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3/21/07

## Apathy - Perhaps the Biggest Problem HOA Boards Face



**apathy**, as described by Webster's Dictionary, means: **"a lack of interest or concern."**

So how does it happen that homeowner associations are so widely affected by apathy? It's the opening sales pitch. The first thing anyone hears when they are looking to buy a piece of property in a common interest development, especially a condominium development, is:

***"Enjoy worry-free living... all of your problems are taken care of... you don't have to worry about a thing... someone else maintains the property for you..."***

Naturally, this is what busy people in this day and age like to hear, and this is what sticks in their minds. They don't tend to remember anything about a pile of documents that requires a trade-off (namely compliance with restrictions). It is very easy to become distanced in a common interest development. People don't tend to work out in their yards, don't talk across fences, don't get to know their neighbors, or develop a **"community spirit."** People come to rely on the original representation that they can move in, worry-free and not take any responsibility in the maintenance or issues that may have a bearing on their property values. Of course, this isn't the case for every individual and every association, but it probably is the case in associations where apathy runs high.

### What Is The Result Of A High Level Of Apathy?

When people leave the work and responsibility to someone else, and go on about their lives without paying attention to what is happening, and there are several seriously problematic results:

- A lack of educated homeowners (about common interest development living).
  - A vast number of people who are uninformed about responsibilities.
- A lack of awareness of or interest in the community's "health" and "well-being"..
- A lack of educated, informed homeowners who would be qualified to serve on the Board.
  - A lack of interest in what is happening in the community itself.
  - A lack of interest in serving the community on committees or the board.

and in the more serious cases...

- **A STRAIN ON THE PEOPLE THAT ARE WILLING TO SERVE**
- **A STRAIN ON THE ABILITY TO GET IMPORTANT MEASURES APPROVED**
  - **A STRAIN ON THE BUDGET**
  - **A DECREASE IN PROPERTY VALUES**

Even if you don't care about the first six issues, everyone who lives in a common interest development or owns property in one should care about the last four. Boards that are uninformed and homeowner associations that are unable to inform and educate their homeowners (for lack of

interest) are also generally unable to get a quorum of homeowners to show up for the annual meeting, serve on committees, run for the Board, or pay for professional help that is most sorely needed when the Board is weak, disinterested, or uneducated.

***The ultimate and worst possible result of apathy (short of no leadership at all) is that an association may end up in receivership, with someone at the "helm" who is hired to pay bills, and not to promote community, and/or whose job is to collect assessments and maintain the components the Association is required to maintain, and not necessarily to administer with the best interests of the community in mind. Court appointed receivers are not noted for finding the most efficient and effective way to do things, and are not necessarily focused on enhancing and preserving property values in the development or promoting community spirit. They can get access to money through court ordered assessments if need be, and pay outside consultants, managers, etc. to offer expertise and to handle tasks that need to be done, but the situation is certainly not optimum, and associations more often than not stumble into receivership in undesirable circumstances, because the people in the development were not paying attention!***

### **Now, What Can A Homeowners Association Do About Apathy?**

#### **Apathy Of Homeowners**

A Board that "**reaches out to the community**" is likely to engender interest from the targeted audience. If that audience is just the owners, then there may be a problem in garnering this community spirit if there is a large number of rentals. On the other hand, if the Board reaches out to the owners and residents of the whole community, then it is easier to build "**community**."

**Periodic Or Regular Newsletters:** Associations that regularly send out newsletters to the owners and residents in the community have the opportunity for the most direct link. Newsletters, when used properly, can generate community spirit and interest in what is going on. Newsletters that are bland, uninformative, gossipy, uninteresting, or difficult to read (either because of the prose or the type-face) are not helpful, advisable, nor productive. Newsletters can be used as a device to emphasize important rules and regulations, in a pleasing way. For example, if a community is having difficulty with pets running loose or defecating in the common area, the newsletter can be a source of a series of articles on how to help the administration deal with these problems, and how to help the community to "**police**" the effort. (By "**police**," I do not mean Nazi-style commandeering. I mean through "**peer pressure**".) If newsletter articles raise the nature of complaints, problems for the community, and point out how much better off the community would be without the problem, and then reiterate the rule in more of a "**good-neighbor**" policy format than a "**hard rule**," the owners will be more encouraged to say something if they see a problem. They will be informed and educated, and prepared to point out the benefits of keeping dogs on a leash, or scooping the poop.

