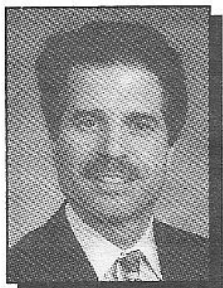


EFFECTIVE HOA COMMUNICATIONS CAN WARD OFF LITIGATION

Jonathan Olcott



Suspicion and secrecy create fertile grounds to sow the seeds of litigation. As Arizonans, we have an innate suspicion of each layer of government. In the media, we see Arizonans expressing a profound suspicion of homeowners' associations (HOAs). Effective communications between the HOA and the membership help keep the suspicions from growing into litigation.

Surveys. The boards of our HOAs are often asked to make decisions on controversial matters. Decisions about colors, basketball hoops, levels of enforcement, refurbishment of amenities, rentals, parking and animals come to mind. The HOA boards should try their best to make a decision which coincides with the interests of the community. One of the most effective tools to accomplish this is to send out a survey. We find that a one-page survey works best, designed so the owner is able to fill it out, fold it over and mail it back. A HOA board can use this input to make a decision which comports with the members' interests and which may also ward off litigation.

Consider a community in which the CC&Rs prohibit street parking, but where the HOA board does not aggressively enforce this provision. If the results of the survey indicate that a significant percentage of the members expressed an interest in more aggressive enforcement, then the HOA board can show the results to the violators. The results legitimize the board's enforcement actions. If challenged, a judge or a jury would consider the survey results in evaluating whether the Board acted reasonably in enforcing the CC&Rs. It follows that the survey results would provide an incentive for the violators to comply.

Open Meeting Laws. Arizona law requires HOA boards to deliberate on most matters in a meeting that is open to the membership per A.R.S. sections 33-1804 (planned communities) and 33-1248 (condominiums). Board compliance with the open meeting laws might be the most effective method of communicating with the homeowners. Homeowners are permitted to comment on items on which the Board takes formal action. Conducting business in an open meeting sends a message to the homeowners that no secret society is making decisions on community matters.

In contrast, there is no better way to create suspicion and distrust than to conduct community business in secret. Although certain subjects may be considered during an "Executive Session", the privilege should not be abused.

Books and Records. Arizona law provides that homeowners may have copies of the HOA records, subject to the same exclusions as the open meeting laws. For condominiums, the books and records law is A.R.S. section 33-1258, and for planned communities, it is A.R.S. section 33-1805. Both statutes permit the HOA to charge 15 cents per page. In a recent case before the Office of Administrative Hearings, the hearing officer held that on the facts of the case, the HOA could provide electronic copies of the voluminous records the homeowner requested. The electronic records laws are codified at A.R.S. section 44-7001 et. seq. In that case, the HOA did not charge the homeowner for copies of the records. * OAH has recently been ruled unconstitutional

In addition to violating open meeting laws, withholding records from a homeowner will create distrust and suspicion. Cooperative compliance sends the opposite message: "We have nothing to hide. Our records are your records."

Town Meetings. A HOA has a large swimming pool which is 30 years old. It requires \$200,000 in renovations. Some of the homeowners who do not use it would prefer it be converted to a park. Other

homeowners who do not use it think it adds value to their homes. The board is not certain whether to go forward with a special assessment to refurbish the pool.

This HOA sent a survey to the homeowners. The results were generally in favor of refurbishing the pool. However many homeowners were adamantly against the project. The HOA board conducted a town meeting in which both sides presented their opinions. After the special assessment passed, at least the homeowners who opposed the project knew that their voices were heard.

Newsletters. An effective newsletter does not focus on scolding homeowners about picking up after pets, keeping trash cans out of sight or keeping the yards neat. An effective newsletter presents community events, and invites the homeowners to attend the board meetings. The newsletter should provide the date, time and location of the meetings. An effective newsletter informs the homeowners of the board's actions and plans.

Web Sites. Many HOAs upload the board minutes and monthly financials onto their websites. Consider the message this sends: "we want you to know what the board is doing, and we want you to know about the community's finances." This is a superb method of diffusing distrust and suspicion in the community.

In more than 20 years of experience, I have observed that many lawsuits have their roots in distrust and secrecy. Utilizing the techniques above can keep your HOA out of court. ▲

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