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AUGUST 2020

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Executive Director Summary

by Kayte Comes

A lot has happened in the world and with the chapters since my last address to you in April. First, I thought by now COVID19 would have come and gone and we would be back to normal. But we all know that has not happened yet or will it ever. Second, so we must move on and find ways to keep us all together and still have fun.

I want to give a big shout out to the Southern Arizona Chapter for winning a CAI National Excellence Award in Chapter Management and Development for their 2019 Annual Tradeshow and Legal Forum. Southern Arizona has consistently been winning awards for the past four years and we are so proud to be a part of their organization as their support staff. Unfortunately, the CAI National Conference was cancelled for June, but we still want to celebrate the chapter achievement. Hopefully, next year Southern Arizona will be up on stage in Las Vegas with a 2020 award or two.

Back to the idea of having fun and still maintaining social distancing, which is a phrase I thought I would ever use, Central Arizona braved the Monsoon heat with record setting temperatures and had Tailgate Bingo in the parking lot of the El Zirabah Shrine Friday night July 31st. We had just over 30 members out with a chance to win up to $1075 in cash. Everyone that attended received a PPE kit, another phrase that I thought I would ever use or hear of, plus their bingo sheets. We had tailgating trucks, baby pool with water and ice in them, snow cones, snowball fights, and lots of cool beverages to keep everyone hydrated as they waited for their chance to win big money. By having this event set up as a tailgating option it gave everyone space but still able to network and have fun in a safe environment. Our chapters need to continue to adapt to these changing times and this was one way to accommodate all CDC, state and local ordinances regarding COVID19. We must continue to think outside of the box to make being a chapter member valuable.

A survey went out a few weeks ago and still the number one item was face to face networking. We are going to make this happen. Next was continuing education, either through Zoom or in the classroom. For right now the best way to accomplish that is through Zoom. This allows the office staff to be able to provide similar opportunities to both chapters and within each Zoom Webinar an opportunity for lunch sponsors to meet folks from both chapters and for all members to meet each another. The big question is what will be face to face in 2020. Southern Arizona is having their golf and tradeshow event combined at the golf course on September 18th. Plenty of fresh air and space to keep everyone healthy and safe. Central Arizona is having their tradeshow October 30th at Rawhide and may go to a trunk or treat style of tradeshow keeping our Petstock 2020 theme with social distancing added to the fun. The golf event is on for December 4th at Arizona Grand.

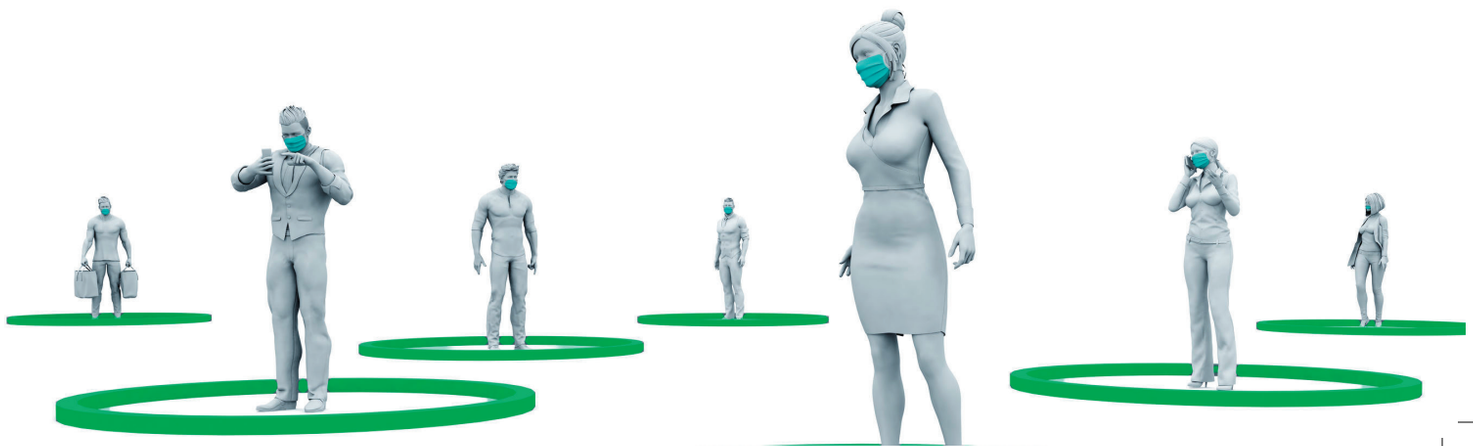
What's new at the office for both chapters. New networking opportunities for the annual sponsors for chapter lunch and learns with members from both chapters. Starting in September we are having one each month for the rest of the year an hour of education from our annual sponsors with four 15-minute educations clips in each.