Sometimes examples of a particular situation will help. Using the pets example, the association might mention that it was forced to spend "**X**" amount of dollars in the prior year in rule enforcement related to pets, and those funds could be used elsewhere, if the community would help by avoiding violations like loose pets and defecation in the landscaping that has to be cleaned up to enable the landscapers to do their job.

Newsletters can also be used to elicit feedback from the homeowners. For example, a newsletter can be used to ask for volunteers to assist on various committees, to announce community "**clean-up days**," to announce social functions or parties, to commend "**good neighbors**," to award prizes or give recognition for service, or to highlight action items in meetings. In this day and age, with so many people having computers, and so many simplified publishing programs, most communities could find someone that would do the good deed of producing the newsletter for circulation. Absolutely, however, no one person should be authorized to send out or submit the newsletter to the community without editing or careful consideration of what is said. There are legal ramifications to certain actions and statements.

#### **Newsletter Dont's:**

- Do not publish the collections list in the newsletter to shame people into paying their assessment accounts.
- Do not mention names or conduct, or disciplinary actions to embarrass people into compliance.
- **DO NOT MENTION HOMEOWNER OR RESIDENT NAMES AT ALL, UNLESS IN THE CONTEXT OF A WELCOMING MESSAGE.**

**Social Activities:** Associations that have some social activities during the year tend to have better community spirit. Some associations have an annual party of some kind, like a Halloween or Christmas party, or an annual barbecue. Some associations combine a social activity with the annual meeting, to bring people out. Some associations have social hour before the board meetings, but caution is in order. If the association serves any liquor at these functions, it may be asking for trouble. If liquor is served at social functions, you need to check with your insurance carrier to make sure that you have coverage for incidents related to alcohol that is served. Even if you serve a glass or two of wine before an annual or board meeting to those attendees, you are risking "**incident**," "**loose talk**," and/or a lack of formality that may hurt the association, or abusive interaction from someone who can't handle alcohol.

**Periodic Reporting To The Membership:** Even if your association does not have a newsletter, or plan social functions, it can keep the community well informed through distribution of necessary documents. Each year, associations are required to send out a pro forma budget, information about the reserves, financial statements, alternative dispute resolution summary, collection policy, fine policy (if fines are to be imposed), insurance information, information about construction defect lawsuits, and attorney's fees, about how to get copies of the association minutes, about meetings and meeting dates, and the list gets bigger each year through the legislative process. Although I don't believe many in the community are as likely to read financial reports or official looking documents as a newsletter, at the very least the association can use its policy of widely distributed and disseminated information in its defense, if anyone attempts to argue that the board is secretive, inept, inadequate, or inattentive.

In essence, the association has to "**capture the community**" to avoid widespread apathy. It has to continuously work to keep the community interested in what is happening. It is important when the association needs to put a ballot out to the community that the solicitation materials not only satisfy legal requirements, but that they also explain the problem or need for response in lay peoples terms. Associations that have lawyers write the solicitation letters without any feedback as to whether even the board can understand what is being said are doing a disservice to the community. Certainly, there are times when attorney input is needed, but in my experience, having someone from the board jot down their thoughts and what is important to them (and the more input from the board the better) to give to the attorney ideas tends to lend a realistic and general "**flavor**" that should be carried on into the solicitation materials that go to the homeowners. After all, the board members do come directly from the community, and if they are pleased with the communication that is going to the homeowners, chances are the homeowners will be more likely to understand it. If the board members see the communication as a bunch of legal gobbledegook, then the homeowners will do the same, and if people can't understand something, they won't read it and they aren't likely to respond to it.

