

# Understanding the Government of a Community Association

By David Kaman, Esq.

As a result of dedicated board members and qualified managers, the community association lifestyle is flourishing. In order for a community association to operate smoothly, it is as important for the owners to understand the basic concept of how the community association is governed.

There are many forms of governance that are NOT applicable to a community association. As an example, some owners think they have bought into a democracy in which they are entitled to vote on everything. A community association is NOT a democracy. Some owners think they have bought into a social organization where owners sit around, drink scotch, and make casual decisions. A community association is NOT a social organization. Many owners have belonged to a civic organization or to a union. These owners may believe that the community association is similarly run. They may believe that a board makes a recommendation to the members, such as on an annual budget, and the members vote for or against the budget. A community association is NOT a civic organization or union. Occasionally, owners think they have bought into a dictatorship or monarchy where one board member, usually a president, makes all decisions individually. Remember all board members are elected, not anointed. A community association is NOT a dictatorship or monarchy.

A community association IS a business, and a very substantial business at that. Virtually every association is subject to a corporate form of governance. For example, if an individual purchases \$75,000 worth of General Motors stock, that individual is entitled to attend the General Motors annual meeting at which the election of a governing board takes place. The same concept applies in an association. An owner has the primary right of attending the annual meeting at which the election of the association's governing board takes place.

As a stockholder of General Motors, if one is unhappy with the operation of the corporation, one available option is to sell the stock. Likewise, an unhappy unit owner has the option to sell the unit. An unhappy General Motors stockholder also has the right to solicit proxies from other shareholders in order to get elected to the General Motors board. The same process for the election to the board exists within a community association. Board members are volunteers elected from the unit owners. If an owner is not satisfied with the association operations, that owner has the right to seek the proxies and votes of other owners and get himself or herself elected to the association board.

After the General Motors election, the board runs the day-to-day affairs of the corporation. It has been elected to make decisions. It acts in what it believes to be the best interest of the entire corporation. Similarly, after the association annual meeting, the association board runs the day-to-day affairs of the complex. This board has also been elected to make decisions and act in the way it believes to be in the best interest of the entire association.

For example, the General Motors board decides what the price of cars will be. The General Motors shareholders cannot pass a binding motion that cars will sell for \$100. Similarly, the community association board generally determines the level of maintenance fees. It is understandable that owners want low maintenance fees. However, low fees may not reflect the actual needs of the association and/or be in the best interest of the association. Therefore, generally it is not the owners who determine the maintenance fee level. Rather, maintenance fees are determined by the association board.

The General Motors board also determines who the employees of

the corporation will be. Similarly, the association board determines who the employees of the association will be. Owners do not get to vote on the hiring of a snow plower, landscaper, manager, lawyer or accountant. The governing documents generally place authority to hire and/or fire on the shoulders of the association's board members.

The General Motors board also has the authority to establish corporate guidelines. Similarly, the association board has the authority to make reasonable rules and regulations governing the complex.

If a General Motors shareholder wants to express an opinion to the board during the year, that shareholder is entitled to comment in writing to the board. Likewise, if a unit owner is unhappy with operations, he/she is entitled to comment in writing to the association board.

The unit owner can express an opinion, but the board determines when the grass gets cut, when the snow gets plowed, and when and in what priority maintenance projects will be completed. The association board makes the day-to-day decisions for the association.

Many owners purchase into a community association because of the "carefree" style of living. These owners enjoy delegating maintenance decisions to others and freely accept the concept of an association. They realize that while they have delegated some decision making authority, they have also delegated the corresponding responsibility. No longer do they need to concern themselves with the physical challenge of grass cutting. This lifestyle serves them very well.

A few owners sometimes find the community association concept to be a very difficult pill to swallow. They may have a difficult time accepting that someone else is making the decisions. Occasionally, these individuals challenge the authority of the board. As a result, lawsuits have been initiated. Fortunately for the community association concept, Courts have overwhelmingly rebuked the vocational dissident, whose only role in life appears to be to dissent to everything a well-intentioned board attempts.

When addressing the issue of the condominium concept, the Court in the case of *Sterling Village vs Breitenbach* stated:

"Every man may justly consider his home his castle and himself as the king thereof; nonetheless his sovereign fiat to use his property as he pleases must yield, at least in degree, where ownership is in common or in cooperation with others. The benefit of condominium living and ownership demand no less."

Put another way, if you live in a single family home on ten acres of land, your home is your castle and you determine when the grass gets cut, the snow plowed, or how loud you play the stereo. However, when you live in a community association, your home is NOT necessarily your castle. You have chosen a lifestyle that requires courteous conduct and delegates maintenance decisions to the association board members.

The community association lifestyle is successful because owners have volunteered to take turns serving on the board and have cooperated with each other. Common sense and a sense of what is best for the entire community prevails. Individual rights giving way to the best interest of the community is the foundation of the successful association. ■

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