



SHAW & LINES, LLC
COUNSELORS TO COMMUNITY ASSOCIATIONS

I am the Association! How to Handle the Overbearing Board Member.

Authored and presented by
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This document is intended to provide general information. It does not and cannot provide specific legal advice. For additional information or answers to questions, you may contact Augustus H. Shaw IV, Esq. of Shaw & Lines, LLC at 480-456-1500 or send questions to ashaw@shawlines.com.

I. Introduction.

Every Community Association (or almost) has a Overbearing Board Member, a Member who refuses to keep confidential information, interrupts meetings or represents the Association without full Board approval. Overbearing Board Members can cause a host of legal issues for an association, the Board and the Overbearing Member. This document will discuss the legal liability facing community associations regarding Overbearing Board Members and how community associations should address the situation and protect itself.

As a starting point, it is important to understand that not all Overbearing Board Members have a nefarious intent. Most Overbearing Board Members have a sincere desire to better the community association. Sometimes Overbearing Board Members feel that their actions are in response to a perceived lack of action by the full Board of Directors. Most Overbearing Board Members want to make their communities better but are simply not educated regarding the proper way to accomplish their goals.

So, while this document is meant to instruct community associations on how to identify and address an Overbearing Board Member; this document may also serve as a reflection tool to Board Members so that they may ensure that they do not become an Overbearing Board Member.

II. What is an Overbearing Board Member.

An Overbearing Board Member is a member of a community association Board of Directors who displays the following types of behavior:

1. Conducts himself or herself uncivilly at meetings of the Board of Directors;
2. Seeks to enforce the restrictive covenants on his or her own;
3. Fails to keep confidential information;
4. Talks badly about other Board Members; and
5. Fails to thoughtfully consider the advice of experts (i.e. the association's manager, attorney or other professionals);

Overbearing Board Members can cause a number of practical problems for the Board and the community association. Overbearing Board Members can interrupt the flow of Board meetings and make them more difficult to conduct. Additionally, Rouge Board Members can discourage other Members of the Association's Board from fully participating in Board Meetings.

III. Association Liability Concerning the Overbearing Board Member.

While there are a number of practical reasons why Overbearing Board Members are not good for community associations, there are more important legal reasons why Overbearing Board Members should be addressed.

Overbearing Board Members may be difficult to deal with, but they also create a wide range of legal issues for a community association. In order to fully discuss the different types of potential liability, it is important to revisit the actual behaviors.

Uncivil behavior at meetings of the Board of Directors

When an Overbearing Board Member conducts himself or herself uncivilly at Board meetings, said behavior could disrupt the Board meeting and may lead to important issues not being fully discussed. In addition, other Board members may feel deeply offended or intimidated by the Overbearing Board Member's conduct.

The above could lead to legal liability in the form of a harassment lawsuit against the Overbearing Board Members and a lawsuit against the community association for failing to address the Overbearing Board Member's conduct.

Enforcement of the restrictive covenants without Board Approval

When an Overbearing Board Members seeks to enforce the restrictive covenants on their own, this activity could lead to breach of the community association's policies on enforcement. When an Overbearing Board Member takes enforcement action outside of the association's normal enforcement policies and procedures, this could subject the association to legal liability based on unequal enforcement and breach of the association's own policies and procedures.

Failure to keep confidential information

Every community association board discusses information that, for a number of reasons, should be kept confidential. It is important for Board members to keep confidential information confidential. Overbearing Board Members fail to keep confidential information confidential which could lead to legal liability based on harassment, liable, slander and misrepresentation. Divulging confidential information could also lead to a breach of the attorney client privilege and negatively affect legal action involving the community association.

Speaking badly about other Board Members

Speaking badly about a fellow Board member can lead to ill feelings and resentment that can affect the efficient operation of the Board. Moreover, it could lead to liable and slander liability if the statements made by the Overbearing Board Member are false or misleading.

Failure to thoughtfully consider the advice of experts (i.e. the association's manager, attorney or other professionals)

Under Arizona Law, a Board member will be held to not breach their fiduciary duty if they thoughtfully consider the advice of experts. Overbearing Board Members tend to believe that they are the expert in everything and hiring an expert is not needed. This type of behavior could lead to a host of liabilities depending on the area of expertise not sought.

IV. How to Handle the Overbearing Board Member.

Addressing the behavior of an Overbearing Board Member is a delicate matter. This is because, as stated above, the Overbearing Board Member may not feel that their actions are harmful to the association. Moreover, the Overbearing Board Member may feel that they have no other choice but to engage in this type of behavior.

Prior to addressing an Overbearing Board Member, it is important that the manager and other Board Members agree that the behavior of the Overbearing Board Member is problematic. Also, the association may want to obtain legal advice regarding whether the activities of the Overbearing Board Member present an imminent danger to the association.

When addressing an Overbearing Board Member, there are two main processes. There is the informal process and the formal process.