If a board of directors cannot get a quorum at an annual meeting, it cannot hold a legally valid election. If it cannot get a sufficient response to a voting measure that is put to the homeowners (for things like special assessments, amendment of governing documents, etc.), it cannot follow through with important business decisions and properly administer the community. Here are some other things I have seen done to "**beat**" apathy:

- Include a general proxy in with billing statements and encourage owners to return the proxy so it will be at the meetings in the event they cannot be present.
  - Give as a choice on the proxy a box to check for quorum purposes only.
- Implement a fine system for people who don't return proxies and don't come to the annual meeting (although I certainly would not recommend this, unless the association has the measure approved through an amendment to the governing

documents, preferably the CC&Rs).

- Making telephone calls and going door-to-door when a ballot measure is out before the members, or an annual meeting is coming up.
  - **Now Comes The More Serious Issue ...**
- **What Happens When You Cannot Get Enough Board Members To Serve?**

While homeowner apathy mostly causes grief, when it leads to board member apathy, or more precisely, a lack of resourceful people to serve on the board, it can lead to serious legal issues and, ultimately, the demise of the association. The "**board pool**" depends more or less, though, on the strength of awareness, education, and information that flows to the owners. So you have to work backwards, at the lowest level of apathy, to create the type of ground swell that will elicit competition of these resourceful people to serve on the board. It is not just about community, it is about finding people who are capable to actually contribute something to the board, not just people who are looking for a "**figure head**" position.

An association is in the best position to create the ground swell of interest and "**groom**" candidates to give service (either on committees or on the board) by, again, by "**reaching out to the community.**" In the newsletters I talked about above, you could use these opportunities to survey the membership, find out areas of interest, and find out what kind of people are available that have given service in the past and may be willing to do what it takes to learn how to be a good board member for the homeowners association. The association can solicit feedback from the membership. Surveys can be provided asking for input on areas of interest, areas of concern (within the association), jobs or positions that had specific qualifications or expertise that might be valuable to the association (construction background, landscaping, legal, accounting, leadership, management, etc.). You might just seek out the best form of interactive communication. These items could be used to find out how many people in the community are on the "net," and might give what is the best means of communicating with the homeowners. Questions could be asked about whether the membership would be interested in attending social functions, participating in board training, etc. Sometimes, you have to get creative. In one of my current roles as leader of a resource panel for a particular industry group, I recently sent around a signup sheet asking for volunteers to serve on committees or possibly participate in leadership roles in the group. The piece of paper came back blank. The next piece of paper I circulated at a meeting asked everyone in the group to please give me at least one suggestion as to who they thought within the group might make a good candidate for service, either as a committee member or in leadership. In other words, I asked for names and recommendations. When this sheet went around the room, I told anyone whose name ended up on that sheet who really wasn't willing to give service would be entitled to cross their name off. I got the sheet back full of suggestions, with no names removed or crossed out. In other words, don't just look for people to volunteer, look for ways to "**pull them out of the woodwork.**" Most of the people who are really good volunteers are already busy, but I would also venture to say that most of those who are already busy can usually take on some additional responsibilities for a good cause.

In the homeowners association context, the approach might be sending out a notice to all of the homeowners that the association is forming a landscape committee to identify the needs of the association, solicit bids, and interview landscapers, with the intention of bringing a recommendation to the board of directors on one or two companies that seemed the most promising. If the association has to pay extra to have some of this work done by the manager, then the "**solicitation**" for volunteers might mention that if there are no willing volunteers, the board will have to pay for the service. One could remind the homeowners that the dollars are coming out of their own pocket. One might rather emphasize the fact that the health of the whole community depends on the willingness of volunteers to fill the necessary roles with qualified people. You know better what kinds of people live in your community than I, and I always ask board members (when they ask me for assistance on these issues) what they think might get people's attention. One might peruse some of the publications put out by the government to entice "**volunteers**" for various areas of the service, and see what "**Uncle Sam**" uses to draw people in. It isn't always about money.

