GASSEN COMPANIES

TOWN HALL MEETING

Audience Questions and Attorney Responses

In April of 2015, Gassen Companies held a town meeting. We invited Dave McGee, Nancy Polomis and Anthony Smith, three local attorneys experienced in handling litigation, real estate, townhome & condominium law to answer questions from the audience and shed some light on important HOA issues.

DAVE McGEE

Partner at Chestnut Cambronne

Dave has over 25 years of litigation experience representing insurance companies, employers, boards (profit and nonprofit), realtors (real estate agents, brokers, and brokerages), appraisers, title companies, engineers, design professionals, community associations, business, and individuals in the areas of Professional Liability, General Civil Litigation, Commercial Litigation, Construction Litigation, Insurance Litigation, Real Estate Litigation, as well as Real Estate Law, and Townhome and Condominium Law.

Dave is a frequent lecturer and has written numerous articles in the area of Professional Liability, Construction Defect, Community Association, Real Estate, and Workplace Issues. He is also a qualified neutral under Rule 114 of the Minnesota General Rules of Practice (mediation and arbitration).

My question is in regard to conflict of interest. Our board is not paid and I'd like to know if it is a conflict of interest if a board member wants to perform services (say, chopping down trees) for pay.

No, it is not a conflict of interest; however, it is inadvisable for a number of reasons. First, regardless of whether the individual is a member of the Board of Directors or not, the individual is a member of the association and by performing services for the association in exchange for compensation, or in some cases that we have seen, reduced or waived association assessments, the member is receiving a benefit that the other members do not receive. This creates a slippery slope and circumstances that other members will want to take advantage of. Second, if a member performs services for the association, the question becomes whether they are working as an independent contractor or employee. If it is not clearly established that the member is working as an independent contractor, they will likely argue that they are an employee of the association. As a result, the association must follow state and federal requirements due to the implied employer-employee relationship. If the employee/member is terminated, he or she may pursue unemployment benefits from the State of Minnesota, which creates additional cost and liability for the association. If an injury occurs, they may claim worker's comp. For these reasons alone, associations should not engage in this sort activity. Finally, the question is one of insurance coverage. Is the association properly insured for this type of activity? Some members may instead want to volunteer their service for the benefit of the association. Prior to accepting any volunteer services from members, the association should consult with its insurance broker to ensure that it maintains the proper insurance coverage.

When an owner is behind paying any assessment (monthly dues or a special assessment), we have been told that the fact that they are behind places an automatic lien on their property. However, we do not understand how the fact that this lien exists gets into the legal system so that it is a matter of legal record no matter how a title search would be done? We have a circumstance where the owner died. Before he died money was owed the association. While the probate process occurred more debt to the association piled up. The mortgage holder eventually took possession of the property, paid what they legally had to pay, and sold it. However, the new owner never had to pay the outstanding balance owed the association of $1337.00. How could this happen?

Our current understanding of why this could happen is because we didn't go through some court process and officially file some kind of paperwork that then places notice within the legal system of this debt. Please help us get a clearer understanding of how to deal with situations where the transactions taking place between the seller and the buyer would never come to seek information directly from the association about assessment(s) owed.

The Declaration of the Association creates a lien for assessments against all properties part of the Association and subject to the Declaration of the Association. The lien becomes perfected upon recording of the Declaration against the property. In addition, if the Association is subject to the Minnesota Common Interest Ownership Act, Minnesota Statutes Chapter 515B (the "Act"), the Act creates a statutory lien for assessments against the property. While it is certainly a "best practice" for the Association's legal counsel to prepare a Notice of Lien statement to be served upon the owner who is delinquent in the payment of Association assessments and recorded against the property, it is not necessary for the creation and perfection of the lien.

In the situation where a property is sold and an outstanding balance exists from the previous owner, the lien for unpaid assessments still exists against the property but the previous owner (or his/her estate) is personally responsible for the outstanding balance, not the new property owner. In the situation described, the Association could have worked with the estate of the previous property owner to obtain a satisfaction of the amounts owed to the Association. In addition, any time a sale of property occurs in an association, the association, its management company and/or its Board of Directors should communicate with the real estate agent who has the property listed for sale and/or the title company regarding the outstanding balance, if any, owed to the Association so the outstanding balance can be satisfied prior to or at closing.

