

DEALING WITH DIFFICULT AND, AT TIMES, UNSAVORY PEOPLE IN THE HOA

So let's start here with some threshold thoughts. If there is a person "lurking about" in a neighborhood people generally call the police. The police might be more inclined to respond in a non-HOA when there is someone hanging around causing distress in the neighborhood. Directors and neighbors have been told in some instances that there is nothing the police can or need to do unless there is evidence of a crime. Let's face it - the police in most jurisdictions have a sufficient amount of criminal activity and egregious conduct to deal with so that unless there's something occurring that would normally lead to an arrest, which basically means some kind of criminal activity or potential criminal activity, or threat to person or persons, they would rather not have their time usurped dealing with - let's call them unsavory - situations. The truth is, of course, that the police cannot arrest a person for hanging around making people nervous and uncomfortable. However, when a person who raises concerns of neighbors is hanging around in an uncomfortable or vagrancy type of situation the police can at the very least talk to the person, and ask them to move on. And in some of the situations described below, that is all they can do. And in truth, neighbors who are bothered by conduct unbecoming can also talk to the person responsible or the owner of the home where the person causing the problem is hanging about or resides, but the problems that are solved by people taking responsibility to talk to their neighbors are not brought to me. And in this day and age, it seems there is some story each day the news about a crazy person doing something erratic and dangerous that makes people fearful so instead of confronting others they would rather confront the board or the police and demand that something be done. The question is - are their expectations unrealistic? And for the board being pelted with demands, the question is - is there something that should be done?

People- Never a Dull Moment- Regulating Human Behavior - Can It Be Done?

Can people be "fixed"? "regulated?" Made to be "nice"? Probably not ... a nasty person is a nasty person. A crazy person is crazy. Belligerence is not a curable disease. Selfish and boorish behavior is common in self-centered people. Ego drives all sorts of idiotic behavior. But stupidity, which can be cured through education, takes a willing idiot.

HOA Boards are somehow expected to be able to fix everything. They are expected to act on everything that an owner wants them to act upon. They are asked to solve problems that derive and irreversible human behavior. How does one deal with these kinds of problems?

Vagrancy, Undesirable Conduct - What Can Possibly Happen?

Let's say some unsavory person or someone engaged in embarrassing or obnoxious behavior is just hanging around and the board is pelted with complaints. In one situation years ago, the problem was the Association manager who was engaging in somewhat lewd conduct at the pool with her boyfriend, after hours. That was one of the easy ones, and for some reason it hadn't occurred to the board to confront the manager about it. Most are not so easy. Recently, I have been contacted about a few situations and the root of the problem came from a homeowner being unwilling to take a stand and demand that the person causing the concern among the neighbors stay away from the development. The owners had their reasons, and I don't want to call them out or name their excuses as it would be embarrassing to recognize themselves publicly, but I believe it sufficient to say that the board is in a better position to do something about a problem person if that person does not have a right to be in the Association because no one has invited them. In the recent situations, the owners felt that it was the Association's problem and not theirs when they were notified about the situation or call to hearings, and communications from the Board simply did not seem to get their attention. From the board's perspective, telling the residents who are complaining to call the police did no good because (1) there was no actual crime being committed and (2) there was no trespass because the problem persons had been invited by homeowners to come to the development.

So what should the board do when there is someone hanging around the Association causing the stress?

Consider Adoption of Rules That Can Be Enforced

Consider adding rules that address nuisance behavior, loitering and vagrancy. After all, cities and counties have adopted regulations addressing this kind of conduct. Using objective resources can help formulate rules.

Vagrant (defined). Generally, the word vagrant is understood to mean a person who lives idly without any settled home; but this definition is enlarged by some statutes, and it includes those who refuse to work, or go about begging. Loiter¹ is a verb which generally means to stand or wait around idly or without apparent purpose: synonyms: linger, wait, skulk, loaf, lounge, idle, laze, waste time.

Note however that many of the cities, states and town ordinances are targeted to prevent and control aggressive begging, eliciting prostitution, drug dealing, blocking entries to stores, public drunkenness, and being a general public nuisance.

Police upon being contacted may have determined there is not enough bad conduct to constitute a public, let alone private nuisance. In any particular situation it is important, if you enlist the help of an attorney or even a board, to have a record of - which means requiring a written complaint - of the negative reports. Once the board, or the attorney if it gets to that point, knows exactly what is happening, when, and who is affected, it is easier to come up with a cogent definition of nuisance upon which to base a rule.

