Fair Housing Act

Why so many misconceptions about a Not for Profit Corporation?

Recent comments in a group discussion from my LinkedIn groups prompted me to explore this issue. Each and every state has a Not for Profit or a Non Profit Corporate Act. Each and every community is formed according to this Act in every state. In states where there are no other statutes for homeowners associations (especially), the Not or Non Profit Corporate Act controls and provides a foundation for many of the processes and procedures relative to the board, voting, meetings, and other legal requirements for association corporate business practices. This Act should be a regular review when questions come up about procedures in HOA's where there is no other statute that would control.

Many tend to think that a Not or Non Profit corporation can't make a profit. Many tend to relate a 501© type corporation, i.e. charitable or church organization, with a Not/Non Profit corporation.

The actual definition of this type of corporation is:

"A business organization that serves some public purpose and therefore enjoys some special treatment under the law. Nonprofit corporations, contrary to their name, can make a profit, but can't be designed primarily for profit-making." Another major difference between a profit and nonprofit business deals with the treatment of profits. With a for-profit business, the owners and shareholders generally receive the profits. With a nonprofit, any money that's left after the organization has paid its bills, is put back into the organization.

Income taxes also plays a role in this equation. Your association is not taxed on assessment income. But any income derived from other sources is taxed. That income could be interest income on investments, income from the rental of the clubhouse or parking or storage spaces, administrative charges for services to resident, income from laundry, rental income from association owned units, etc. Unlike a charitable organization, an association is not tax exempt - there are some variations on what and how taxes are determined, but for the most part every

association files a tax return for federal income tax. Some also file state and county tax returns.

Ok, now that I've got that off my mind, on to another current issue.

Are we discriminating against children without realizing it?

A couple of weeks ago, I wrote about the inclusion of hoarding as a mental disability that is now covered by the Fair Housing Act. Recently, there has been a different situation that has also risen to Alert status for every association.

History: It should be common knowledge that it is unlawful to discriminate against residents of a community based on "familial status". Communities for "older persons" (age 55 and older) under the Fair Housing Act (Federal) are permitted to discriminate on the basis of familial status because they are considered exempt under the law. They adhere to a very strict guideline of requiring at least 1 person in each household to be age 55 or over. If these guidelines are not strictly maintained, may run the risk of exposure to claims of unlawful discrimination. Most HOA's and condos do not operate under those guidelines.

The issue: Discriminatory conduct against children

Most Associations that have pool facilities, clubhouses, playgrounds parking areas, landscaped common areas have Rules and Regulations and most of the time, signage that indicates who may use or not use a certain facility or area, i.e. a demonstration of concern for children's safety with rules that don't permit children under a certain age (usually 14) to swim alone, or using the clubhouse without adult supervision or playing with bikes or skateboards on the common areas. Seems like common sense, but may well expose a community to a claim for damages.

The case: In March of 2015 the Department of Justice (DOJ) issued a press release concerning a settlement it reached with a management company and its client homeowners association consisting of 462 condominium units in Minnesota where the association was required to pay a $10,000 penalty to the United States and a $100,000.00 to six families in the community who had sought damages as a

result of the alleged discrimination. According to the press release, the lawsuit against the association and its manager alleged they had unlawfully discriminated against residents with children by issuing and enforcing rules regarding the use of common areas at the condominium.

It is reported the association and its manager allegedly engaged in a pattern of discrimination by creating and enforcing rules in a manner that prevented children from equal enjoyment of common areas and making statements that indicated a preference against families with children. The United States alleged that the association and management required children to be supervised at all times when in a common area, prohibited or unreasonably restricted children from using the common areas and selectively enforced the common area rules by issuing warnings and violation notices to residents with children, but not to adult residents engaging in the same activities.

It would seem the Association rule in effect since 1998 known as the "children rule" prohibited children from playing in the common areas. In 2011, the association amended the rules to prohibit riding bicycles, tricycles, scooters, skateboards, skates and rollerblades; playing; picnicking and sunbathing in the common areas. Owners with children received two violation notices citing them for violating the new common areas rule. The notices indicted that the children were not allowed on the common element grass or landscaping. In September 2011, the association's board of directors rescinded the new common area rule, citing recent changes in discrimination laws, but continued to threaten to fine the residents about their children's activities in the common area. In 2012, the manager wrote to the resident with children asking that they "take the comfort of other residents into consideration and have the children observe the association's rules". The letter also stated that playing on the grass or sidewalks is allowed, playing in the landscaping and the trees is not allowed. The owner was urged to take her children to a park or school off-site to play. Right after that, the Association placed notices on the community bulletin boards that stated "kids may not play in the garage, driveway, parking lot or by the pond. If the kids are in the grass, they may not dig, ride bikes, slide down hills or in any way hinder the growth of the lawn. They cannot play in the trees or planted areas and may not

jump off balconies. The notice went on to say that the sounds of the children playing near a building can be disturbing to other residents.

The Association was accused of discrimination because they were treating children differently than they were treating other residents. Would the same charge have been leveled had the rules stated "no person may play in the garage, driveway, parking lot or by the pond?"

The bottom line here is that rules (any rules) should be non-discriminatory by being addressed to everyone. Should be enforced equally and not targeted. Letters or notices sent to violators need to be mindful of the words used and the statements made.

North Carolina:

There are a number of bills before the House and Senate that may affect North Carolina's homeowners and condominium associations. It would seem there are currently twin bills HB514/SB 563 proposing community association manager's licensing. The proposed bills have some issues that are causing some heartburn and the CAI (Community Associations Institute) North Carolina Legislative Action Committee (LAC) are opposing the bills as written, but want to continue the dialog on the issue and other bills they do support. The LAC is actively covering 9 bills of interest to the HOA community. To read more you can go to www.cai-nc.org. Choose the Legislation tab for more information on these and other items.

Florida:

A last minute update on the issue that I emailed you about last week - the "bad bills" HB 611 and SB 736, that was about to be voted on regarding estoppel fees and other related issues. The House yesterday closed the session "Sine Die" 3 days early. All bills that were on the floor will die for this year. The only bill that will be considered by the legislature is the budget that will need to be passed by June 30. The industry lobbyist has warned however, that the issue is not over. It is being supported by two very heavy groups: Realtors and Title Companies. He's indicated it will be sure to resurface next year in 2016. In the meantime, our

Thanks to all who sent those emails out. We were assured that it did make a difference.

Well, I think that is enough for this week. So, until next time.