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**ASSOCIATION
ACADEMY**

FEBRUARY 2018



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**You Can't Simply
Look The Other Way**

New HUD/FHA Rules That
Affect Your Associations

Lydia Chartre
February 21, 2018



New Rules

New HUD Rules went into effect October 2016 which may have a significant impact on Associations

- Quid Pro Quo Harassment
- Hostile Environment Harassment
- Third Party Liability

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Harassment

- Two Types of Harassment (Quid Pro Quo and Hostile Environment) that are recognized/identified by the FHA
- The new HUD Rules state that Associations may be held liable as a "third party" if they can exercise control to try and stop the harassment, but fail to do so.

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Quid Pro Quo Harassment

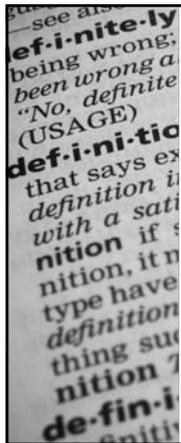
An unwelcome request or demand to engage in conduct, made a condition related to providing services or facilities

“I'd be happy to fix that porch light for you, if you _____ for me...”

Might also arise when a person's access to services or facilities is interfered with because of a failure to submit to demands

“We are going to fine you because you won't go on a date with the Board president...”

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Hostile Environment Harassment

= unwelcome conduct that is

- **sufficiently pervasive or severe** as to interfere with
 - the providing of or enjoyment of services or facilities

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“Sufficiently pervasive or severe”

“Sufficiently pervasive or severe” what does that mean?

- only applies to harassment based on a protected class
 - (sex, religion, race, color, familial status, national origin, or handicap)
- the harassment must be on the level of intimidation, threats, coercion, interfering with housing/living
- two recent cases: *Halprin* and *Revocek*

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Third Party Liability

Now, not only is the Association responsible for its own conduct, it is also liable for:

- Failing to take prompt action to correct discriminatory practices of employees/agents *and*
- Failing to take prompt action to correct discriminatory practices of third parties (could be other owners!)

Where the Association knew or should have known about the discriminatory practice.

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Impact on Associations: Two Scary Facts

- Know that you can be in trouble if a board member, agent, employee, or other owner creates a hostile environment that harasses a resident who is a member of a protected class.
- The resident doesn't even have to complain to the Association to put the Association on the hook for liability:
 - *Example:* if the hired lifeguard or a board member observes racial discrimination by the pool of a resident, but takes no action, the Association can be liable.

How to Protect the Association

Don't look the other way; Act promptly on complaints from residents, especially when they relate to discrimination of a protected class

Don't wait for the resident to complain if you hear of discriminatory harassment from another source

Educate board members and employees/agents about the types of discrimination they should look out for

Adopt and publish **Anti-Discrimination Policies** – that will help educate and put owners on notice as well

Enforce your rules to help end discriminatory conduct

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Questions?



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THANK YOU

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Association Collections

Billie Fatheree
February 21, 2018

Do You Know What You Are Getting?

- Does your Association actually track/measure the income and expense of each collection matter?
- Does your Association collection attorney provide statistics on what they recover, including net of attorney fees and costs? **They should.**
- The Board has a duty to make sure your Association knows what they are spending **AND** what they are recovering.
- If you don't measure, you don't know and can't manage.

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Proven Success

- We track every collection matter we open, and provide our Associations with a breakdown upon completion of each matter.
- Since 2012, we have collected over \$5.1 million **NET** in dollars and property for our associations.

Collection Report January 1, 2012 – February 19, 2018	
Debt at Time Sent to HB (including interest)	\$3,353,510.87
Total Dollars Paid to Associations (after attorney fees/costs)	\$5,159,831.58
<small>1,798 Closed Files</small>	

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Real Results (From Really Bad Starting Situations)

Collection Report - Waukesha Association	
Debt at Time Sent to HB (including interest)	\$84,375.34
Total Dollars Paid to Association (after attorney fees/costs)	\$141,681.14
<i>50 Closed Files</i>	

Collection Report - Milwaukee Association	
Debt at Time Sent to HB (including interest)	\$92,398.51
Total Dollars Paid to Association (after attorney fees/costs)	\$199,292.09
<i>53 Closed Files</i>	

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When The Odds Are Stacked Against You

Ari Kasper
February 21, 2018

Chance Time?



Litigation is not a certainty

- **Calculated** risk
- Controlled v. uncontrolled variables

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Background

- Homeowners Association with troublesome member
- Prior collection attempt before HB was involved
- One Unit Owner with fundamental misunderstanding of what an HOA is



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HOA Timing Issues

(4) In the event that an assessment levied under sub. (2) against any lot remains unpaid for a period of 60 days from the date of the levy, the governing board of the levying corporation may, in its discretion, file a claim for a maintenance lien against the lot. All of the following apply to a claim for lien under this subsection:

(a) The claim may be filed at any time within 6 months from the date of the levy.

