CAMS "ASK THE EXPERTS"
Behavior Management: How to
Deal With Everyday Headaches in
Your Community Association

Christopher Gelwicks
The McIntosh Law Firm

Thursday, November 17, 2022



# ROADMAP TO OUR DISCUSSION



- WHAT HEADACHES COULD YOU POSSIBLY HAVE AS A VOLUNTEER, UNPAID, HOA BOARD MEMBER?
  - VIOLATIONS HEADACHE
  - THE NON-VIOLATION HEADACHE
  - DOCS ARE NOT CLEAR HEADACHE
  - IS IT AN HOA ISSUE HEADACHE
- REALLY COMES DOWN TO WHAT IS THE ROLE OF THE BOARD IN A CERTAIN SITUATION
  - Police
  - Politician
  - Lawyer
  - Mediator (maybe)



# BOARD OF DIRECTORS-WHAT ARE THE MAIN ROLES

- ROLES-DUTIES (governing document and dependent)
  - Generally to govern the community
    - Set and collect assessments
    - Enforce restrictions (to the extent allowed in the governing documents) and adopt rules
    - Form committees and oversee them (e.g. AC)
    - "Act for the common welfare of the community"



### VIOLATIONS-THE POLICEMAN



- Can be of restrictions, rules, guidelines, depending upon what you have.
  - What about violations on Lots?
    - If there is a restriction, then violation is enforceable with penalties
    - If the Association has the power to adopt rules and regulations over what occurs on a Lot or Unit, then CAN BE enforced (there is no case on this)
- Follow procedure (NC-statute SC-documents)
- Remember, the goal is compliance
- Act quickly



# POLL QUESTION 1

- Have you received complaints from owners on issues that are not addressed in the restrictions or association rules?
- Yes
- No

# NON-VIOLATION HEADACHE



#### **EXAMPLES:**

- NOISE--- EVERYTHING FROM MUSIC TO CARS TO DOGS BARKING
- PARKING ON THE STREET OR IN THE "WRONG" LOCATION
- EXTERIOR LIGHTS SHINING IN THE WINDOW
- DOGS USING THE BATHROOM ON A LOT AND NOT CLEANING IT UP (WHEN THERE IS NO RULE OR RESTRICTION)
- ITEMS OR ADDITIONS ON THE PROPERTY THAT A PRIOR BOARD DID NOT ADDRESS
- THE LIST GOES ON---- "Bad behavior"



#### CASE STUDY



## • THE DIRT/GRAVEL DRIVEWAY—IT'S A VIOLATION BUT ITS TOO LATE!

- RESTRICTIONS ONLY ALLOWED BRICK OR ASPHALT OR CONCRETE
- STARTED WITH RUTS DURING CONSTRUCTION
- OWNER BEGAN TO USE
- ASSOCIATION HAD STRICT PROCEDURE FOR VIOLATIONS
- TOOK NO ACTION FOR A LONG TIME
- JURY DECISION
  - OWNER IN VIOLATION
  - BOARD WAITED TOO LONG SO CANT ENFORCE
- THE HEADACHE? NEIGHBORS COMPLAIN ABOUT IT, THE PREVIOUS BOARD IS BLAMED, AND THERE IS NO RESOLUTION TO THE PROBLEM THAT SATISFIES THE COMMUNITY.



# NON-VIOLATION HEADACHE-THE POLITICIAN

# • COMMUNICATE WITH THE COMPLAINING OWNER

- EXPLAIN WHY THE BOARD CANNOT ENFORCE
- GIVE THE OWNER THE INFORMATION ON ALTERNATIVES
- DESCRIBE THE PRACTICAL ISSUES INVOLVING ENFORCEMENT (e.g. constant monitoring not possible, might not be an owner)
- BE PREPARED FOR OWNER DISCONTENT FOR AWHILE --- IT COMES WITH THE JOB

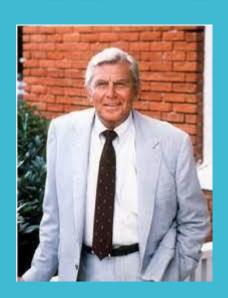


# POLL QUESTION 2

• Have you pursued the fine/suspension process on issues that are not completely clear in the Restrictions?

- Yes
- No

# THE DOCS ARE NOT CLEAR HEADACHETHE LAWYER



- •BE BOLD continue with the process all the way through
- BLUFF continue to a point
- LET IT BE it's not worth the trouble or completely unenforceable
- HOW IMPORTANT IS THE ISSUE:
  - WHAT DO WE KNOW ABOUT THE OWNER
  - WILL THEY COMPLY
  - DO WE NEED TO MAKE A STATEMENT—DIE ON THAT HILL?
- AGAIN, REMEMBER THE GOAL IS TO GAIN COMPLIANCE, NOT REVENGE OR PENALTY
- WHAT IS OUR ATTORNEY'S OPINION ON THE LIKELIHOOD OF SUCCESS



# IS IT AN HOA ISSUE HEADACHETHE MEDIATOR



# • NEIGHBOR TO NEIGHBOR DISPUTES ARE NOT HOA BUSINESS, AND ARE SIMILAR TO NON-VIOLATIONS

- FIDUCIARY DUTY FOR USE OF RESOURCES, ASSESSMENTS, AND TIME
- EXCEPTION--- **FHA** DISCRIMINATION MATTERS—ASSOCIATION MUST TAKE CERTAIN ACTION IF IT IS MADE AWARE OF POSSIBLE DISCRIMINATION



## IS IT AN HOA ISSUE-MEDIATOR

#### WHAT SHOULD THE BOARD DO?

- IF IT'S AN FHA ISSUE, THE BOARD WILL HAVE TO GET INVOLVED, PERHAPS ONLY WITH A LETTER, BUT COULD HAVE MORE INVOLVEMENT DEPENDING UPON THE ALLEGATIONS, INCLUDING A MEDIATOR ROLE
- IF ITS AN OWNER-TO-OWNER ISSUE, THE BOARD SHOULD CHOOSE NOT TO GET INVOLVED



# POLL QUESTION 3

• Have you tried to get an amendment passed to give some teeth to restrictions, based upon complaints from owners, only to see the amendment fail?

- Yes
- No

#### SOLUTIONS/ SUGGESTIONS

- AMEND THE DECLARATION
- AMEND THE RULES (AS YOU CAN)(SC-must record)
- CREATE COMMITTEES (IF YOU CAN GET THE VOLUNTEERS) TO HELP IN DEALING WITH OWNERS AND BAD BEHAVIOR
- BE CONSISTENT IN ENFORCEMENT
- COMMUNICATE CLEARLY WITH COMPLAINING OWNERS AND OFFENDING OWNERS.



# Chris Gelwicks The McIntosh Law Firm 704-892-1699 chris@mcintoshlawfirm.com