Communication to Owner of Property

By the same token, it is important to have a written record in place in order to consider any communication with or action against an owner who is allowing or inviting a person who is hanging around for no good reason, or engaging in unsavory conduct, to be in the development. It is important to have a good record so that you can accurately address concerns in the letter to the owner. Vague accusations will get you nowhere. When advising individual homeowners or boards on how to prepare letters that will actually have the right kind of impact, I stress the need for details. I have seen situations where the board writes a letter to an owner saying that there have been "reports" of many problems and the owner has to do something about it, and the owner responds, "show me the reports." The same tends to happen when the owner hires an attorney, the attorney demands to see the alleged "reports". I am not saying that you have to turn over any written complaints to anyone, but I will say that if the statements in the communication are definitive about time, place, persons, and activities, it is harder for an owner to take the approach that the Association really doesn't have anything. It is harder for any attorney consulted by the owner to take the same mindset if there are specifics, namely details about incidents. The persons who made the complaints do not have to be identified, in my opinion. It is true that by specifying detail, the owner can often figure it out; however, this is just such a case where the neighbors that are complaining have to take some responsibility in the matter, at the least submitting written reports, complaints, and details, or as often happens, the board doesn't really have a leg to stand on in trying to address the problem.

Consider Disciplinary Action

If the person who is on-site is engaging in activities that violate rules and regulations of the Association, the owner of the home with whom they are associated can be contacted and the Board can consider disciplinary action, according to what the Association governing documents allow. That might be fines, monetary penalties, reimbursement assessments for costs that the Association incurs, and in some cases, again depending on documentary authority, that might include legal fees if the board or a complaining owner needs to get an attorney involved. Keep in mind that owners have rights under the governing documents as well as the Board to address nuisances and if a board is not willing to do anything, and an owner that is suffering because of offensive or threatening conduct, he or she has rights as well and they include

enforcement of provisions in the documents and recovery of attorney's fees. This happens sometimes when a board refuses to do anything and an owner is being subjected to untenable conduct by a neighbor.

Restraining Orders

Police often tell persons who report problems that they cannot do anything without a restraining order. Boards are often asked to "just get a restraining order" against this person who is hanging around or causing problems. Well, it's not really that simple. First of all, the Board of Directors will have to consider that seeking a restraining order costs a lot of money. Some may say it's not about the money, but it really is, since the board has control of the funds of all of the owners in the Association and all of the owners may not be in favor of spending it trying to get a restraining order. Second, the Association Board of Directors are not seen in the same way as an individual who is the subject of harassment or obnoxious behavior. Restraining orders are generally often referred to as stay-away orders, and it is hard to get a stay-away order for someone from the entire development if the Association cannot prove that the vagrant or problem person is terrorizing the entire development. And, the Association is an entity, not a person. Restraining orders are intended to keep problem persons from bothering or threatening other persons. The Association might be successful in getting a restraining order to keep someone from using the common area facilities, but keeping them off the streets and sidewalks is a different story. Individuals who hold the fears or believe they are being threatened, on the other hand, are the persons who should be seeking the restraining orders. Individual can pick up a packet of papers at the local courthouse and file for restraining order against another person on their own, without an attorney, and once any of the neighbors has obtained a stay-away order, there is something upon which the police can base an arrest if that person violates the order. But no one is going to be able to get a restraining order against someone who is just hanging around glaring at people, swearing, giving the finger, or wearing a hoodie, making out with their girlfriend, nor even sleeping in their car in the parking lot.

Safe Streets Meetings - Neighborhood Watch (Not a formal Committee, but....)

If a situation is particularly egregious, and there is not yet evidence of a crime, it might be time to talk with the local police about arranging a "safe streets" meeting for the residents. I have attended many such meetings where there was someone, sometimes a vagrant, or unusual nighttime traffic, and sometimes an owner or resident who has exhibited threatening behavior, and the neighbors became very concerned for their safety. Police departments generally have a unit that can arrange for an officer to come and talk to the community about how to conduct a neighborhood watch, what things to watch for, what kinds of details will help the police identify potential criminal behavior, and how to conduct themselves around a potentially dangerous or criminal element. If, as I have seen in some situations, a resident seems to be mentally unstable and erratic, the local police department can put an Association representative or an owner in touch with an officer who has psychiatric training or is in a department that deals with possible 5150 candidates. These are people that are arrested when they are exhibiting behaviors that appear to be a threat to themselves or others. They are generally taken to the local hospital and held for three days for evaluation. There have been a few occasions over the 30 years that I've been practicing where activities known to trigger erratic behavior, with such an officer standing by, were purposely taken so that the person could be arrested and taken into the hospital for evaluation. This is not something I recommend as a matter of course, but sometimes you have to think outside the box.

We could go on for 50 pages telling you about situations over the years that have come up where measures needed to be taken to deal with extremely difficult people and challenging neighbor to neighbor disputes. The bottom line and point of this E-newsletter is that sometimes it literally "takes a village" to deal with difficult people in the HOA, meaning it should start with written complaints if individuals expect the Board to do anything at all. Residents tend to assume that Boards of HOAs are like landlords and it is their duty to resolve all problems, but the Boards are not the police and not capable of (or wise to try) handling criminal or overtly aggressive or threatening behaviors. Boards need written records to rely on when making plans of action and demands on responsible parties, and may need to consider some document cleanup and revisions to get into a position to address owners who allow bad behaviors in residents, guests or visitors of their homes.