What do other associations do about homeowners who are always late paying their association dues? They get behind, pay up when they get fined or they get sent a letter notifying them of legal action and the next month they don't pay again and are on the delinquent list almost every month. Is it legal to publish the delinquent list?

Associations' practices vary regarding delinquent accounts and the collection process. We recommend establishing a policy regarding delinquencies in the payment of assessments and the collection process. We encourage the Board of Directors to adopt such a policy and publish the policy to its members so all members are aware of the policy.

Depending on the terms of the governing documents of the Association, the Association may charge a late fee and/or fine the member for non-payment (with notice and an opportunity to be heard prior to instituting any such fine) of Association dues. If accounts remain delinquent, many of the associations we work with will send a Notice of Default letter to the delinquent homeowner under the Fair Debt Collection Practices Act notifying them of the default in payment of assessments and the potential legal ramifications of the default. If the account remains delinquent, the Association may commence collection action against the homeowner in conciliation (small claims) court or district court or may foreclose its lien for nonpayment of assessments. Associations should work with their managers and legal counsel in adopting a delinquency and collection policy and should always seek the advice and guidance of legal counsel when pursuing collection activity against a member of the association.

If the association is subject to the Act, Minn. Stat. § 515B.3-106 provides that the association must provide an annual report which contains a variety of items, including "a statement of the total past due assessments on all units, current as of not more than 60 days prior to the date of the meeting." Information regarding delinquent units may also be included in the meeting minutes of the Board of Directors of the Association, which are made available to members of the Association. It is recommended that Associations identify delinquent accounts by address only, rather than the names of the property owners.

Can someone explain the advantages and disadvantages of MCIOA and if we've opted in and it's in our legal documents, can we opt out and what would be required if we did that?

Dave McGee: There are many advantages to opting in to MCIOA. Advantages include: (1) document and rule clarity (by amending and restating the governing documents, the association has the opportunity to clarify and restate provisions of the governing documents and remove provisions that no longer apply); (2) establishment of authority of Board of Directors within the statute; (3) assessment procedures and lien authority – establishment of the "super lien" (i.e., lien which is subordinate only to first mortgage recorded against the property and any tax liens); (4) reserve replacement fund requirements (may be seen as a disadvantage from some members' perspectives; however, a healthy reserve replacement fund create a financially stable environment with less likelihood of future special assessments); (5) reasonable attorneys' fees and costs of litigation may be awarded to prevailing party in court case; (6) insurance requirements (may be seen as disadvantage depending on perspective); and (7) increased marketability for association, recognized and understood framework for Association procedures and definitions. Depending on your perspective, there are some disadvantages to MCIOA which include mandatory insurance requirements of the association, reserve replacement fund requirements/obligations and the requirement that the association have an independent audit of the financials of the association; however, the audit may be waived if 30% of the members vote in favor of the waiver.

The process to opt into MCIOA is to amend the Declaration and Bylaws of the association. We have never worked with an association that desires to "opt out" of MCIOA; however, in the situation where a planned community or single family association which previously opted in no longer desires to be subject to MCIOA, the association would have to amend and restate their governing documents again, obtain member approval and record the documents against the association property. This would be a time-consuming and costly process for an association that had previously opted in. Condominiums are automatically subject to MCIOA under Minnesota law, so a condominium association could not "opt out" of MCIOA.

My question is about the board hiring a company that is owned by the president of the board, when does this become a conflict of interest?

The Minnesota Nonprofit Corporation Act, specifically Minn. Stat. § 317A.255, governs this situation and discusses what steps need to be taken by the non-profit corporation (association) when working with an affiliated entity. A contract with an affiliated entity, such as a company owned by the President of the Board of Directors, will not be considered void if the following steps are taken by the association: (1) the contract or transaction is fair and reasonable; (2) the material facts regarding the contract or transaction and the director's interest are fully disclosed to the members and the contract or transaction is approved by 2/3 of the members entitled to vote; or (3) the material facts as to the contract or transaction and the director's interest are fully disclosed and known by the Board and the Board authorizes, approves or ratifies the contract or transaction in good faith by a majority of the Board members. For greater details on this type of contract or transaction, please refer to the statute.

Notwithstanding the above, if the association engages in business relationships where the director has an ownership interest in a company performing services for the benefit of the association, the Board should be prepared for questions from members. In our experience, these types of situations open the door for accusations by members of impropriety, favoritism and unfairness by the Board of Directors. Often times, the time, energy and expense incurred by the association to rebut claims from members far outweighs the advantages obtained from working with an affiliated entity.

