

Tough Calls

Boards Must Use Common Sense and Resources

By Lisa Iannucci

Board members find themselves acting as referees so often, some may feel like they're wearing black-and-white striped shirts. Maybe they're mired in the middle of a conflict between homeowners because one group of gardening enthusiasts is at odds with a group of parents over whether to use a limited space to grow flowers or install play equipment. Another day might find them settling a dispute between two unit owners who are about to duel over noise or food odors.

Settling these conflicts often involves tough choices on the part of building administrators, who must weigh the positions of different groups against what's best for the building community at large. It's a balancing act with political, personal, and practical considerations.

Common Problems

For Lori Burger, senior vice president of the Institute of Real Estate Management (IREM) and of marketing and business development for Eugene Burger Management Corporation in Rohnert Park, California, the typical pet peeves among homeowners usually boil down to what she calls the Three P's: "That's people, pets and parking," she says.

Attorney Steven Glassberg of the Manhattan-based law firm of Glassberg & Associates, LLC, says the most common issue he hears about is noise. He remembers one fairly typical case where a young child's bedroom was on the other side of the wall from a single individual who enjoyed music. "When the parents complained, first to the neighbor and then to the board about the music waking their child, the neighbor didn't take to it kindly," he says. "It caused a problem between the neighbors and eventually the board had to get involved."

In Burger's experience, most of the conflicts between residents and boards come down to money. "Anytime a board increases expenses or there's a budget issue, it usually stirs up conflict," she says.

Other typical issues between boards or management and residents involve repairs in the building that inconvenience residents, says Glassberg. "For example, I was involved with a situation where the resident didn't want to allow the building's plumber into his apartment because the plumber was going to have to open a wall to look at some pipes, and the board couldn't tell the resident how quickly the wall would be closed back up. The building had to get its attorney involved before the resident allowed the plumber in."

Boards and homeowners can also get into a debate when important decisions need to be made that will affect homeowners. For example, the down economy has strapped many residents financially, and they in turn have fallen behind on monthly maintenance payments. Multiple delinquencies may push a struggling building further into the red, prompting the board to decide that it's time to cut back on expenses. But if the board opts to scale back pool or doorman hours, even residents in arrears are likely to complain.

"Homeowners need to remember that, at their most basic level, community associations are businesses, and they need to be operated accordingly," says Ryan Poliakoff, co-author of *New Neighborhoods: The Consumer's Guide to Condominium, Co-Op and HOA Living*. "The directors who run these businesses will need to make decisions on insurance, reserves, employment, repairs and maintenance—including landscaping, groundskeeping and housekeeping—all of which can result in significant expenses."

When residents aren't contributing fully to their building community's coffers, services, amenities, and extras may have to be reduced or eliminated. It's a tough choice for building administrators, but when times are as tough as they are now, there really may be no choice at all.

Does Money Talk?

In some buildings, residents of differing income levels live next door to each other and each may have different opinions on matters and have different life issues. This can lead to headbutting among neighbors.

Steven Goldman, a partner in the real estate department of White Plains-based Kurzman Eisenberg Corbin & Lever LLP, remembers one instance where money might have come into play in a decision. "In one building, there was a guy who managed hedge funds and the board agreed to let him come in and make changes to his apartment to include a gym facility," he says. "But it created a noise issue for the neighbors downstairs. He was very wealthy and spent lots of money on that gym, but did the board do the right thing and do it correctly to give him approval? Maybe they could fix the problem by imposing hours of use."

Burger says that the socioeconomic particulars of residents in her client buildings play a marginal role at best in her decision-making process. "Wealth and heritage don't come into play when I'm trying to make decisions," she says. "Instead, I go right to the association's documents."