The idea went off so well we were full within minutes. Depending on member response will be adding these to annual sponsors packets for 2021. Also, the staff is working on revising the website to include advertising on all pages of the website. Please visit the website to see what you might be interested in, along with our new continuing educational webinars that have been approved for CAMICB credits. Any of you that missed our scheduled webinar luncheon can now download from the Central Arizona website. The Community Resource magazine is going digital for the rest of the year starting with this issue. It occurred to me that most of you receive the magazine at your office and right now most members are working from home. So, we are bringing the magazine to you to read at your leisure at home, hopefully in your PJs. Take a look at our Facebook pages and other social media outlets, we are always posting information and celebrating our annual sponsors for all they do for the chapters. They are the ones that help shape each chapter and provide the ability to do all that we do.

This address has been lengthy and is filled with excitement as we move forward to new ways of adding value to our members and the means to do it in a safe environment. All of these ideas have happened because of COVID19, some were in the works but weren't at the front of the line. This pandemic has pushed us all to stay relevant and find ways to build relationships from a far. Both Central and Southern Arizona Chapters are here for you and are proud to serve you.

All the Best!

Kayte Comes, MBA, MNML
Executive Director
Central and Southern Arizona Chapters



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Assistance Animals and Community Associations:

Is that a prescription for a chicken?

By Lydia Linsmeier, Esq.

As many of you know, on January 28, 2020, the Department of Housing and Urban Development ("HUD") issued FHEO-2020-01, to go into effect immediately. The Assistance Animal Notice ("AAN") was drafted to provide best practices for housing providers to determine when to provide an assistance animal accommodation. Community associations use the AAN as guidance when a disabled individual requests an animal as an accommodation pursuant to the Fair Housing Act ("FHA").

Unfortunately, the COVID pandemic started almost immediately after HUD issued the AAN. Instead of the anticipated AAN training and discussion, housing providers were forced to focus on resident safety and emergency community compliance with health regulations and laws. However, the FHA is an important component of your COVID response, and the AAN can become a powerful tool to assist managers and Boards to quickly and fairly evaluate assistance animal requests.

Service, Support, and Assistance Animals

For the purpose of the federal FHA, all animals requested by disabled individuals in housing are **assistance animals.** There are two types of assistance animals: 1) **service animals**, as defined by the Americans with Disabilities Act ("ADA") and 2) **support animals**, which have no training requirement.

Community associations should begin their enquiry by determining if the animal is a service animal. Remember, only a dog can be a service animal (with a miniature horse exception). Sometimes it is readily apparent a dog has been trained to do work or perform tasks for the benefit of a person with a disability, for example a guide dog. However, if you cannot tell if the dog is a service animal, the association may only ask two questions:

1. Is the animal required because of a disability?

2. What work or task has the animal been trained to perform?

If the answers are 'yes' and the work/task is identified, the association should permit the animal if the accommodation is otherwise reasonable. In most circumstances, the association should allow a service animal as an accommodation, as the threshold is very low.

If the answers are 'no' or the work/task are not identified, the dog is probably not a service animal. Most dogs are not service animals, and keep in mind people tend to not understand the difference between the terms. There are no 'magic words' for an animal accommodation, and associations should listen carefully to make certain a request is not accidentally denied. There is not enough space in this article to discuss how to verify a disability or the nexus between the disability and requested accommodation; however, it is important to remember a community association's FHA duty to accommodate is triggered by disability.

