

Legal Issues for Oklahoma Community Associations

Advanced Seminar

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Legal Service for Community

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Law – Overview

The law of HOAs

- The applicable law is published cases and statutes
 - 60 O.S. 501 et. seq. – Condo Act
 - 60 O.S. 851 et. seq. – HOA Act
 - 18 O.S. 865; 1001 – Corporation Act
- Where is it? Access the law at **www.oscn.net**
- Recent changes: Lending requirements: FHA/VA (condo projects)

Assessments: Overview

- Four types: Annual, Special, and Specific/Individual, Reserve (See, CAIRF BPR for reserves)
- Procedure: Accounting system; Owner tracking; invoicing, title companies
- Collections: Communication; customer service; Liens; Judicial actions
- Costs and Attorneys Fees

Assessments - Collections

- Periodic review of amount
- Consistent application of interest
- Uniform invoicing and collections; title company contact
- Systematic preparation and filing of liens
- Small claims actions
- Foreclosure of liens

Assessment Liens

- Uniform application
- NOT MMLs – do not have to foreclose within one year
- Filed with county clerk
- “continuing lien” language
- Title company contact

Small Claims Collections

- \$7500 jurisdictional amount
- Affidavit; Alias Affidavit
- Service of Process
- Trial within 45 days approx.
- Default
- Service of judgment
- Collection of the judgment

Foreclosures

- Petition and Summons
- Entry of Appearance
- Answer
- Cross-claims
- Timing
- Will the HOA see any \$\$???

Bankruptcy

- Is owner re-affirming?
- Pre-petition dues
- Post-petition dues
- Automatic stay
- Collections during pendency

Dispute Resolution - Overview

- Clear, up-front communication
- Room for honest disagreement
- Informal Mediation
- Binding arbitration
- Penalties: no vote, no common area
- Monetary Fines
- Small Claims Court
 - Collections of assessments and fines
 - Amounts under \$6,000.00
- District Court
 - Injunctions, damages
 - Declaratory actions (honest disagreement)

Meetings - Practice

- Annual Meetings
 - Same time each year
 - Written agenda, notice given prior to meeting
 - Provide childcare and refreshments – advertise!
 - Use proxies to attain a quorum
- Board Meetings
 - Open Meeting Act does not apply automatically
 - Should occur at least quarterly
- Meeting Tips
 - Prepare and follow an agenda
 - Limit the floor to minutes and recognized speakers
 - Hold hostile meetings in a church or elementary school

Meetings - Minutes & Resolution Practice

- Resolutions document decisions/acts of the association.
- Sometimes done when awarding contracts for common area maintenance, or for substantial corporate events, such as taking legal action or policy positions.
- Minutes and Resolutions are the written record of the corporation and should be kept together for future boards.
- Minutes are prima facie evidence in court
- See www.okhoa.blogspot.com for samples of a resolution, meeting agenda, and minutes.

Meetings - Default Procedural Rules ("UOP")

- UOP, Bylaws adopted/amended by "governing body."
- UOP, quorum is 1/3 of total membership (Can be much less)
- UOP, majority vote except for election of directors.
- UOP, plurality vote for directors.
- UOP, Min. 10 / Max. 60 days notice

Meetings – Quorum

Quorum under the Law

- A quorum is “Such a number as must be present in order that business can be legally transacted.” RONR, p.334-340
- What does Articles or Bylaws provide for quorum?
- If incorporated, 18 O.S. 1060 provides for 1/3 of total membership, but may be less.
- For court-ordered election, the quorum is the number of members present regardless of actual quorum requirement.

Meetings – Proxies

Proxies – A Primer

- 18 O.S. 1057.C & D
 - Proxy must be signed or have signature “affixed” to writing
 - Electronic copies are acceptable
- 18 O.S. 1060
 - UOP, proxy is valid for 3 years
- RONR disfavors proxy voting
- Limited proxy? Voting proxy?

Meetings - Internet/Electronic Voting/Email

- Use the Internet to communicate
 - Governing documents
 - Newsletters/events
 - Contacts
- Remember the “Newspaper Rule” when using email among board members
- Electronic voting is allowable by Oklahoma Law; may require governing document amendments.

Electronic Voting

18 O.S. 1060E. If authorized by the governing body, any requirement of a written ballot shall be satisfied by a ballot submitted by electronic transmission, provided that the electronic transmission shall either set forth or be submitted with information from which it can be determined that the electronic transmission was authorized by the member or proxy holder.

Amendments – Reasons Why

9. No shooting from boats, except for cripples, and in no event shall a motor be ‘running’ in so doing. (The boat shall not be in forward motion.

Amendments - Overview

- Why? Defective/obsolete language, grammatical errors, change in law and/or facts, remove defunct Declarant language.
- Follow amendment provision within document.
- 11 O.S. 42-106.1
- Absent special amendment provision, each Lot owner must execute a notarized ballot to be filed with the amendment
- Covenants – Regular and intentional oversight
 - Special amendments – 11 O.S. 42-106.1(D)
- Bylaws – Board and member amendments – 18 O.S. 1013

Amendments: Mechanics

- Drafting Committee
- Testing the Waters
- Information meetings
- Notaries
- Voting Ballot – all in or line item?
- What percentage?
- Filing with county clerk

Insurance - Overview

Insurance Issues

- Insurance protects against casualties and liabilities
- Specialized insurance packages for community associations
- Director's & Officers Insurance
- Insurance must “fit” to Gov. Doc.
- Annual review of coverage
- Duty to defend certain claims

Operations - Board Duties

- Look for the “shall”
- Business judgment rule
- Duty of loyalty
- Duty against self-dealing
- Duty of inquiry: accounting
- Arbitrary and capricious
- Protect against embezzlement

Operations – Board Statutory Immunities

- 18 O.S. 865-867
- 18 O.S. 1027(E): A member of the board of directors, or a member of any committee designated by the board of directors, in the performance of the member's duties, shall be fully protected in relying in good faith upon the records of the corporation and upon information, opinions, reports, or statements presented to the corporation by any of the corporation's officers or employees, or committees of the board of directors, or by any other person as to matters the member reasonably believes are within the officer's, employee's, committee's or other person's competence and who have been selected with reasonable care by or on behalf of the corporation.

Operations – Books & Records

Books & Records: Rights to Access

- 18 O.S. 1065 (if incorporated)
- 18 O.S. 1069 – form of records
- 60 O.S. 521 (for condo)
- None for HOA
- What do Governing Documents provide?
- “Proper purpose”

Operations - Books and Records

- Consist of Financials, Governing Documents, Owner Files, Litigation/Enforcement Files, Minute Book/Organizational File
- Governing Documents may outline member rights to the books and records
- If incorporated, Oklahoma law grants access to members
- See www.okhoa.blogspot.com for an article on records access

Operations - Common Mistakes in Common Interest Communities

- Over-eager/under-eager enforcement
- Failure to provide due process if required by the governing documents
- Failure to properly constitute the ARC
- Enforcing non-existent covenants
- Assuming court will be a panacea
- Failing to place a D&O insurance policy

Operations – Myths

Have you ever heard...

- “My neighbor’s fence doesn’t comply with the covenants, so I’ll sue the HOA.”
- “Plant more trees in the Common Area or else...”
- “The Board doesn’t enforce the covenants, so I’m not paying my assessments.”
- “I never received a copy of my covenants, so they don’t apply to me.”
- “You can file a lien, but you can’t foreclose.”