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Stuff for Sale

Our governing documents state “No garage sales or other commercial activities will be permitted to be held on a lot.” Our board has approved a “stuff sale,” charging homeowners \$10 each to open their garages or bring items to sell at the clubhouse. This sale is open to the public and a list of participating homeowners will be given at the gate. Some homeowners are concerned for safety reasons. We bought into a gated community for the added security it provides. Can we stop this?—*North Port, Fla.*

A The governing documents specifically prohibit “garage sales” or “other commercial activities” on a lot. Therefore, permitting homeowners in the gated community to open their garages to the public is contrary to the documents, whether called a “stuff sale” or a “garage sale.”

With regard to a clubhouse sale, assuming that the clubhouse is not defined in the documents as a “lot” and there are no further restrictions addressing the prohibition of a “garage sale” or “other commercial activities” at the clubhouse, such a sale would be permitted.

Should the board choose to have a clubhouse “stuff sale” open to the public, we recommend that the board take affirmative measures to ensure the safety of the community. The association should require visitors to show photo identification at the gate to record and confirm the identity of all individuals entering the community, and the association should employ security personnel to assure that nonresidents are restricted to the clubhouse area and are not free to navigate throughout the community.

The objecting homeowners could send a letter to the association, advis-

ing that this sale, as it pertains to the owners’ garages, is contrary to the documents. The objecting homeowners should demand that only a clubhouse “stuff sale” be permitted and advise that, if the association does not provide written notification that the sale will be restricted to the clubhouse, the objecting homeowners may take legal action to prohibit the sale from occurring in the owners’ garages.

» Michael L. Hyman and Shari Wald Garrett are attorneys with Hyman Spector & Mars in Miami, Fla. Hyman is a member of CAI’s College of Community Association Lawyers.

Trading Places

Q Can a resident in a homeowners association allow out-of-state and international visitors to use his home in house exchanges without permission of the board? What guidelines regulate that? Should the board be concerned? —*West Jordan, Utah*

A As with most association issues, the guidelines regulating this issue should be in the CC&Rs, specifically the sections on leasing and renting. Rent is generally defined as money or other consideration paid in exchange for the exclusive use and enjoyment of the home. If the exchange of your home allows you the use of other homes out of state or internationally, the board could consider that as “other consideration.”

Common leasing restrictions that may be problematic for home exchanges include requirements for written leases and minimum lease terms, prohibitions on transient or hotel uses and requirements that owners forward tenant information to the association.

Associations also should consider the short-term lease requirements of the secondary mortgage market (such as the Federal Housing Administration or Fannie Mae), state requirements (such as hotel-motel laws), local ordinances and insurance policies.

If short-term leases are allowed, boards should draft a resolution spelling out the association’s specific exchange policies and educate owners who want to participate in home exchanges. The board also could draft booklets and signs to place in the homes so visitors are aware of the association’s rules and understand they will be responsible for violations. Include specific rules regarding the use of parking, clubhouses, fitness rooms, pools, hot tubs and other common amenities as well as occupancy limits, noise, party and pet restrictions.

Homeowners should keep the association manager or board informed of short-term tenants and their scheduled dates of stay. Associations should treat the tenants with respect and provide timely information to them.

The struggle for continuity of information is magnified in short-term leasing. But a well-managed home-exchange program may be a preferable alternative to a vacant or neglected home. » Michael Johnson is president of FCS Community Management, AAMC, in Draper, Utah.

Save My View

Q When I purchased my home in 1987, I paid a premium because I had a view of the mountains across the freeway behind my house. When the homeowners association planted trees on the hill behind my house, I objected because I thought they would

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ruin my view. Now one of the trees has ruined the view in one direction and the others will block my entire view in a few years. I asked the association to cut them down, but the board said it is not required to do so. They trimmed them last year, but it didn't restore my view. The board says it doesn't fall under the same rules as individual homeowners as far as views. What are my options? The value of my home is linked to the view, and I would like the view I paid for.—*Laguna Niguel, Calif.*

A Carefully review the CC&Rs for your association to see if there are any restrictions that the board violated when it planted the trees. If the board's action violates the CC&Rs, you have the option of suing the board. Under the Davis-Stirling Common Interest Development Act, any member of the association has standing to enforce the CC&Rs.

If the board's action in planting the trees did not violate the CC&Rs, then the board is correct that it is not required to cut down the trees. In California, there is no statutory right to an unobstructed view. Usually, the rationalization is that imposing a statutory right to an unobstructed view would have a chilling effect on real estate development.

Because of this, courts generally don't consider deprivation of a view, per se, to be an actionable injury. Rather, courts consider the total effect of an encroachment, and specifically whether it constitutes an unreasonable interference with the plaintiff's rights under the CC&Rs. However, if your association's CC&Rs don't place limits on tree heights or locations, then you would not be able to win a case against the homeowners association.

Case law has consistently held that the board's duty is to implement actions for the good of the community as

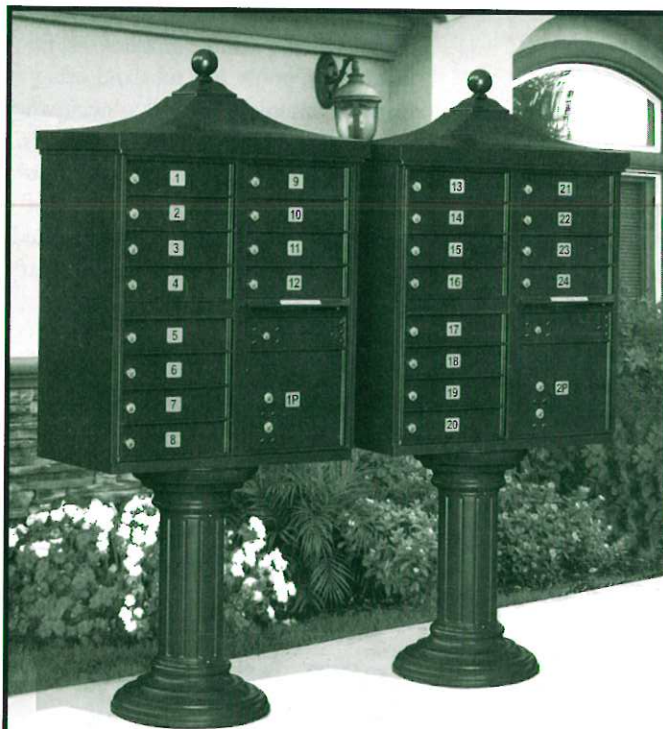
a whole, not take into account the circumstances of a particular homeowner.

If there is a provision in your purchase contract which specified that a portion of the sales price was in consideration for the view itself, and which represented that you would always have that view, then you may have an option of suing the seller.

Considering that most informed sellers would be aware they could not guarantee the unobstructed view would remain in perpetuity, it would be surprising if your seller made a specific promise of a view in the purchase contract.

» Rachele E. Menaker is a partner with Hart, King & Coldren's transactional practice group in Santa Ana, Calif.

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