Managers and board members alike must be very familiar with the declaration or covenants, the bylaws, and other controlling documents that form the contract between homeowners and association or cooperative corporation. To make any decision, a board must use business judgment, wherein all the facts and circumstances are taken into account, options are identified, and a course of action is decided upon that serves the best interest of the community. A board must act for the benefit of the cooperative or homeowners association—not the benefit of individual board members. They can't discriminate by favoring one homeowner over another—that's not only spelled out in a building's bylaws, but in the law of the land overall.

Don't Get Personal

When it comes to problems between residents, Glassberg says he typically tries to keep the boards of the buildings he represents from getting involved. "Unfortunately, that's not always possible," he says. "If the board has to get involved, it's better to act as a mediator and not to look as if the board is taking sides. Appearances are very important to residents, and it's important for the board to appear impartial. In co-ops the board has significantly more power than in a condo."

That being said, Burger contends, "Boards don't believe they have a duty to intercede, but they do. When it comes to management's attention that there is an issue, it's important to resolve it so it's not festering. Get the parties to sit down and talk to the management, and if necessary, the board. Owners live side-by-side, and we are here to help build a community, so it's important to address problems immediately."

At some point, however, the board may have to get involved in the dispute, especially if it involves the safety of the building or other residents, or when rules are being violated outright. "I heard of a situation where multiple apartments in a co-op were being rented as furnished short-term rentals by the owner," says Glassberg. "A new person was using the apartment every few days. At that point, when many people are coming and going and no one knows who is living there on a given day, and the owner is the cause of the problem, it is imperative for the board to get involved."

"The board also has to consider its fiduciary responsibility to its members," adds William A. Gillis, senior vice president and corporate counsel for Eugene Burger Management Corporation. "They need to decide if they are going to spend the resources to resolve this dispute between two neighbors. It may not be justified."

"Most boards, and board members...are able to do what they feel is right," Glassberg continues. "They're protected to the extent they use their proper business judgment and aren't discriminatory in their decision-making. The law will protect a board doing its job, even when, in hindsight, the board made the wrong decision."

When weighing a tough building- or resident-related decision, listening is every bit as important as talking, says Burger. In the case of a resident objecting to a rule or having issues with a neighbor, "Most of the time the person is trying to communicate, but just not being heard or validated," she says, adding that her company stages enactments of common problems between residents as a training tool to help their managers better learn how to handle them.

According to Margie Russell, executive director of the New York Association of Realty Managers (NYARM), building administrators should keep trying to settle a problem between homeowners until it gets past reasonable. "Or until it comes to a place where the staff's patience is exhausted to the point that it seems everyone is there only for the purpose of stroking the battling parties," says Russell. "These efforts are important to keep the building from becoming a litigious state. The typical lawsuit comes about because one person feels they were not given their 'human relations due,' and if only someone had apologized sooner or more sincerely, a lawsuit might have been avoided."

Board members can turn to managers and other members of their team for help in settling a matter or ruling on a tough procedural call. "I think the greatest thing is that the managing agent is there for the board," says Burger. "A building or association has lawyers, engineers and accountants and other team members to call upon, and they should see us as a similar resource."

Other Resources

Another factor that can help boards make fair and balanced decisions is the existence (or non-existence) of mandatory Alternative Dispute Resolution (ADR) requirements in their state. ADR typically refers to processes and techniques such as mediation, arbitration, or other collaborative methods for resolving disputes that fall outside of the judicial process. Some states now require homeowners to use mediation before going to court.

Other resources include publications like *The Cooperator*, and books such as *Community Associations: A Guide to Successful Management*, published by IREM. One chapter of the book is devoted solely to successful communication, and covers various communication strategies and conflict resolution techniques. The "Board of Directors" section includes topics related to successful board meetings. NYARM's property management school also offers classes in 'people skills' as part of their NYARM certification course.

The most important thing to remember, says Goldman, is that conflicts will always happen. "I grew up in a five-story walk-up and there were always conflicts between neighbors, whether it was that the radio was too loud, or the food odors." The key is to have a strong, conscientious board who knows the rules, and knows how to make the best use of the various resources available to them.