

10 things newly elected community association board members should know

By Hans C. Wahl, Esq.

Special to the Recorder

We are entering the annual meeting and election season for community associations, where newly elected board members assume their roles for the first time. Board membership is a major commitment in both time and responsibility. Those who serve do so because they care about their communities and desire to improve them, but many newly elected board members are not familiar enough with association governance to make an immediate and positive impact. Below is a list of 10 things every new community association board member should know:

There is a process for reinstating rules and regulations that went unenforced by prior boards. Did prior boards fail to enforce the community's rules and regulations? A new board can enforce those rules and regulations consistently once again. Written notice must be sent to every member, citing the rule, regulation or bylaw to be enforced and the date in which enforcement will begin uniformly for everyone.

Have a timely meeting with the association's attorney to discuss legal matters. It is imperative that new board members have a thorough understanding of all current legal matters involving the association. Some boards do a terrible job of communicating with the association's attorney and some attorneys do a terrible job communicating with the board.

A new board should discuss all current legal matters with the attorney and establish good communication channels at the outset.

Create a formal collection policy and strategy for delinquent unit owners. Board members have a fiduciary duty to maintain the association's budget. Unpaid assessments become a liability for all responsible members in the form of higher assessments when delinquent accounts are not addressed in a timely manner. A new board should work with its attorney to develop a formal



collection policy to maximize assessment revenue and maintain the overall budget.

Collect unpaid assessments from the owner's tenants. Florida law allows associations to demand the future rent payments from a delinquent owner's tenant. If the tenant complies, the owner cannot evict the tenant, but if the tenant refuses the association can evict the tenant. This is a powerful collection tool that associations often overlook.

Don't ignore lender foreclosure actions. Most associations ignore unit foreclosures, but that can be a costly decision. Associations should always make a claim for any amounts paid at the lender foreclosure sale. Moreover, associations can utilize Florida law to expedite the foreclosure process, forcing lenders to take ownership of

the property and make those assessment payments.

Boards can suspend a delinquent owner's use-rights and voting rights. Boards can vote to suspend owners from using the community amenities and from voting on association business due to community rules violations and unpaid assessments.

Address potential construction defect claims. A new board should have the common areas professionally inspected for potential construction defect issues so timely claims can be made against responsible parties.

Know the law on lender liability for unpaid assessments on foreclosed properties. Florida law affords lenders limited liability for past-due assessments on foreclosed properties; however, there are exceptions that could make a lender liable for the entire amount owed. An attorney should analyze the lender's liability before the association concedes to a reduced payoff.

New board members are required by law to read the association's documents. Within 90 days after being elected, new board members shall certify in writing that he or she has read the association's governing documents, that he or she will work to uphold such documents and that he or she will faithfully discharge his or her fiduciary responsibility to the association's members. In lieu of this, new board members can complete an educational curriculum administered by an approved education provider within 90 days of being elected.

Amending the association's governing documents can be valuable. Changes to Florida law over the past decade provide associations with more rights, power and available remedies. Yet many association documents are outdated and fail to grant the board its full available power under the law. Amending the governing documents can pay dividends back to the association over the long term.

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