There are two classes of **support animals:** 1) animals commonly kept in households and 2) unique animals. Animals commonly kept in households include: dogs, cats, small birds, rabbits, hamsters/gerbils/other rodents, fish, turtles and any other small, domesticated animal that is traditionally kept in the home for pleasure. Any reptile other than a turtle, barnyard animals, monkeys, kangaroos, and any non-domesticated animal fall into the unique category.

If the requested animal is one commonly kept in households, for example a dog, the association should generally permit the accommodation so long as the request is otherwise reasonable. However, if a unique animal is requested, the requesting individual now has, "the substantial burden of demonstrating a disability-related therapeutic need for the specific animal or specific type of animal." The type of documentation required for unique animals is discussed in detail in the final three pages of the AAN: "Guidance on Documenting an Individual's Need for Assistance Animals in Housing." The burden for individuals who are requesting the typical ESA chickens or pot-bellied pigs is substantially higher than the burden for service animals or typical household pets.

Quick Tips and Best Practices

- The AAN is a guidance document that provides best practices. A mistake implementing the AAN is not automatically a violation of the FHA.
- The association should ideally have a response back to the requesting individual within ten days. This can be difficult because associations have statutory meeting notice requirements.
- Please do not ask for a diagnosis, medical records, require a medical exam, or question the severity of the disability – and keep all information strictly confidential!

How many times have you received a prescription for a cat, with no further information? The AAN is a great tool for managers and Boards who are evaluating requests for assistance animals. As always, if you have any questions regarding how to best implement the AAN or revise any forms, check with your association's legal counsel for more detailed information.

Lydia Linsmeier is a Partner with Carpenter, Hazlewood, Delgado & Bolen. The information contained in this article is not intended to be legal advice and is provided for educational purposes only.

Construction Defect Claims

Duties of Boards of Directors

By Ritchie Lipson, Esq.

Communication between the Board and its members is critical, for while all decisions must be made by the Board as required by Arizona law, and the applicable Association governing documents, Homeowners and unit owners certainly have a stake in the outcome of a construction defect claim. It is the Homeowners who are anxious to have the defects fixed in their homes and placed in a code compliant and safe condition.

Residents today want to know that appropriate inspections are being performed, and that their units are safe–and if not—what can be done. Clear communication is the key.

If the building is still within the applicable period within which to pursue a Construction Defect claim, generally eight (8) years* from the substantial completion of the building, Owners want to know if defect conditions are being investigated and more importantly, the remedy. Keeping unit Owners informed is the most appropriate course of action to avoid friction between the Board members, Owners, and the Property Managers to avoid confrontations at the open Board meetings.

In addition, there are numerous cases throughout the country that hold that the requirement to maintain the common area creates a fiduciary duty to not only complete regular inspections of the common area (as do many CC&R provisions), and bring claims against the responsible parties if defects are discovered. It is important to note, that most Directors and Officers insurance policies specifically exclude coverage for claims made against Directors for failure to pursue construction defect claims. Recently in Arizona there have been several claims against Directors and the Property Management Company for failure to investigate and bring appropriate defect claims.

Often the CC&R's requires unit Owners consent to the commencement of Construction Defect claims by the Association. Developers often insert provisions in the Declaration requiring consent from a super majority of two-thirds (2/3) of the unit Owners or even an outrageous ninety percent (90%) approval, which such super majority provisions are subject to challenge in the courts.

The first step is to search to see what provisions apply. Most often these super majority provisions are contained in the Alternative Dispute Resolution portion of the CC&R's however, sometimes they are hidden in the section delineating the powers of the Board, restricting the Board from commencing a claim without Homeowner approval; these provisions have even been hidden in the Bylaws. Regardless of where the provisions are, frequent, honest and direct communication with Owners facilitates obtaining the necessary vote. This should be done in a series of clearly written informative letters, often times followed by a "Homeowner Forum" where further information can be presented and discussed.

The Construction Defect attorney is well versed in both the applicable law as well as the technical aspects of the defect conditions and can discuss issues of applicable law and how they relate to defects.