How are property taxes allocated to properties when they are part of a homeowner's association? We have a mix of single family homes, townhomes, condos and a significant amount of green space.

Because each association/municipality handles taxation differently, we are unable to provide a direct answer to this question. We recommend that each association look to its governing documents to determine the allocation of real estate taxes. It may also be helpful to pull the property tax statements for the single-family homes, townhomes, and condominiums to determine if real estate taxes are assessed directly to the property or whether the real estate taxes are assessed to the association and then allocated among the properties in accordance with the governing documents as common expenses. In a majority of instances, the property taxes for each unit will be assessed directly to the unit. In our experience, common element land has a low property value because it cannot be developed so any property taxes associated with common element law is not typically very high.

The city of Bloomington recently installed a paved bike/pedestrian path along the front or our property and across the only driveway leading in and out of our complex. What might our liability be if there is an accident anywhere on that path or specifically at the driveway/path intersection? The city has indicated they have no liability for this.

To fully understand this question, it is important to understand the arrangement between the City and the association. Did the City commence an eminent domain action for the portion of the bike path intersecting the private driveway of the association? Or, did the association and the City enter into an easement agreement? The answer to this question is important. For example, if the City and the association entered into an easement agreement, the association could, hypothetically, be responsible for the maintenance of the area where the private drive and pathway intersect, leading to increased liability for the association.

As the result of the intersection between the private driveway and the bike path, the association is subject to increased liability. It would be prudent for the association to post warning signs on the drive to exercise caution, drive slow, institute a speed limit, watch for bikers/walkers, etc. and to notify its owners of the intersection between the path and private drive and to encourage owners and their guests to exercise increased caution in this area. It is important for the Association to advise its members of the increased liability and need to exercise caution. It is also important for the association to maintain adequate insurance coverage on the association property. We recommend that you work with the association's insurance broker to ensure that proper insurance coverage is maintained on the association property to address this situation.

We have a master association and 3 sub-associations. If one of the sub-associations wants to sever from the master, is that possible and what would it take to do so?

Severance is possible, but it is complicated. If the master association and sub-associations are subject to MCIOA, there is a specific provision of MCIOA that covers severance and outlines the severance process and requirements. The applicable statute under MCIOA is Minn. Stat. § 515B.2-124. In addition, the master association and sub-association should review each of their governing documents to determine if there are additional and/or different requirements regarding severance that must be adhered to as well. If the master association and sub-association are not subject to MCIOA, the terms of the governing documents control regarding severance – the association may only look to the 4 corners of the documents for guidance and control regarding the severance process. The associations should engage legal counsel to assist them with the severance process.

Our condo association documents state to refer to Minnesota Statute 515.A, our association was formed in the early 1980s. There is a newer statute 515.B for condo associations formed in the late 1990s. Should be following the newer statute and if so should we amend our By-laws and Declarations accordingly?

The condominium association does not need to amend its Bylaws and Declaration in order for Minn. Stat. Ch. 515B to apply. Minn. Stat. § 515B.1-102 provides that Minn. Stat. Ch. 515B "shall apply to condominiums created under chapter 515A with respect to events and circumstances occurring on and after June 1, 1994; provided (i) that this chapter shall not invalidate the declarations, bylaws or condominium plats of those condominiums, and (ii) that chapter 515A, and not this chapter, shall govern all rights and obligations of a declarant of a condominium created under chapter 515A, and the rights and claims of unit owners against that declarant."

What are the pitfalls to avoid when working with Rules and Regulations and its wording?

It is very important that the Rules and Regulations of an association are consistent with the terms of the Declaration, Bylaws, and Articles of Incorporation. The Rules and Regulations are to clarify and expand on the terms of the governing documents. Often times, associations prepare Rules and Regulations that attempt to create restrictions on members' conduct (i.e. leasing restrictions, use restrictions, pet restrictions, etc.) that are inconsistent with the terms of the Declaration. Any provision that attempts to restrict the members' conduct should be included in the Declaration, not in the Rules and Regulations. A restrictive term contained with the Rules and Regulations that is inconsistent with the terms of the governing documents is likely to be deemed unenforceable. When an association is creating new rules and regulations, the Board should look to the Declaration, Bylaws and Articles of Incorporation to ensure that the Rules are consistent with the governing documents.