When apathy affects an association to the point of a series of uncontested elections, or worse yet, a long period of time when board members have to be sought out, chased down, cajoled, and shamed into service, it is time to take the matter seriously. Shaming and dragging people into service, or operating year after year under the same uncontested leadership, very often leads (eventually) to

burnout, dictatorship, frustration, control issues and "**cliques**". The kind of power that develops over a long period of time when one, two or three people control the board isn't always healthy. Those in leadership roles come to expect that their decisions will not be challenged, and often bristle when they are.

### **What Happens When You Absolutely Cannot Fill A Board With The Number Of Directors Specified In The Bylaws?**

**An Association Needs All Possible Resources, And The Only Way To Get Optimum Benefit Is To Make Sure That All Of The Board Positions Are Filled With Resourceful People:** If you cannot fill the board, or there is anyone on the board who isn't serious and attentive about coming to meetings, the integrity of the whole board is compromised. Worse yet, if an association cannot get a sufficient number of board directors to show up for meetings to constitute a quorum, the ability to do business may come to a halt. The bylaws for a homeowners association should specify the number of directors. The board should be filled up to that number of directors, and not more. The number of directors can be stated as a "**range**" wherein the specific number of board members could be determined either by the board, or by the membership. (However, always keep in mind that the board cannot make a decision about board size that would result in someone losing their "**duly elected**" term.)

The quorum of the board should also be stated in the association's bylaws. It may be stated in terms of a percentage of the full board (such as "**a majority of the number of board members provided in these bylaws**"). It may be stated in a "**sliding scale**" such as "**...a majority of the board members currently in office.**" It may be stated as a specific number. The provisions in bylaws that state a majority of the board members named in the bylaws is beneficial in that it prevents the association from taking action without a reasonable number of board members in attendance. However, the downside to such a provision is that it more or less paralyzes the association if board members start dropping out because of some difficult issue or power struggle within the association.

**Voting On Action Items:** Anytime a board of directors is consistently unable to get a quorum of directors to the meetings, there is a serious problem that needs remedy. **Decreasing The Number Of Board Members:** Some associations have taken care of the quorum problem by lowering the number of people serving on the board. If a board of seven or nine is difficult to fill, a board of five or seven may not be. If a board of five is difficult to fill, a board of three may not be. Again, keep in mind that board seats cannot be taken away from someone who is duly elected by decreasing the number of people who serve on the board.

**Getting More Help For The Volunteers:** Sometimes it is difficult to get board members to serve, because too much time is required. Sometimes it's because neighbors do not want to get between neighbors and collections, rules enforcement, etc. Sometimes it's because people don't feel they have the expertise. This is where choosing good management comes into play. A board member's duties can be minimized with a good, resourceful management company. If the association is small, and does not feel it can afford full service management, there are consultation and specific types of management services available. For example, some associations have delegated only the financial management to a professional. Others use management consultant services for violation letters, hearings, etc. related to enforcement of the documents. Some associations have delegated architectural review to outside consultants.

All of the communication in the world with the homeowner sector of the community, with the idea of soliciting willing volunteers, will not help if the board meetings are chaotic. Professional management can help with this. Some associations use management consultants to assist in running smooth, efficient and effective board and/or annual meetings.

Whether the board directors execute a mass exodus because of a difficult problem facing the association, or whether the association is unable to fill the board because of apathy, the business cannot be run without someone making the day-to-day business decisions. Sometimes drastic measures are needed.

**Getting The Attention Of The Community:** I have, jokingly at times, suggested that a board of directors (or one remaining board member, if there is one), send out a communication to the homeowners with the headline

**"YOU MAY BE FACING A \$10,000.00  
SPECIAL ASSESSMENT IF YOU DO NOT ACT NOW."**

This heading could be followed by "This or worse could become a reality if we do not get community interest going and find members who are willing to serve on the Board!" And then follow with a plea for volunteer board members. It may be a bit misleading, but it is not illegal stated in such equivocal terms. And it does get people's attention. Truth be told, an association without effective administration could be facing this kind of an individual assessment, if things are left unattended too long. Inattention invites things like theft, waste, and deterioration.

