

When an HOA board plays favorites

Question: A board member in my Los Angeles-area association is seriously delinquent on her monthly association payments. She asked the board to give her leeway in paying past-due amounts, and the majority of directors agreed. Two homeowners who are not board members are also behind on their association payments, but the board voted to send pre-lien notifications to each of these owners.

An unemployed director at my sister's association in Orange County failed to pay six months of association fees, and the property manager wiped the debt off the books. Last year, that same director defaulted on his mortgage and was headed to foreclosure when suddenly the default was paid off and the association's accounts were missing the same amount of funds.

Is either board in violation of any laws and what can be done?

Answer: Every member of the association is subject to the same rules, and all policies must be enforced fairly and uniformly. When it comes to assessments and the obligation to make payments, there are not two sets of laws, one for board directors and another for other homeowners. The same applies to fines and penalties.

The board has discretion to work with delinquent owners, but it is not up to the board to fashion accommodations for some owners and not others. Indulging a board member who asks for leeway in paying her delinquent assessments and then not treating other owners in the same manner creates a disparate system of enforcing rules, covenants, conditions and restrictions.

The board may be creating legal liability for the association in treating certain members differently. Such discrimination could result in a lawsuit against individual directors and the association if the motivation for the discrimination is related to race, religion, gender or some other protected class.

A board member's disappearing debt from association records may entail a criminal action; missing funds are always cause for concern. The result may involve removal of directors, referral to enforcement agencies, even filing police reports where necessary. Owners are watchdogs for association expenditures.

To learn of delinquencies on a monthly basis, titleholders must regularly view association documents to verify what's going on and what action must be taken. Although the names of delinquent owners may not be shared publicly, the status of the property addresses may.

The key to any titleholder action against a board of directors begins with consistent document demands. Because California's Legislature limited owners' rights in viewing and obtaining documents, titleholders need to be disciplined and hold firm in keeping current with making demands.

Under Civil Code section 5210(b), when an owner properly requests access to association records, strict time periods apply for compliance. Records prepared during the current fiscal year must be provided within 10 business days after the association receives the request, and association records prepared during the previous two fiscal years must be provided within 30 calendar days of the association's receipt of the request.

Your proper written request must fall within precise statutory time frames for the requested documents. Write with specificity, leaving nothing to chance. Provide effective dates for each item requested. Demanding a laundry list of items may thwart your efforts to use those documents in court as supporting evidence for your case.

Without persistent owner objections to such indiscriminately offensive favoritism, the illicit activity will continue. Titleholders must do their part to hold these directors responsible. If there is evidence to support unequal treatment of members or embezzlement of funds, then board directors may face personal liability.