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What Boards Need to Know About Neighbor-to-Neighbor Harassment

Google the synonym for "neighborly," and words like "amicable," "chummy," and "friendly" appear. But, remove the “-ly," and the definition of neighbor is merely "one living or located near another." So how is it that neighbors can sometimes be so un-neighborly? And why should the association care?

Community associations are great places to live. Residents look out for one another, share the financial burden of maintaining common property, and agree to a set of rules that promote good behavior. But a community association is made up of people with unique personalities, ideas, and opinions. Diversity of opinion can undoubtedly be a positive, as long as they are expressed positively, but when a neighbor expresses themselves in a harassing or discriminatory way within a community, the association, as a housing provider under the Fair Housing Act (FHA) and Housing and Urban Development’s (HUD) definition, can be responsible for addressing it.

Neighbor-to-neighbor harassment is regulated under the FHA when a homeowner is subjected to “unwelcome conduct that is sufficiently severe or pervasive as to interfere with… the use or enjoyment of the dwelling;…or the provision or enjoyment of the services or facilities in connection therewith” because of or as related to the homeowner being a member of a protected class (race, color, religion, gender, disability, familial status, or national origin* (24 CFR 100.600)). It's essential to keep this definition in mind. Mr. Jones yelling at everyone who parks in front of his house is likely not harassment under this definition. Mr. Jones only yelling at pregnant women who park there may be since he is singling out people based on their gender and familial status.

Whether an association has any responsibility to involve itself in resident interactions seems antithetical to most people’s idea of a community association’s purview. In fact, it wasn’t so

long ago that community managers and boards were trained to steer clear of neighbor conflicts. A 2016 clarification of the FHA provision about “hostile environment harassment” by HUD made it clear that under the "Third Party Liability Rule," Associations can be held liable when the association board or management knew *or should have known* about the harassment and had the power to act, but failed to do so. Associations must be aware of their role in reviewing neighbor-to-neighbor harassment concerns and to have a process for addressing them. Not following through could be a violation of the FHA. So, how can association boards be prepared to handle these complex issues?

An ounce of prevention is worth a pound of cure. Adopting an anti-discrimination policy with a clear process for reporting and addressing discrimination and harassment is the first step. It should be clear that discriminatory harassment is not tolerated within the community. Your community manager can work with the association’s attorney to provide a sample homeowner code of conduct as a starting point. Social media platforms are magnets for nastiness, so a good social media policy and a moderator are critical. These policies should note that the platform follows the same code of conduct as other interactions in the community. Adding disclaimers on social media platforms may also demonstrate the association’s commitment to maintaining an anti-discriminatory environment but remember that a disclaimer won’t necessarily release the association of an obligation to act if comments cross the line. If the Board or manager participates in the platform at all, it may be assumed that the association should have been aware of harassment conducted through it. An association attorney can help draft good social media policies and disclaimers and provide guidance for moderating and participation.

When the association is aware of possible discrimination or harassment, take prompt action. While adoption and publication of the rules is the first step, enforcing those rules is often the challenge. The association should have a straightforward, written process addressing an issue when it arises. It’s important that associations don’t wait until a formal report is filed and delay the process unnecessarily. Just because a policy provides a timeline for review doesn't mean waiting until the time is set to expire is wise. The longer someone is subjected to harassing behavior, the more likely it could be considered "pervasive." A review and investigation are necessary to gather information. The Board should consider:

- Can the person exhibiting the behavior be identified?
- Is the behavior ongoing?
- What is the impact? Does it interfere with a resident’s use of facilities/common areas?
- Is there a protected class involved?

If the answers are "yes," a cease-and-desist letter may be the first step. If that isn't effective, mediation is an option. In either case, understand that most board members and managers are not qualified to handle these issues independently. In addition, know that completely resolving the problem may not be in your power under the enforcement provisions of the Governing Documents. Rely on experts. Involve your association attorney or a professional mediator early in the process to ensure compliance with FHA regulations within the authority provided in the Governing Documents.

Finally, the Board’s most vital role is to protect the association. Just because the Board has done all it can to comply with the law and address neighbor-to-neighbor harassment doesn't mean a claim won't be filed. Review insurance policies to ensure they don’t exclude discrimination or Fair Housing claims. A suit for a failure to act on harassment and discrimination is literally a “federal case” and can be costly to defend. Documenting all action and communication on the issue is essential. Should the association find itself in court, it will

be necessary to demonstrate that the association took action consistent with established policies. Being able to show each step of the process will be critical to the defense.

Association involvement in neighbor disputes may seem like a heavy burden for volunteer board members. Clearly communicated policies and prompt and consistent processes, coupled with expert legal support, can help boards navigate this complex responsibility, and with any luck, encourage a community of neighbors who are neighborly.
**Some states may have additional protected classes. Review your State's Fair Housing policies for specific guidance.*

Special thanks to Kathleen N. Machado, Shareholder-Community Association Practice Group at Rees Broome, P.C., Tysons Corner, VA, for her input for this article.

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