Once an action is initiated, the Owners should be regularly updated as to the status of the claims via periodic letters, or attendance at open sessions of Board meetings. At this time the attorney can present a concise and factual discussion as to the nature of the investigation and claims process, followed by a brief question and answer session. If properly conducted at this meeting the attorney-client privilege can be established with the understanding that it is primarily the Association, not the members, who are the client.

By the Board not keeping the information secret, all Owners can get behind the Board in supporting the action, as a better understanding of the claims, objectives and procedure can be established. The Board is never placed in an embarrassing position of not being able to answer a question; this may take the extra effort for the attorney to be present at every meeting. It pays off.

In addition to regular Board meetings, as the claim develops, such as the formal filing of an arbitration or litigation, or as significant events occur, supplemental disclosure statements may be issued. Periodically there can be additional Homeowner Forums or Special Board Meetings set aside for more lengthy discussions. Transparency is the key for the Board and its management company to work together with the Owners towards a common objective, making the building safe.

** The subject of the applicable Statutes of Limitation/Statute of Repose are complex and vary by the nature of the claims and governing documents, which the Construction Defect Attorney can analyze if a community is close to the 8 year deadline.*

Ritchie Lipson, Esq. is Director of Client Relations and leads Business Development Efforts for Kasdan LippSmith Turner LLP. For over 20 years, Lipson has limited his practice to representation of Homeowners Associations, Residential Property Owners, School Districts, Municipalities, and Commercial Investors to assist in the fair resolution of their claims for defective construction. During that period, he has been involved in over 85 cases, including several Class Action lawsuits, recovering over $175 million for clients.

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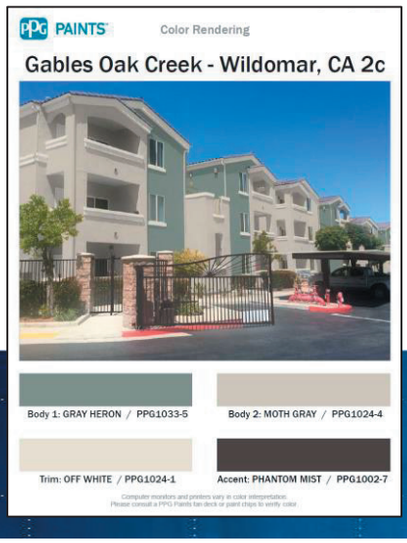

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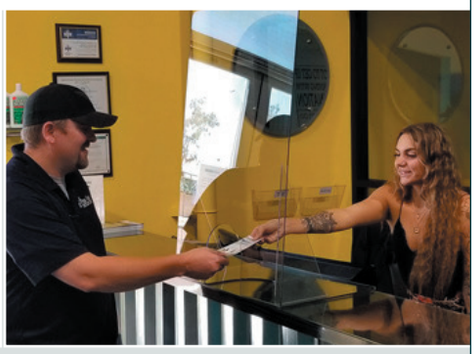

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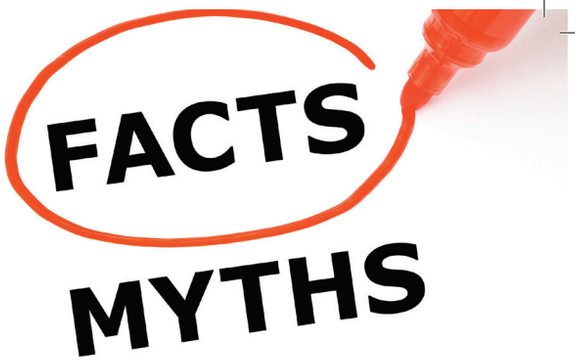


By Lynn Krupnik, Esq., CCAL and Elaine Anghel, PCAM

Myth

Associations can never limit an owner's speech.

Fact

Many associations have seen a variety of signs on people's lawns recently. People often, incorrectly, think that the freedom of speech articulated in the First Amendment to the U.S. Constitution applies to homeowner associations. The truth is, the relationship between the members of an HOA and the association is governed by the CC&Rs. Accordingly, where the association is given the right to limit a member's speech, such as with the placement of signs, it has the lawful ability to do so, only subject to specific statutory laws.