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Artificial Limitation

- HOA had passed rules artificially limiting their ability to foreclose a lien or recover money damages
- Prior proceedings ended in appeal, resulting in Unit Owner's favor as a result

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First Stages of Action

- Filed lien, filed suit
- Answer & Amended Answer
- Summary Judgment Motion
- First Hearing

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Proceedings Escalate

- Unit Owner's attorney files response, another answer, and counterclaims
 - Property Management Company's actions were by the book
- Second Hearing
 - Case beings down the road less traveled

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Stop-Deliberate

- Faced with another deposition, at least one more hearing
- Learned bank is foreclosing
- Attempted to settle
- Thoughts on Judge's reasons for continuing proceedings

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Round 3...and 4

- Third hearing turns into motion to withdraw
- Unit Owner provides her reasons for letting her attorney go
- Fourth Hearing, back on Motion for Summary Judgment
- Unit Owner's Motion interlude



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Motions in-between

- Motions to Strike
 - Purpose and necessity
- Moved to Strike Second Amended Answer and Counterclaims
 - Implications of Counterclaims
 - Failure of Judge to rule
 - Trial date turned status conference turned motion hearing

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Trial

- One witness
- Hour and a half
- Request for damages and reasonable attorneys fees
- Asked for monetary damages around \$250.00
- Asked for reasonable attorneys' fees around \$20,000.00
- Asked for costs and fees

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Guesses on Verdict?



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Decision

- Compensatory damages for full amount asked, around \$250.00
- **Reasonable** attorneys fees for...
 - Full amount requested, around \$20,000.00
- Costs and fees also awarded

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Questions?



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**2018 Condo
& HOA Issues**

Daniel Miske
February 21, 2018



Things We Think

Right to Control Use of Property and Exterior Appearance.

1. Because Statute Says So
2. Because We Always Have

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Things Are Changing

1. *Backyard Gardens* – CA has recent legislation that permits them
2. *Artificial Turf* – AZ passed law making any prohibition void
3. *Clothes Hanging Outside* – Allowed as an energy saving device in 7 States – but reasonable rules allowed



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Things Are Changing

- 4. 25 states now prohibit restrictions on solar panels
- 5. Anti-smoking Legislation
 - a. Reach varies
 - b. Common at city and county level
 - c. Associations can be liable for failure to abate nuisance
- 6. CA Free Speech law includes right to use common area – flags political signs



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Things Are Changing

- 7. Right to short term rentals – proposed in 14 states mostly at local level
 - a. Cases relate to already existing restrictions
 - b. Cases are not consistent
 - c. Write a good policy – minimum lease term or prohibit via online platforms



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Things Are Changing

- 8. Board Transparency
 - a. Perceived Conflicts of Interest
 - b. Board Qualifications
 - c. Proxies
 - d. Election standards
 - e. Good Standing

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More Changes

Fake Emotional Support Animals

1. Criminalizing the intentional misrepresentation of an emotional support animal
2. Amend Documents to specify that such a misrepresentation is prohibited and fineable.

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Emotional Support Animals

- People want it to apply to everything.
- Applies to Housing Providers?

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Manage Employees?

Shouldn't they manage themselves?

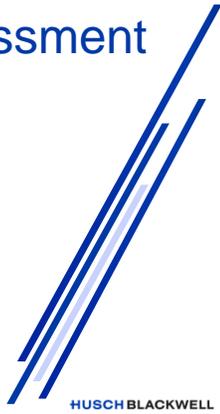


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Sexual Harassment

*Schaeffer v. Anderson
Management Company*
(Ind. 2014)

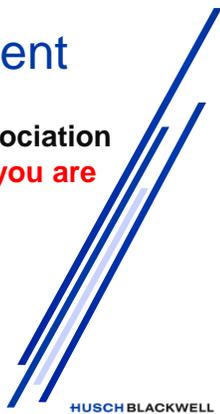
- a. Damages \$18,000+
- b. Costs \$19,000
- c. Punitive Damages
- d. Attorney Fees



Management

What lengths can Association
go to? SIGN - **"Smile you are
being video taped."**

What does this say
to you?



Cameras?

Allstate Ins. Co. v. Soulant Bros., LLC



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Cameras?

“Smile you are being video taped.”

- Breach of duty to provide security
- By posting statement it assumed duty to provide working cameras

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Conclusion

- Update your Policies Before a Case or Law hurts your Association
- Don't say things that aren't true
- Deal with problems (Sexual Harassment)
- Smoking in Units

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Questions?



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