Associations should also strive for clarity and simplicity in the Rules and Regulations. Often times, associations try to mimic the language found in the Declaration, which can be confusing and contain quite a bit of "legalese". The Rules and Regulations should be written plainly and in a manner that is not confusing to its owners.

The policies and rules adopted by the Board of Directors must be published to the members of the Association. Once a new rule or policy is adopted by the Board, the rule or policy must be published (i.e. posted, mailed, emailed, etc.) to the members of the Association. Many associations fail to properly adopt and publish rules and policies of the association. The Rules and Regulations are not effective until they are published. This very important step should not be overlooked.

This means that any events arising prior to June 1, 1994 (the effective date of Minn. Stat. Ch. 515B) would be governed by Minn. Stat. Ch. 515A and that Minn. Stat. Ch. 515A would govern all rights and obligations of the declarant (developer) of the condominium and the rights and claims of unit owners against that declarant. Given that almost 20 years have passed since the effective date of MCIOA, it is unlikely that any such events, circumstances or claims would arise at this point in time that would require the association to look to Minn. Stat. Ch. 515A, rather than Ch. 515B.

Explain the difference between condominium organization and a co-op, as many newer housing developments are choosing.

A condominium association is a common interest community association which governs the management and operation of the condominium building(s) and property surrounding the condominium building and the rights/obligations of the condominium unit owners. The condominium association is a non-profit corporation organized under Minn. Stat. Ch. 317A (the Minnesota Nonprofit Corporation Act) and is subject to Minn. Stat. Ch. 515B, the Minnesota Common Interest Ownership Act. B. MCIOA defines a condominium to mean "a common interest community which (i) portions of the real estate are designated as units, (ii) the remainder of the real estate is designated for common ownership solely by the owners of the units, and (iii) undivided interests in the common elements are vested in the unit owners." See Minn. Stat. § 515B.1-103(11). This means that each unit owner owns his/her/its condominium unit and the remainder of the real estate (the common elements which includes the parking areas, clubhouse, pool, hallways of condominium building, etc.) is owned in common by all of the unit owners, often times in proportion to their ownership interest in the condominium as a whole. In short, a unit owner maintains an ownership interest in real property in their unit and in the common elements.

On the other hand, a cooperative or "co-op" is a common interest community in which the real estate is owned by an association, each of whose members is entitled to a proprietary lease by virtue of the member's ownership interest in the association. See Minn. Stat. § 515B.3-103(13). In a co-op, the member usually owns stock in the association and then has an exclusive lease for the real property. In our experience, it can be difficult to locate a lender who is familiar with financing the purchase of a co-op because they are financing ownership in a corporation, not ownership of real property. Co-ops are seeing increased popularity in our market, particularly among the aging population who often times no longer want to own real property later in life. However, we have recently seen some co-ops fail due to the nature and structure of co-ops. For example, a co-op can have a majority shareholder who owns a majority of interest in the co-op, has control over the association subject to the governing documents, and may use the properties in the co-op differently than as initially intended or marketed to the other owners. Other co-op owners may object to this sort of use of the property, but have little ground to stand on due to their minority interest in the corporation. Because of these types of issues, we have seen some co-ops convert to condominiums or apartment buildings. However, in some communities, such as New York City, co-ops are very successful and thriving.

NANCY POLOMIS

Hellmuth & Johnson

Nancy's in-depth understanding of the real estate market, coupled with her unique perspective as a former mortgage company employee, enables her to provide direct and proactive counsel to clients including builders, developers, banks, condominium and townhouse associations, as well as individuals and entities involved in real estate transactions.

Representing numerous community associations, she brings considerable insight to all stages of association development – and all association matters – including entity formation, the creation and interpretation of covenants and bylaws, and collections.

Is it discriminatory to allow pets in a formerly "no pets" building when the criteria to allow a pet is that the resident has a "medical need" statement? This seems to create a "special needs" category that is unfair to residents who simply desire to own a pet.

Under the Fair Housing Act, associations must make reasonable accommodations for people with disabilities. Such accommodations might include allowing a service animal/therapy animal/comfort animal, even in a community that prohibits pets. A service/comfort/therapy animal is not a "pet." The animal must assist with the disability, and the association is entitled to ask for information in that regard (including verification of disability unless it is obvious). However, there is a limit on the information that may be requested. If an occupant requests reasonable accommodation of a disability, consult with legal counsel. Violations of Fair Housing Act can result in lengthy investigations and potentially significant fines.

