a way to bring some coherence and clarity to difficult issues. Getting along and living with other people is not easy. We’ve been struggling with it for 2,000 years.”

A Red Flag or A Step in the Right Direction?

It’s not clear how many associations have adopted civility codes, though, in an informal survey, 26 percent of Common Ground readers reported that their community has adopted a code. Some have adopted the code within the past year.

A few association experts say the trend is troubling.



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“It’s a shame that so many communities find the need to adopt codes to require homeowners to act maturely,” says Lindsay Smith, an attorney at Winzenburg, Leff, Purvis, and Payne in Littleton, Colo. “A homeowner with association experience may see a civility code as a red flag that the community is not civil.”

Other experienced association professionals believe civility codes are a step in the right direction for communities experiencing behavioral problems.

Mark Wade, CMCA, AMS, LSM, PCAM, the general manager of Sun City Oro Valley, a large-scale community north of Tucson, Ariz., is one of them.

“We, as community managers and community leaders, need to be forward thinking,” he says. “If (communities) are having problems, they should get that policy in place so they can protect themselves.”

Sun City Oro Valley adopted a civility code that imposes fines of \$100 for a first offense and \$200 for a subsequent one. The association has had to enforce it only on rare occasions. Wade says he encountered inappropriate behavior more frequently in a previous association management job.

In Colorado, all community associations are required to adopt polices governing the conduct of meetings. The polices typically demand that owners and board members act civilly. They stipulate that all persons must respect the decisions of the meeting chair, says Smith.

Often, owners with grievances have let them simmer for a long time before they attend a meeting. When they do address the board and staff, it can get ugly.

This is where association leaders must walk a fine line. They should allow owners to speak, yet they must maintain proper decorum. When unhappy owners speak out of turn, shout, curse or go past their allotted time, the meeting chair has to try to enforce rules without appearing to squelch the speaker’s rights.

“This requires infinite patience and a strong backbone,” observes Smith.

The need for civility extends beyond meetings. “Some communities find that additional policies establishing requirements for board or homeowner civility are appropriate. For example, a policy that governs meeting conduct won’t stop a homeowner from emailing rude messages to a manager,” says Smith.

Focus on the Effects

Tobey Oxholm lives in Lakeview Estates in Gouldsboro, Pa., a small community with no on-site homeowners association staff; a community manager comes by periodically. The association has no civility code. But there are arguments, and some get out of hand.

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“We have had people come to meetings and say, ‘You’re an S.O.B. You’re this, you’re that,’” says Oxholm, who is assistant secretary of the association. “We’ve had owners who have been really angry at things and have come to meetings angry and expressed their anger. And we’ve had individuals who have been really ticked off at the community manager and have been abusive, both in person and in emails.

When a resident is really tough to deal with, the community’s first answer is to “suck it up and get through it,” says Oxholm. Things change when the resident begins to interfere with association business. At that point, a board member will have a face-to-face meeting with the individual to explain how the behavior is being interpreted, the hurt it’s causing, or the tension it’s creating.

“We’ve tried to stay away from saying, ‘You’re bad; you’re abusive,’ and focus more on the effects of it in the hope that the person is not aware of them. That doesn’t mean that they’re going to change their behavior; they may love the fact that they’re causing somebody pain. But at least we want to make them aware of the effects of how they’re communicating their message and explain that it might not be helpful to them in getting their message heard and responded to,” says Oxholm.

In his day job, Oxholm runs an alternative dispute resolution (ADR) practice, Just Resolutions. He believes that the principles of ADR can be applied to disputes between residents and association officials.

“In ADR, what you’re trying to do is get people to think about their shared interests rather than their rights. So, you can have rights, but it’s likely that the other people have rights too,” he says.

Focusing on the outcome that a complainer seeks can help. “When you’re talking about how you would like things to be, people can get much further down the road of agreement.”

‘Reasonable’ Codes

Andrea J. Boyack, a law professor at Washburn University School of Law in Topeka, Kansas, says that associations should have legal counsel review their civility policies before they are adopted to ensure that they do not infringe upon homeowners’ rights.

Generally, courts allow policies and regulations such as civility codes as long as they are “reasonable.” But what’s reasonable to one person might not be to another. Battles over flags and yard signs make this painfully evident.