Informal Process

The first step of the informal process concerning the addressing of an Overbearing Board Member would be to, in an executive session meeting of the Board of Directors, present the Overbearing Board Member with a written list of the behaviors the Overbearing Board Member is engaging in. This should be followed up with a discussion on how the behavior could harm the association and ways to positively address the behavior.

If the Overbearing Board Member continues to engage in damaging behavior, the next step would be to discuss the Overbearing Board Member's actions in an open meeting of the Board of Directors. A document should be drafted detailing the areas of concern and ways the Overbearing Board Member can address the behavior.

Formal Process

If the Overbearing Board Member continues his/her behavior after the informal process, then the next step would be to conduct the Formal Process. The Formal Process begins with an official letter of censure to the Overbearing Board Member. The Censure Letter should list out the areas of concern and should also list the ramifications if the Overbearing Board Member continues their behavior.

If the Overbearing Board Member continues their activities after a formal Censure Letter has been issued, the association has two remaining options, said options being:

- a. The calling of a special meeting of the association to discuss the removal of the Overbearing Board Member from the Board of Directors; or
- b. Filing a breach of fiduciary duty lawsuit.

The calling of a special meeting of the association to discuss the removal of the Overbearing Board Member from the Board of Directors

Most community association bylaws allow either the President of the association or a majority of the Board of Directors to call a special meeting of the members. This special meeting of the members could be held to discuss the removal of a member from the association's Board of directors.

Calling a removal meeting should be only done in extreme circumstances. It is always advisable that prior to calling the removal meeting, the association seek the advice of its attorney.

Filing a breach of fiduciary duty lawsuit

This is absolutely the last option an association may take regarding an Overbearing Board Member and the most drastic. Before considering this option, the association should consult with its attorney to determine whether this option may be effectuated.

V. Conclusion.

Addressing the issue of an Overbearing Board Member is not easy. Community associations, however, must be able to identify the warning signs and address the issue quickly before the issue leads to legal liability.

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I AM THE ASSOCIATION! HOW TO HANDLE THE OVERBEARING BOARD MEMBER

  

  

What is an Overbearing Board Member

- Conducts himself or herself uncivilly at meetings of the Board of Directors;
- Seeks to enforce the restrictive covenants on his or her own;

What is an Overbearing Board Member

- Fails to keep confidential information;
- Talks badly about other Board Members;
- Fails to thoughtfully consider the advice of experts (i.e. the association's manager, attorney or other professionals).

Association Liability Concerning the Overbearing Board Member

- Uncivil behavior at meetings of the Board of Directors.
 - Legal liability in the form of harassment lawsuit;
 - Inability to conduct the business of the Association;
 - Perception of incompetence.
- Enforcement of the restrictive covenants without Board Approval.
 - Legal liability based on unequal enforcement;
 - Legal liability based on breach of the association's own policies and procedures on Enforcement.

Association Liability Concerning the Overbearing Board Member.

- Failure to keep confidential information.
 - Legal liability based on harassment, liable, slander and misrepresentation.
 - Breach of the attorney client privilege which may negatively affect legal action involving the community association.
- Speaking badly about other Board Members.
 - Legal liability based on harassment, liable, slander and misrepresentation.
 - Affects the good working relationship of the Board.

Association Liability Concerning the Overbearing Board Member.

- Failure to thoughtfully consider the advice of experts (i.e. the association's manager, attorney or other professionals).
 - Could lead to breach of fiduciary duty liability;
 - Could lead to general harm of the Association.

How to Handle the Overbearing Board Member.

• Informal Process

- In an executive session meeting of the Board of Directors, present the Overbearing Board Member with a written list of the behaviors the Overbearing Board Member is engaging in.
- If the Overbearing Board Member continues to engage in damaging behavior, the next step would be to discuss the Overbearing Board Member's actions in an open meeting of the Board of Directors.

How to Handle the Overbearing Board Member.

• Formal Process

- A Censure Letter detailing the areas of concern and the ramifications if the Overbearing Board Member continues their behavior.
- The calling of a special meeting of the members to discuss the removal of the Overbearing Board Member from the Board of Directors.
- Filing a breach of fiduciary duty lawsuit.

Questions?

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- 8/22/2012** Changes in the Laws Affecting Community Associations.
- 10/24/2012** How to Conduct Board Member Training - Key Issues Every HOA Board Should Be Taught.

All Seminars will be held at Noon (check in at 11:30) at The Hilton Phoenix Airport - 2435 South 47th St., Phoenix, AZ – State Route 143 & University.

To register for any of the above seminars and lunch, please contact us by:

Phone: 480-456-1500
E-mail: veronica@shawlines.com

*The Lunch and Learn Lecture Series is free to all Community Association Managers. Additionally, Board members who are clients of Shaw & Lines, LLC may attend free of charge on a first come, first served basis. Non-clients of Shaw & Lines may attend for a \$40.00 per person fee. The Seminars may qualify for continuing education credit for community managers with the CMCA, AMS and PCAM designations, as well as continuing legal education credits for Arizona certified document preparers.

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