How do you make residents pay for damages done to the building?

It depends on the terms of the association's governing documents. In most cases, there are provisions that authorize the association to assess a unit and its owner for damages caused by such owner or his guests/tenants/family members. Procedurally, the association would notify the owner of the violation (damage caused) and the fine to be imposed. If the association is governed by MCIOA [Minnesota Statutes Chapter 515B]—or if it is specifically provided in your governing documents—the association must advise the owner that he is entitled to a hearing on the matter before the fine is imposed. If no hearing is requested, fine may be imposed. If hearing is requested, hearing is held (before Board or committee appointed by Board). Owner must be notified of the decision of Board following hearing (preferably in writing). If fine is imposed and not paid, it becomes a collection issue. (Check governing documents for specific time periods in which owner must request hearing, timing of hearing, notice required, and timing of notice of decision.)

How does an Association limit the number of rentals?

The Association must amend its declaration to impose a restriction on the number of units that may be rented at any given time. This can be a contentious issue, so associations are advised to consult with counsel as to the requirements for amendment, drafting of the amendment and verification that all requisite approvals have been obtained. Associations should also bear in mind that overly burdensome restrictions may preclude a condominium association from getting (or keeping) FHA project approval. Any amendment to declaration must be recorded in order to be effective, and is not effective until it is recorded, regardless of when owners may have approved the amendment.

How do you control children, for their own safety?

Associations need to be careful about imposing rules specific to children, as some can be deemed discriminatory to families (discrimination based on familial status). Rules need to be neutral on their face ("No running in the halls"), but also neutral in their application. (If only children are "busted" for running in the halls, the application of the rule is not neutral.) Not to beat a dead horse, but consult with counsel; have counsel review proposed rules before they are distributed to owners/occupants to ensure that rules are appropriate and not in violation of Fair Housing or other applicable laws or inconsistent with the Declaration.

Can a proxy be used to make a motion, or only to cast a vote after a seconded motion?

Nancy Polomis: I assume the proxy holder is not a member of the association therefore could not make the motion on her own behalf. Typically, a proxy gives the holder the right to cast votes on behalf of the proxy grantor. As such, one who holds a proxy and is not a member would not be entitled to make a motion or second it; it can be used only to cast a vote on behalf of the proxy grantor.

If you have disputes with your attorney, what do we do?

Talk with the attorney. It may be there's been a misunderstanding or miscommunication. If that is not the case, every client has the right to discharge its attorney. If the association is in the midst of litigation, you may be limited as to how close to trial you can discharge counsel, since it could adversely impact the other parties if counsel is discharged too close to trial.

Seek a second opinion from another attorney experienced in community associations. That attorney may advise that the counsel of record is doing things "right," but expectations have not been managed or status has not been adequately communicated. If that's the case, it's time to talk to counsel of record (again). If the second opinion is that the counsel of record is stalling or engaging in tactics that don't advance the case (but, rather, just "run up the bill"), it may be appropriate to discharge counsel of record, but be prepared for some delays (and possibly extra charges) while new counsel gets up to speed.

How do we manage an attorney we feel is dragging a case out too long?

See above.

How does the association board begin to change our building to non-smoking? Can we legally do this? If so, do we need a vote of owners before proceeding? If this is the case, what percentage of approval do we need to proceed?

To prohibit smoking in Units, you would have to amend the Declaration. It is legal to do so. Amending the Declaration typically requires approval of a percentage of owners (as stated in the Declaration) and may require consent of first mortgage holders as well (if so required under the amendment requirements of the Declaration). The percentages can vary; you need to check your association's Declaration.

Please discuss the difference between limited common elements and common elements.

Limited Common Elements are a "subset" of Common Elements. Common Elements are those portions of the community other than the Units; Limited Common Elements are those portions of the Common Elements reserved for the exclusive use of the Unit to which the Limited Common Elements is allocated. Limited Common Elements are most commonly found in condominium communities rather than townhome communities, but townhome communities may have Limited Common Elements. Classic examples of Limited Common Elements are decks and balconies; these components typically lie outside the "cube of air" that constitutes a condominium unit, so are part of the Common Elements, but are intended for the exclusive use of the unit to which they are allocated. (NOTE: Simply because the association is responsible for maintaining a component does not mean the component is a part of the Common Elements or is a Limited Common Element.)

