

Legal Issues for Oklahoma Community Associations

Part 2

Matthew L. Winton^{PLLC}

WINTON LAW

3233 East Memorial Rd., Suite 103
Edmond, Oklahoma 73013
405.478.4818

www.wintonlaw.net

okhoa.blogs.com

mlw@wintonlaw.net

Legal Service for Community

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MLW HOA/Condo Resources

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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**

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

- The correct account amount
- Consistent application of interest
- Late fees?
- Uniform invoicing and collections; title company contact
- Lien practice: Absent a Power of Attorney, your HOA manager does not have authority to sign liens.
- Make sure your manager, attorney, any third party collector understands and complies with FDCPA.

Assessment Liens

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

Small Claims Collections

- \$10,000 jurisdictional amount
- Affidavit; Alias Affidavit
- Service of Process
- Trial within 45 days approx.
- Default/Attorney's fees limited
- Service of judgment
- Collection of the judgment

HOA/Condo Foreclosures

- Valid lien?
- Bankruptcy?
- 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 – Civil Penalties
- Collections during pendency
- Make sure your HOA, your manager, and attorney understand the U.S. Bankruptcy Code



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Dispute Resolution – Judicial Remedies

- Demand letter
- Penalties: no vote, no common area
- Monetary Fines
- Small Claims Court
 - Collections of assessments and fines
 - Amounts under \$10,000.00
 - Attorney's fees limited
- District Court
 - Collections under \$10,000 (CS court)
 - Collections over \$10,000 (CJ court)
 - Injunctions, damages
 - Declaratory actions (honest disagreement)

The dangers of a one sided story



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 – IRS form 1120H
- 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 - 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.”