



# October 2020

## *Community Associations Newsletter*

### **Toxic Neighbors, and the Association's Role when Anger Strikes**

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Neighbor to neighbor disputes seem to be at an all-time high right now. Many times, the neighbors are trying to bring the Association in to these battles. In order to best utilize the Association's assets, Boards and managers must recognize when it is appropriate for the Association to engage, and when to stay out of the conflict.

We see it everywhere – suggestions on how to deal with the stresses of living in the current socially distant times. Stress levels are extra high due to the pandemic, worry over loved ones, current events, and job loss; the list of tragedies is long. Perhaps the greatest tragedy of all is the neighbor who leaves their shoes out in front of their door. Pre-COVID 19, you would see the shoes now and then and it was an annoyance. But now, it seems like they do it every day. Isn't there a rule against that? Why don't they know it's against the rules? Why do you have to look at their shoes? They aren't even clean shoes! **WHY ISN'T THE ASSOCIATION ADDRESSING THIS?**

What should the Association do when it is asked to resolve a dispute between two neighbors? It is well settled that the Board has a fiduciary duty to the Association. This means Board members must put the interests of the Association ahead of their own personal interests. In addition, directors are required to make decisions in good faith, fulfilling the Association's legal duties, and not expending members' dues on items that are outside the scope of the Association's functions.

When confronted with a personal dispute between two owners, management and the Board's job is to determine whether there is really a connection between the dispute and the Association's rights and obligations. If there is no such connection, then the Board must try to minimize the Association's resources being sought by the feuding neighbors. However, there are times when the Association is expected to have some involvement even if the hostility seems to be mostly between two persons.

The following cases comprise both real life, and hypothetical situations; they all involve stress and a description of the Association's role in neighbor disputes.

**Scenario 1. The Bird Feeder Case.** Mrs. Holmes and Mrs. Grass have disliked each other a long time for a litany of reasons. Alas, they live next door to one another in Leafy Trees HOA. From the HOA Board's perspective, it seems like the neighbors try to come up with ways to both torture each other, and try to use

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the HOA as their personal combatant to rain ugliness upon the other. To wit: birds. The HOA has received many complaints from Mrs. Holmes that Mrs. Grass has installed a bird feeder expressly for the purpose of enticing birds to *do their business* on Mrs. Holmes's property. Leafy Trees HOA does not have any rules against bird feeders. But Mrs. Holmes is threatening to sue the HOA if it does not remove the bird feeders, send a violation notice, or *do something* about the offending bird feeders. The birds are damaging her property and are unclean - the birds and their feeding are clearly a nuisance.

**What to do?** A good option for Leafy Trees is to respond politely to Mrs. Holmes that the HOA will continue to make good faith efforts to enforce its rules consistently, and information on enforcement activities against a particular lot is not something the HOA shares with members. Should Leafy send a letter to Mrs. Grass? Probably not. However, it is prudent to review the Association's nuisance provisions, and whether there are allegations or reason to believe there is repeated and severe abuse from one owner to the other relating to the one's membership in a protected class before classifying the situation as neighbor to neighbor.

**Scenario 2. The Blog Case.** Blue Towers Condominium has a resident blog which is not governed, regulated or managed by the Condominium Board or management. The blog is purely resident-driven. Blue Towers is a no-pet condominium. However, a unit owner, Miss Canine, who is disabled, sought an accommodation to have an emotional support animal. Before she obtained approval for her animal, Miss Canine adopted a dog to live with her at Blue Towers.

Hostility ensued. Residents of Blue Towers posted comments on the Blue Towers blog about how if the Board of Blue Towers would not act, then they would to shame Miss Canine into complying with the no-dog rule or moving away. Residents mocked the dog's status as an emotional support animal, accused Miss Canine of lying about that, and discussed her disability. A former board member wrote on the blog that Miss Canine is a "miscreant whose refusal to follow the no-dog rule should result in liens, a foreclosure if necessary," and that Miss Canine "is a selfish, spoiled, brat, willing to flaunt her dog's illegality in every one's face."

The Blue Towers Board eventually granted approval to Miss Canine to have her dog. So, they cured the problem, and need not engage in the fight from other owners, right? Furthermore, all that hostility took place on a purely residents blog that is not sanctioned by the Condominium, so no liability, right?

What if the blog posts consisted of at least nine harassing messages over five months, and were public writings, available on the internet? At least one court has held that these facts could cause a reasonable jury to find such harassment sufficiently severe as to have interfered with Miss Canine's fair housing rights under Federal law (42 USC 3617). The causal connection would be the harassing conduct being based on Miss Canine's exercise of her fair housing rights.

Thus, important questions to ask when deciding whether and how the Association should get involved include whether there is a violation of the Association's governing documents and what is the Association's authority to address under the documents. Few governing documents spell out that residents must treat their neighbor respectfully, but lack of such a rule may not be enough for the Association to remain disengaged. A careful review of all relevant circumstances, and basis of the friction is the first step in determining if the Association should do more than let the neighbors battle it out.