As it is election season, there are statutes that require associations to allow political signs on owners' lawns. However, the association may prohibit the display of political signs earlier than seventy-one days before an election and later than three days after an election. The association may also regulate the size and number of political signs on an owner's property if the association's regulations are no more restrictive than any applicable city, town or county ordinance on point. Note that the term "political sign" is also defined in the statute. If an association has a question about whether certain signs are political signs, it should contact its legal counsel to discuss.

Myth

It is the association's job to enforce the governor's orders regarding COVID-19 against individuals.

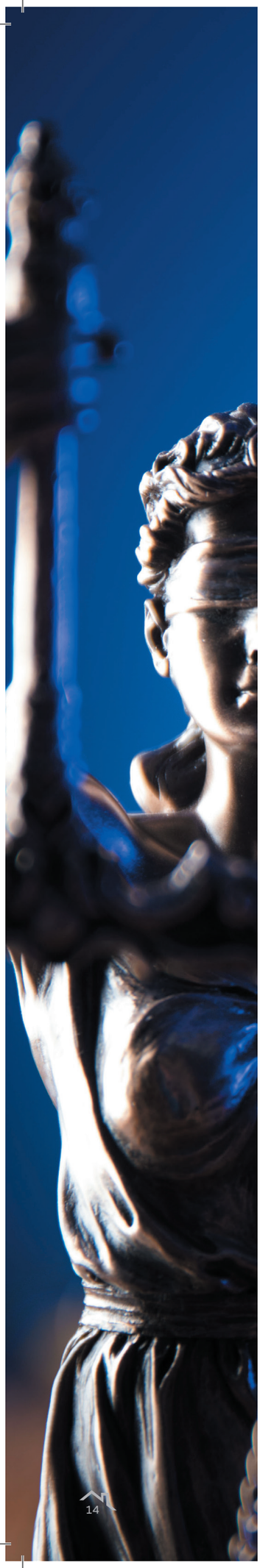
Fact

Although the fact patterns can be unique, the governor's orders regarding COVID-19 restrictions are not unlike local ordinances or criminal statutes. For restrictions that apply to individuals, such as wearing a mask and social distancing, an association must look to its governing documents to determine if there is language that allows the association to enforce against an owner for a violation of any local rules or law. There may be a time and place where it is appropriate for the association to enforce current restrictions related to COVID-19 against individuals through its authority granted in its CC&Rs. However, the association is not the police department and the association's board members are not police officers. Therefore, there are many considerations an association needs to consider when determining how to address the current COVID-19 restrictions as to individuals.

With that said, the association should ensure that it is following all governmental regulations related to COVID-19 that apply to the association itself, such as pool requirements.

Lynn Krupnik is a partner with the law firm of Krupnik & Speas, PLLC. She has been representing community associations since 1997. Lynn is a member of the CAI College of Community Association Lawyers ("CCAL") and speaks and writes often on topics that affect community associations.

Elaine Anghel is the Senior Vice President of On-Site Management at AAM, LLC and has been in the homeowner association industry since 1993.



Demystifying The HOA Administrative Law Judge Process

By Augustus H. Shaw IV, Esq., CCAL

A.R.S. § 32-2199.01 requires homeowner associations ("HOAs") to participate in what is referred to in the HOA industry as the Administrative Law Judge ("ALJ") process. The ALJ process is a quasi-judicial forum where owners can litigate grievances concerning their HOAs. The ALJ process is overseen by the Arizona Department of Real Estate ("AZDRE") and litigation regarding the process is conducted by the Arizona Office of Administrative Hearings ("OAH").

Most HOAs experience the ALJ process as a respondent; defending itself against a complaint filed by an owner. When an HOA receives an ALJ complaint, there are many things the HOA should consider.

First, the HOA should consider tendering the complaint to its insurance carriers for indemnity and defense. If the insurance carrier covers the claim, this could aid the HOA with its inevitable attorney's fees. Speaking of attorney's fees, it is important for a HOA to consider that even if the HOA prevails, there is no mechanism to recoup attorney's fees in the ALJ process.