Is it possible to have a delinquent renter delinquent for over two years? ($7,000)

Yes. If the association has not commenced any collection action, the owner has no incentive to pay. The association needs to get that account into collections! If they wait too long, the association may lose its right to pursue collection of older amounts.

When the Declaration contains amenities, how do we remove from the Declaration (ie non-repairable sunken spa too expensive to replace)?

Typically, that would require amendment of the Declaration. (See above for discussion of approvals that may be required.) It would also be prudent to review the plat, since the plat may make specific reference to the amenity. That may require amendment of the plat to remove references to amenity. Amending plats can be expensive.

ANTHONY SMITH

ROEDER, SMITH, JADIN

Anthony ("Tony") T. Smith has been representing plaintiffs for most of his career. His clients include commercial and residential property owners, condominium and townhome associations, property management companies, and individual homeowners.

Tony has presented at local and national educational seminars on a wide range of topics, including property owners' rights under their insurance policies, insurance appraisals, insurance carrier bad faith, and construction defect litigation.

We have a bulletin board – one homeowner wants to advertise her services as a companion for elderly people. Should we allow this and if so, how should we word a disclaimer?

Bulletin boards are a great idea for community associations. They give homeowners a way to communicate with other members of the community.

Association should permit homeowners to post things on their community bulletin board as long as the content of the postings do not violate any of the association's governing documents (i.e., the declaration, bylaws, and rules and regulations) or any applicable laws. If you have questions about whether a posting may run afoul of the governing documents or applicable law, you should contact an attorney for a legal opinion.

Associations may want to post general disclaimers on their bulletin board stating that their bulletin boards are provided as a service to the homeowners, and that they do not screen or endorse the services, goods, or messages posted by homeowners.

In this case, there is probably no problem with a homeowner advertisement for services as a companion for elderly people. It does not violate any laws, and almost certainly does not violate the governing documents.

What is a good percentage of rentals?

That really depends on the association and the general desires of its members. Some associations do not want any rentals and prohibit them outright. Other associations do not restrict rentals at all. And some associations fall between these two extremes and impose some limitations on rentals. There is no "right answer." Associations should consider the impact that rental restrictions (or the lack thereof) might have on their community with their members, and consult with an attorney to implement an appropriate plan.

Regarding Association records, how long should we retain the following:

Invoices
• Annual contracts
• Improvement/upgrade project files
• Bids/Proposals
• Legal files:
• Collections
• Notices
• Non-lawsuit related files
• Financial files (Is there a benefit to keeping them longer that the IRS recommends?)
• Taxes
• Audits

In Minnesota, a corporation (associations are nonprofit corporations) must keep complete copies of its governing documents, accounting records, voting records and all minutes of meetings of the members, of the board and of any committee that has the authority of the board for six years. Anything older than that can be discarded from a legal standpoint.

Additionally, associations subject to the Minnesota Common Interest Ownership Act, Minn. Stat. § 515B ("MCIOA"), must keep records of their membership, unit owner meetings, board of director meetings, committee meetings, contracts, leases, and other agreements to which the associations are parties, as well as material correspondence and memoranda relating to its operations. Associations subject to MCIOA must also keep sufficiently detailed financial records. And Associations subject to MCIOA must produce these documents to a homeowner upon request. Again, these documents must be kept for six years.

However, associations may want to keep some documents for a longer period of time. For example, an association may want to keep documents relating to capital improvements and construction projects for up to twelve years. Construction defects and related damages may not manifest themselves until years after the work is complete. In Minnesota, property owners may have as long as twelve years after the completion of the construction project to bring legal claims against the builder. It is therefore a good idea to hold onto these documents for longer than the usual six years.

We have a homeowner who puts up a bouncy castle occasionally. We're concerned that the association might be held liable for injuries, etc. How should we word the rule prohibiting these types of things?

Associations are free to restrict activities that may constitute a nuisance or expose it to potential liability. The bouncy castle would fall into that category, as would other potentially dangerous things like trampolines, swimming pools, and the like.

Federal and state laws like the Fair Housing Act ("FHA"), the Americans with Disabilities Act ("ADA"), and the Minnesota Human Rights Act ("MHRA") prohibit associations from enacting rules and regulations that discriminate based on age, gender, marital status, familial status, disability, religion, and other categories.

Because of these laws, associations should make sure their rules and regulations are facially neutral and do not disproportionately affect certain classes of people protected by the FHA, the ADA, or the MHRA.