**Receivership:** Another way to get homeowners' attention is to send a communication to all of the owners stressing the fact that if people are not willing to come forward and serve on the board, the last remaining act of the last remaining board director or directors will be to put the association into "**receivership.**" When board members are ready to throw up their hands and drop off of the board either for lack of successors, or because of a difficult problem, I recommend that their last act, rather than leaving the association without any leadership at all, would be to put the association into receivership. It is not an enticing idea to voluntarily put an association in receivership, but it is better than walking away without leaving anyone in control (for those walking away, and for the community). Even a professional manager cannot run an association without a board. The manager can do a lot of things, but cannot act in place of the board. If receivership sounds inviting, picture this: a person who is chosen by the court to be paid by the association to perform services in management, whether or not the person has any kind of professional management designation or expertise. The receiver is likely to be given control of funds, and be given the authority to pay bills. The receiver might not be given any authority to make decisions related to maintenance, rehabilitation or reconstruction, unless funds have already been set aside for those purposes. A receiver can file and defend lawsuits, but has little opportunity to fully integrate membership.

In community associations, apathy is a disease that requires a treatment plan. "**Prevention**" is even better. Some directors may be very happy about the fact that the community is not interested in what is going on in the board room. However, even those people often end up sorry when they have run a dictatorship for years (without the community even knowing it) and can find no one to fill their shoes when they get sick or wish to retire.

Here are some more suggestions I have heard from associations dealing with apathy, and looking for solutions:

- In a smaller association, one on-site manager told me that each year she sends around a calendar to the membership and provides boxes for members to fill in indicating years they would be willing to serve.
  - Some associations have a celebration dinner or evening party each year honoring those who have served. (Advice: don't send the board to Cancun on association funds!)
  - Some associations have shortened the term of directors to shorten the commitment. (Keep in mind though that an association does not get the consistency it would otherwise achieve through longer, staggered board terms where only a portion of the board is up for election each year.)
- One association approved a partial "dues (assessment waiver" (although there are possible ramifications to this that should be discussed with the association attorney.

In one non-profit organization on which I served on the executive board, finding volunteers was difficult because of the sheer commitment of each officer position. In our organization, we proposed

and achieved approval of a bylaw amendment that split some of the officer positions into a position that could be shared, changing the titles of the positions to include the prefix "co-."

To recap, apathy prevention begins with the communications to the homeowners. Communications that are geared toward soliciting feedback help the administration and leadership to identify resources within the community. Accessing those resources and funneling creative and resourceful energy into committee and board service commitments promotes a healthier business structure and community environment. A healthy community environment probably means a healthy political environment. With good administration, smooth running programs, sufficient help from the committee structure, and effective and efficient administration, there is a stronger likelihood of willingness to serve. Alternatively, in an inefficient or a dictatorial system, there is less likelihood of people willing to stand up and serve. No one really wants to become a target. If the association does nothing to counter the conceptual reality that serving on a volunteer board is a thankless job where one is likely only to hear complaints, and not praise, then the association is likely to come up short at election time.

In my experience, I have never seen or heard discussed at any board or annual meeting the specific issue of apathy in the community, although I have heard board members lament, when it is time for an important ballot or an annual meeting, that: ***"There is no way we will ever get enough response to pass this measure."*** The time to approach apathy is not just before a very important election on some important action item before the association. The time to approach it is at the board meeting where the seats in the audience are empty. Perhaps it would be a good idea to work in discussions on overcoming apathy and expanding the board pool into (hopefully far in) advance in planning for the next annual meeting. The board that operates without community involvement is likely to face a lack of community support when difficult decisions have to be made and imposed upon the membership. Don't let that happen to you.

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**Return**