“Where associations sometimes get into trouble is not in the actual regulations and restrictions, but in the way they are enforced,” says Boyack. “You don’t want to get so overly specific that you paint the association into a corner. And you can’t have some homeowners treated worse than others.”

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She says it would be highly problematic for an association to get involved in a dispute between homeowners based on a civility code. An owner might come to the board and say: “Hey, my neighbor is being uncivil to me; you better write them up,” she says. That puts the association “right into the middle of this dispute, and suddenly they have to be the judge and jury.”

There could be real trouble if the wording or enforcement of an association’s civility code infringes upon constitutionally protected free speech. “Do they keep people from truly having a voice?” says Boyack. “I’m worried about the vagueness” of the codes.

Board members and staff must be consistent and diligent with enforcing civility codes, advises Smith, the Colorado attorney. “The policy should specify methods of escalation,” the steps to be taken if a property owner is uncivil at a meeting.

“The first step would be for the chair to instruct the individual to come to order,” she says. “If the individual refuses, the chair may call for a recess or adjourn the meeting until the individual can bring himself or herself under control.

“This also gives the chair or some other person who may be in a position of authority – a board member, attorney, or manager – time to talk to the individual and explain how disruptive the behavior is and request that it stop. If this remains impossible, the chair may adjourn the meeting to another time and date or seek the presence of law enforcement to encourage civility.”

Set an Example

Above all, board members and staff need to set an example of firm, quiet, and fair leadership.

“Boards and managers need to treat others with the respect they demand for themselves,” says Smith. “When homeowners see the secretary interrupt and talk back to the president, the homeowners feel they are able to act with incivility.”

Take a deep breath when tempers flare, she advises. “Be respectful, even when you’re being abused. Be the better person. Recognize that the homeowner may have other problems that are coming out at the meeting.”

Before barring the person from speaking, she says, ask yourself: “Is that a violation (of the policy), or do we just not like the person?”

At the same time, when a property owner keeps interrupting, “Don’t let them intimidate you. Once you lose control of a difficult owner, you lose the meeting.”

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Thielemans says that many owners at The Hills are still unaware of the association's civility policy, even though it's on the association's website and has been discussed at meetings. "When they do find out, they're like, 'Really? You actually need to use that?'" she says.

Homeowners remain vocal at The Hills, but the board and staff have learned tricks that help tamp down tensions. For example, when a resident denies they were abusive to a security guard at a checkpoint, Thielemans will remind the person that activity at the gates is captured by video camera. "Then they change their tune," she says. "If you live in a deed-restricted community, you have to play by the rules."

A Code to Live By

Civility Codes should be tailored to each community, based on its makeup and needs. They should spell out behaviors and actions that the board finds unacceptable. Some civility codes address only the behavior of the association board and staff. Others cover property owners and their guests as well. They should restrict not only in-person interactions but also digital ones, such as emails.

A typical code will include language such as:

- This code has been created to spell out the responsibilities of community association board members, association staff, property owners, and their guests. The board wishes to protect the community, its reputation, and the interactions of association representatives and owners.

- This code supplements the rules for the conduct of board meetings, which lay out the procedures for owners who wish to address the board.

- The following actions are not permitted:

- Physical assault of a board member, staff member, property owner, or guest

- Use of loud, profane, or abusive language – including harassment or threats – in person or digitally

- Failure to comply with the rules for owners who wish to address the board

- Actions that cause unsafe conditions or impair the rights or privileges of others in the community

- Complaints regarding potential violations of these standards may be filed in writing with association staff. Such reports will be investigated, possibly resulting in warnings, fines, or loss of privileges.

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Defusing Conflict

Lindsay Smith, an attorney at Wizenburg, Leff, Purvis, and Payne in Littleton, Colo., offers these suggestions for de-escalating disputes in community associations:

BE A GOOD LISTENER. Some people tend to keep agitating until they feel that their grievances are heard.

LEARN WHY THE PERSON IS ANGRY. That can point the way to a solution or a compromise.

WELCOME INPUT. Invite the complainer to speak at the next board meeting – as long as they follow meeting procedures.

BE TRANSPARENT. Conduct as much discussion as possible in open session.