In this case, the bouncy castle is a child's play area, and any rule prohibiting bouncy castles would disproportionately affect children and families with children. If the association acts to ban only the bouncy castle, then there is a good argument that the rule runs afoul of the FHA and MHRA.

A better practice would be to pass a broad rule that generally bans outdoor recreational items. This would include the bouncy castle, but would also include other things such as putting greens and hot tubs. This broad rule is not targeted specifically at children, and is more likely to be enforceable.

You should consult with an attorney to discuss the preparation of rules specific to the needs of your association that will avoid running afoul of the FHA, the ADA, and the MHRA.

Do open meeting calls apply to informal work meeting of the Board (to review & discuss bids, work process, etc.)?

Association boards may desire to meet informally, without notice to unit owners, to discuss association matters without taking action. While this may seem fine, MCIOA's statutory requirements of notice to unit owners and open board meetings apply regardless whether action is taken at a meeting. In short, associations subject to MCIOA must follow the open meeting requirements.

Associations subject to MCIOA must generally make all of their board meetings open to all unit owners, and must provide them with reasonable notice of the date, time, and location of the meetings. A board meeting is any meeting of an association's board of directors where association business is discussed and/or conducted. Therefore, any meeting of the board of directors where association business is discussed and/or conducted must be open to all members.

There are only a handful of situations in which an MCIOA association's board can close its meetings. An MCIOA board can close its meetings to discuss: (1) personnel matters; (2) pending or potential litigation, if necessary to discuss strategy or to protect the association or its members; or (3) criminal activity within the association, if necessary to protect the privacy of the victim.

Define the open meeting law.

Associations subject to MCIOA must generally make all of their board meetings open to all unit owners, and must provide them with reasonable notice of the date, time, and location of the meetings. A board meeting is any meeting of an association's board of directors where association business is discussed and/or conducted. Therefore, any meeting of the board of directors where association business is discussed and/or conducted must be open to all members.

Must all board emails be given to residents?

Anthony Smith: As noted above, associations subject MCIOA must keep "material correspondence and memoranda relating to its operations." This includes board e-mails related to the operations of the association.

Additionally, MCIOA requires associations to produce its documents to homeowners upon request. This includes board e-mails related to the operations of the association.

How does the Board need to let homeowners know when and where meetings are held?

Under MCIOA, the board must give homeowners "reasonable notice" of the date, time and location of its meetings. This can be done in any reasonable manner (a formal mailing, a bulletin board posting, flyers posted in and around the property, an e-mail blast to homeowners, posting on a website), as long as it can be accessed and viewed by the homeowners.

Can homeowners stay at meetings when the Board discusses delinquencies? Other personal matters about homeowners?

It depends. Under MCIOA, a board of directors can close its meetings to discuss: (1) personnel matters; (2) pending or potential litigation, if necessary to discuss strategy or to protect the association or its members; or (3) criminal activity within the association, if necessary to protect the privacy of the victim.

With respect to delinquencies, a board can probably close the meeting to discuss its collection strategy. Discussions about delinquencies and an association's collection strategy likely falls within the "pending or potential litigation" exception to the open meeting rule.

Whether the board can close its meetings to discuss "other personal matters about homeowners" will depend on the nature of the personal matter. You should consult with an attorney to discuss the specific personal matter, and whether the board can close its meeting to address it.

Some units in our quads continually need gutters cleaned and/or ice dam removal. Is there a way we can force those owners to add insulation or to install gutter covers?

It depends on the association's Declaration. The Declaration should specify who is responsible for maintaining, repairing, and replacing these building components, who is responsible for paying these costs, and whether there is a mechanism your association can use to make these improvements without the homeowners' consent. You should consult with an attorney regarding this situation for a specific review and interpretation of your Declaration.

How do we update our Declaration to make it a newer, clearer package?

Your Declaration contains a section that discusses the process for amending it. This generally requires the consent of a supermajority of the homeowners (often 67%) and sometimes the consent of the first mortgage holders. The Declaration will also specify how consent must be given – whether the Association needs to hold a meeting to vote on the proposed amendment, or whether the Association can obtain written consents from the homeowners without a meeting.

Of course, homeowners have to know what they are giving their consent to. Your association must prepare a draft of the amended Declaration for them to review and vote on.

You should consult with an attorney to assist you in reviewing the Declaration and drafting appropriate amendments to meet the needs of your association. The involvement of a skilled attorney will simplify this highly technical process.