

DEALING WITH THE UNHAPPY CO-OWNER

D. Douglas Alexander

Attorney and Counselor At Law

ALEXANDER, ZELMANSKI, DANNER & FIORITTO PLLC

If you are involved in the administration of a condominium either as a director, officer, property manager, attorney or committee member, chances are very good that you have encountered unhappy co-owners on more than one occasion. Your success and reputation will often depend on how well you handle these individuals. Often these situations become very stressful and while most do not result in legal proceedings, some do, usually to the detriment of all concerned. Our legal system is not well designed to deal with such situations and therefore, it is very important to develop a successful strategy for dealing with unhappy co-owners. Many of the problems are avoidable and it is wise to develop a strategy before they arise and spiral out of control.

Obviously, co-owners become dissatisfied for many reasons, legitimate and otherwise. They will express their concerns in a variety of ways including making complaints at annual meetings and/or board meetings, sending complaint letters, threatening lawsuits and circulating recall petitions to name a few. Less obvious are the instances where the emotions are vented by withholding or late payment of assessments and rules violations.

It is helpful to consider why these situations arise in devising your strategies. First of all, it is always important to remember that many co-owners are having their first condominium experience and they are discovering that condominium living is not for everybody. Many freedoms enjoyed during a lifetime of traditional single family home ownership are curtailed in a condominium setting. Those coming from an apartment rental situation find that they are no longer as anonymous and some have difficulty accepting the fact that the Association is not a surrogate landlord who will be responsible for every problem that arises. On top of this, we have the myth of condominiums as a carefree lifestyle as advertised by so many developers. As we are all aware, condominiums do not run themselves and if all of the co-owners expect a carefree existence, there is bound to be trouble.

The specific battlefields usually involve repairs, snow removal, lawn care, rules enforcement and/or the finances of the Association. The vast majority of these situations are avoidable if there are good communications between the Board of Directors and the membership. The members need to be constantly reminded that the directors are themselves co-owners who share the same interests and concerns. Further, everyone needs to bear in mind that decisions made by the board may not be readily understood by the co-owners since the co-owners did not invest the time the directors put into formal and informal directors' meetings, study sessions and discussions with property managers, accountants and/or attorneys.

This information gap can be dealt with in several ways. First of all, intelligible and complete minutes of all meetings should be available to the membership. Secondly, unless the Association is very small, it is wise to have at least a quarterly if not a monthly newsletter that contains enough information to enable co-owners to educate themselves if they take the opportunity to do so. Making a portion or all of the directors' meetings open for attendance and/or a limited question and answer session with the co-owners is very useful. Truly confidential discussions can be reserved for executive sessions. Limiting co-owner comments to a particular portion of the meeting will also prevent unnecessarily long meetings.

You can head off many questions by taking the time to prepare well organized and reasonably detailed management and officer's reports for presentation at membership meetings. If there is a special problem confronting your Association such as a developer dispute, special assessment or document amendment proposal, consider calling a special informational meeting. Although the Condominium Act

only requires the single annual financial statement, (the contents of which are up to the Board of Directors to determine), consider more frequent statements and evaluate their content from the point of view of the co-owner who has not participated in the budgetary process directly.

A less obvious communication solution involves co-owner dissatisfaction with maintenance or repairs. Have an organized work order system using written requests and an established follow up procedure. Include the co-owner requesting the service in the determination of whether the work order has been satisfactorily completed. You might consider publishing the number of work orders received and processed within a given time frame to show the co-owners the magnitude of the task and your methods of organizing it.

Rules enforcement issues could probably be the subject of a small book. Suffice it to say that it is critical that the rules be understood by the co-owners which means that you should make copies readily available including the Master Deed and the Bylaws. Problem areas can be highlighted in the newsletter to minimize unwitting violations. Develop a welcome package, for new residents for the same purpose. If a violation is reported, urge the complaining party to discuss the matter with the alleged violator before the Association becomes involved. Bear in mind that the property manager and directors are not police officers and that violations of the law should be reported to the proper authorities. Condominium restriction violators should receive a polite initial notice identifying the problem and requesting compliance. These first contacts should not come from the Association's attorney and all concerned need to keep an open mind so as not to prejudice the situation. If you have a fines procedure, bear in mind that the threat of a fine is usually far more effective than getting embroiled in levying and trying to collect fines. The object after all is compliance not revenue collection.

Lastly, be aware that co-owners have made a large investment and are entitled to voice their opinions, critical or otherwise. Organizing a forum for the expression of these opinions can help you carry out your duties and minimize emotions. A proper response to most complaints would be to thank the party for expressing themselves, explain the Association's relevant policy and if appropriate, indicate how the board intends to follow up on the complaint. Not all complaints require follow up and some people can never be happy. In those instances, simply thank the person for expressing their view and go on to another matter. Having a good plan and following it will help you minimize unhappy co-owner confrontations and help avoid destructive and expensive court battles.