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CELEBRATING 55 YEARS

CAI's 39th Annual Community Association Law Seminar

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Boston, MA The following seminar update was prepared by seminar attendees Scott Eriksen, Esq. a partner with the law firm Perkins & Anctil, P.C. and Ellen Shapiro, Esq. a principal with the law firm Goodman, Shapiro & Lombardi, LLC.

At the seminar earlier this year in Palm Springs, we heard dozens of familiar stories from community association attorneys around the country: communities wrestling with requests for support animals, struggling to limit short term rentals, dealing with residents "aging in place" and more. While the subject matter presented much of the same in terms of issues, problems and challenges for communities, there is still plenty to think about.

Hoarding – It's Worse Than You Think

In 2014, hoarding was recognized as a psychiatric disorder and estimates reflect that two to five percent of the population suffers from this disorder. That's nearly twelve million people! Hoarding can present a bevy of problems for boards, managers and neighbors. Oftentimes, hoarding begets safety and sanitary woes: fire hazards, vermin, noxious odors and other unpleasant or unlawful conditions. These issues, the products of the underlying disorder, must be addressed, but the lesson from this year's seminar was one of perspective. Associations are not in a position to treat psychiatric disorders, and hoarders will likely continue to hoard even if a board cracks down on the problems that the behavior has created for the community. It is important to take this into consideration in terms of formulating a comprehensive strategy for resolution, and to spend time defining what success should look like in different terms.

The Perils of Hostile Environment Harassment

In 2016, the Department of Housing and Urban Development issued a rule prohibiting Quid Pro Quo ("this" for "that") and Hostile Environment Harassment, and extended liability for discriminatory housing practices based on those prohibited actions. Standards were established to be used for assessing claims alleging discrimination arising out of these actions regardless of which section of the Fair Housing Act (FHA) is alleged to have been violated or if the conduct complained of violates more than one section. It is important to note that there is no damages element to claims under this law. That means that if harassment is present it is actionable, and there is no requirement for the victim to prove that he or she suffered harm (financial or otherwise).

Even if the victim has not suffered a financial loss, there is still liability on the part of an association if it is found to have committed or allowed to be committed either a quid pro quo act of discrimination or maintaining a hostile environment in housing. In fact, a victim does not even have to show

psychological or physical harm. Simply stated “quid pro quo” discrimination in housing is an unwelcome request or demand to engage in conduct as a condition for providing housing or a benefit attached to housing. Hostile environment on the other hand is unwelcome conduct that interferes with an individual’s right to use and enjoy the property. Since even a single incident is sufficient to sustain a claim, we urge boards to exercise caution at all times.

55 and Better Communities

We used to think that the most important thing to know about over 55 communities was the Housing for Older Persons Act (“HOPA”), the law that allowed these communities to prohibit occupants under 55 (which obviously includes children) without risk of discrimination claims. While the speakers at the seminar covered HOPA, they also covered other laws which come into play when boards are confronted with problems as the older 55 occupants age in their units. Consider, for example, whether associations have any obligation legally to address conduct and behavior of occupants? This is a question that often confronts association boards, but the import of the question is emphasized when the behavior and conduct threatens the health and safety of others. Conduct of an aging occupant who forgets that something is cooking on the stove or who cannot maintain his/her unit in a sanitary manner can present far graver consequences to the community than the type of conduct frequently complained of in non-age restricted communities. The latter (such as music, loud parties, etc.) tend to be more annoying than dangerous. In one case in Tennessee, where an owner occupant failed to correct unsanitary conditions including rotten food, bodily fluids and mold, the association was left with no choice but to resort to litigation and finally received judicial authority to sell the unit (and was awarded its legal fees).

Also in 55+ communities the need for curb cuts, ramps and handicap parking spaces among other modifications is on the rise, as is the need to allow occupants under 55 to reside with a disabled occupant in order to provide assistance, all of which are presented as requests to boards for reasonable accommodations or modifications.

Continuing with this line of discussion, while acknowledging associations’ obligation to comply with FHA and applicable state laws, does the association have the right or obligation to insist that the aging occupant who forgets that food is cooking engage a live in aide? Does the association have the right or obligation to spend association funds to clean out a hoarder’s unit and sanitize it to prevent a spread of rodents or insects to other units or to prevent fires? Does an association increase its liability by failing to take these actions or by undertaking them? Does the association even belong in these areas of occupant conduct? While there are few definitive answers to many of these questions, it is quite clear that over 55 communities present numerous challenges that are not addressed in, and probably were not contemplated by, the Housing for Older Persons Act. As these populations age and the occupants become more fragile, it is clear that community association law when applied to over 55 communities requires increasing familiarity with laws other than those that simply permitted the creation of these communities.

Conclusion

In summary, this year’s CAI Law Seminar was yet again an educational experience, but not necessarily because of anything particularly novel or surprising. The takeaway is that it would be a

mistake to treat common issues with drone like, routine attention. Use the skills and knowledge you have acquired, but be sure to keep your perspective as fresh as possible.