Regarding defending the ALJ complaint, the HOA should ensure that AZDRE has jurisdiction to hear the complaint. Pursuant to A.R.S. § 32-2199.01(A), AZDRE does not have jurisdiction to hear disputes among or between owners to which the HOA is not a party of entities engaged in the business of designing, constructing or selling a condominium or any property or improvements within a planned community. In other words, the ALJ process cannot litigate owner vs. owner disputes or construction defect issues.

Once the HOA has determined that the AZDRE has proper jurisdiction, it is prudent for the HOA to determine whether the issue may be resolved without a hearing. A number of ALJ complaints are based on "miscommunication" or "misunderstanding" of relevant law or procedures. It is always helpful to try and resolve the complaint prior to the ALJ litigation process. As A.R.S. § 32-2199.01(F) states, "[I]nformal disposition may be made of any contested case."

If a solution cannot be achieved early on in the process, then the HOA should respond to the complaint. Pursuant to A.R.S. § 32-2199.01(E), "[F]ailure of the respondent to answer is deemed an admission of the allegations made in the petition, and the commissioner shall issue a default decision." Therefore, timely responding to the complaint is critical.

HOAs should also understand that the rules of evidence and civil procedure are "relaxed" in the ALJ process. The OAH's website, https://www.azoah.com (see Tab entitled "Practice Pointers"), provides an excellent discussion on how the rules of evidence and civil procedure are applied in OAH hearings. The website https://www.azoah.com is a wealth of knowledge regarding how to put on the best case before the OAH.

The above being said, the evidentiary standard of proof before the OAH is a "preponderance of the evidence." It is also important to limit the issues presented at an OAH hearing to the issue discussed in the OAH's Notice of Hearing. Only issues discussed in the OAH Notice of Hearing should be litigated at the actual hearing.

Once a ruling on the matter is provided, pursuant to A.R.S. § 32-2199.02(B):

> The order issued by the administrative law judge is binding on the parties unless a rehearing is granted pursuant to section 32-2199.04 based on a petition setting forth the reasons for the request for rehearing, in which case the order issued at the conclusion of the rehearing is binding on the parties. The order issued by the administrative law judge is enforceable through contempt of court proceedings and is subject to judicial review as prescribed by section 41-1092.08.

Therefore, the ALJ's final order may be reheard upon request or appealed to the Superior Court upon request. Pursuant to A.R.S. § 41-1092.09, a request for rehearing must be filed with the Commissioner of the Department of Real Estate within thirty (30) days of the service of the AZDRE final order.

Ultimate enforcement of the ALJ's final order can be accomplished through contempt proceedings in Superior Court.

Augustus H. Shaw IV, Esq., CCAL is the Founding Partner of Shaw & Lines, LLC. A lecturer for many municipal HOA Academies and continuing legal education seminars, Augustus is a member of the prestigious CAI College of Community Association Lawyers. Augustus is a graduate of the University of Arizona College of Law and has been practicing law for close to 20 years.

CAN A FLAG BE A SIGN?

Navigating legal pitfalls in a politically charged environment

By: Michael S. Shupe, Esq.

It is election season once again, and this year, in particular, is shaping up to be very contentious. Considering the underlying socio-economic and political tensions relating to topics like COVID-19 and race relations across our Country, you can expect to see an increase in various displays of support and expression in your communities.

We all may already be aware that Federal laws, like the Freedom to Display the American Flag Act of 2005 (Pub.L. 109–243, 120 Stat. 572, enacted July 24, 2006), protect a homeowner's right to display the American Flag on their property. However, what about a "Trump 2020" flag, or a "Black Lives Matter" banner? What authority, if any, does your community association have to restrict or control the display of these kinds of items, and how should you navigate the "grey area" where disputes are most likely to arise?

FLAGS

Sections A and B of Arizona Revised Statutes (A.R.S.) §§ 33-1261 (Condominiums) and 33-1808 (Planned Communities) protect the outdoor display of a short list of flags, while also providing for "reasonable rules and regulations" as to the number and height of such flags, and flagpoles. The protected flags are as follows:

1. The American flag or an official or replica of a flag of the United States army, navy, air force, marine corps or coast guard by an association member on that member's property if the American flag or military flag is displayed in a manner consistent with the federal flag code (P.L. 94-344; 90 Stat. 810; 4 United States Code sections 4 through 10);

2. The POW/MIA flag;

3. The Arizona state flag;

4. An Arizona Indian nations flag; and

5. The Gadsden flag."

POLITICAL SIGNS

A.R.S. §§33-1261(E) and 1808(C), respectively, define political signs as "a sign that attempts to influence the outcome of an election, including supporting or opposing the recall of a public officer or supporting or opposing the circulation of a petition for a ballot measure, question or proposition or the recall of a public officer." Community associations must not prohibit "the indoor or outdoor display of a political sign by a unit owner by placement of a sign" on a member's/unit owner's property."

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CAN A FLAG BE A SIGN?

It is important to understand that these Statutes do not operate as de facto restrictions on the types of flags or signs that are allowed to be displayed in your community. Instead, they prohibit associations from restricting the display of certain class of flags or signs. In order for a restriction as to the display of other flags or signs to be enforceable, that restriction must be in the CC&Rs.

I often see rules, policies, and design guidelines that include provisions similar to: "No flags/signs may be displayed other than those flags authorized by A.R.S. §§33-1261/33-1808." However, it is very likely that a rule, policy or guideline similar to the example above would not be enforceable if there is not an appropriate restriction in the CC&Rs.

Be careful -- general language common to many CC&Rs that establishes the Association's design review or architectural control authority may not be sufficient, particularly if such language is being used to enable a prohibition as to the content of the sign or flag, and not just its physical characteristics and nature of display (i.e. size, height, and time/place/manner). Furthermore, even a restriction the CC&Rs, properly approved by the members, can run afoul of the applicable statutes. For example, although certain kinds of regulation as to the size and number of political signs may be permitted, association regulations can be "no more restrictive than any applicable city, town or county ordinance that regulates the size and number of political signs on residential property." If such local ordinances do not exist, associations may not limit the number of signs up to a "maximum aggregate total dimension" of nine square feet for all political signs on a property.

Once an appropriate restriction in the CC&Rs is identified, or an amendment is approved by the members, rules, policies and guidelines can be very effective tools for determining when a flag is a flag, and a sign is a sign. It is more common now to hear arguments from homeowners that "My [Insert Candidates Name] 2020 flag is not a flag at all, it is a political sign." Clear rules can provide structure and guidance when dealing with these grey areas and can avoid diversions into largely irrelevant and sometimes costly debates about a homeowner's free speech rights.

Therefore, when dealing with signage and flag issues in your community, be sure to familiarize yourself with any local codes or ordinances before adopting rules or restrictions, if you have questions or concerns about your community's flag and sign policies, always review your CC&Rs, and consult with experienced community management professionals and community association legal experts.

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Reserves to the Rescue?

Carefully Tapping Reserves in a time of Financial Crisis (COVID-19)

By DJ Vlaming, RS

"Can we use Reserves to cover an Operating Fund shortfall?"

is a question we are asked all the time. Under normal circumstances, our standard response would be an emphatic "No!", because Reserves are for major repair and replacement projects. But now, in a time of (inter)national crisis, Reserves may play a valuable additional role at your association.

In March, our country began the process of "closing down" to prevent the rapid spread of the COVID-19 pandemic, which caused a rapid spike in unemployment. That means associations are, or will soon be, experiencing higher than normal assessment delinquencies. With tight budgets even in good times, rising owner delinquencies put the short-term financial health of associations at risk. Yes, the roof might still need to be replaced in 5 years, but management, insurance, and trash bills all need to be paid now! In times like these, Reserve contributions and the Reserve Fund can also be used to help offset a disruption to essential operating cash flow. But it must be done with caution and care.

Even in the midst of uncertainty, boards still need to act and make wise financial decisions to lead the association. Faced with difficult decisions, the "right" answer may not be clear, because standard "best practices" may not apply. Fortunately, boards can limit their liability exposure when making "non-standard" decisions by following the three-step process which flows from the "Business Judgment Rule" if the documentation shows that the board acted:

- **In good faith**
- **In the best interests of the association**
- **After appropriate due-diligence (seeking wise counsel)**

What do we do first?

First, make sure you've gathered current financial information (financial reports with bank balances, year-to-date budget, Delinquency report, your most recent Reserve Study), begin your belt-tightening, continue your collection (and communication) efforts, and get in touch with your legal counsel (to find if you have any state-law or governing document limitations). Trying to solve the problem with Reserves is not your first step.

What are Board options?

There are three ways Reserves can help rescue the association in a financial crisis:

- **Conserve Cash (defer Reserve projects)**
- **Re-Allocate Cash (Reserves to Operating)**
- **Save Cash (bargain shop)**

Conserve Cash (Prioritize your Reserve expenses in 2020)

In a time of financial scarcity, a standard good rule is to minimize your spending. But not all Reserve projects are equal. Prioritize your 2020 Reserve projects - don't defer projects that will expose owners to even greater problems or expenses! Defer "inconsequential" Reserve projects (new carpet in the rear stairwell), and double-check before replacing the perimeter wood fence (can it last another year with a few repairs?). While the lobby remodel may be a significant "first impression" project for owners and guests worth keeping on schedule, with the clubhouse closed is this really the time to spend $50,000 on its remodel? If cash permits, go ahead with the remodel (it might be a great opportunity to do the remodel when no one is using it), but if cash is tight, defer it to 2021. And anything like building painting or roofing related to maintaining building integrity? Do them. Don't make things worse by risking expensive problems like dry-rot or water damage that could have easily been prevented. Similarly, projects that protect the best interests of the owners (like the central hot water heater, or automobile gate mechanism) are projects that you should perform on schedule. Make sure you spend precious Reserve cash only on projects in 2020 that cannot be readily deferred to 2021. And remember… deferred projects don't represent savings. You'll still need to do those projects next year.

Re-Allocate Cash

If your Reserve contributions are anywhere close to the 25% of total budget that most associations find is necessary to offset ongoing deterioration and avoid special assessments, perhaps you scale back for a few months. Dropping your contributions by 10% down to 15% immediately offsets a 10% increase in delinquencies. The same effect could be achieved by deferring Reserve contributions for a few months. You could also consider a zero-interest loan from Reserves to Operating. Consult with legal counsel and your Reserve Study provider regarding these three options… which might be the best "fit" for your current needs, in light of your contribution size, Reserve Fund size, and upcoming Reserve projects. Run some cases on your Reserve Study software or ask your Reserve Study provider to run some cases to document the plan (both the borrowing and the repayment). No guessing! That repayment might take the form of a single or multi-year special assessment, or higher future Reserve contributions, all of which might be minimized by higher-than-normal transfers to Reserves next year when delinquent owners resolve the funds owed to the association.

Save Cash

Certain industry sectors are offering significant savings at this time, particularly those projects with a high labor component (roofing, painting, asphalt…). If the cash is available, now might be a great time to check with your service providers. You may be very encouraged to "stimulate the economy", keep their crews working, and enjoy a 5-10% discount on some of the association's larger projects. Just be careful when updating your Reserve plan, as discounts available in 2020 will likely not be repeatable in future years.

How do I Respond?

Gather information. Confer with your legal counsel. While documenting your process, conserve cash (Reserves) by prioritizing and only spending where the projects have true merit, re-allocate cash going into Reserves or already in Reserves (remember to create a repayment plan), or save cash by performing some Reserve projects now. Make decisions that are in good faith, in the best interests of the association, and after investigating your options. And one of those options may be a new and valuable use of Reserves!

DJ Vlaming, RS is President, Association Reserves – AZ, LLC since 1997 and has personally completed thousands of Reserve Studies for properties ranging from simple developments with minimal assets to complex international resorts. DJ is an active member of multiple CAI chapters.

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