

CONDO & HOA TIPS & ADVICE BLOG | ALL PROPERTY MANAGEMENT

HOA Responsibility for Neighbor-to-Neighbor Disputes & Harassment

APM on Tue Jul 16 2019 | 7 min. read



[Home](#) > [Blog](#) > [HOA Responsibility For Neighbor-To-Neighbor Disputes & Harassment](#)

CONDO & HOA TIPS & ADVICE BLOG | ALL PROPERTY MANAGEMENT

HOA Responsibility for Neighbor-to-Neighbor Disputes & Harassment

Getting involved when residents in your association are having a dispute can be tricky territory. On one hand, you don't want to meddle in their lives. On the other hand, regulations from the Department of Housing and Urban Development (HUD) and the Fair Housing Act (FHA) make community associations liable for taking prompt action to correct neighbor-to-neighbor harassment that meets certain guidelines. In these cases, if a resident is experiencing harassment and the association fails to take action, your association can be at risk for a lawsuit.

**Get your
property
managed *today***

Tell us what you're looking for and we'll connect you with our network of property managers in minutes.

ZIP CODE

Get started

The Right to Quiet Enjoyment

In your CC&Rs, there is most likely a clause that says homeowners have the right to "quiet enjoyment" of their homes. That translates to the right homeowners have to peacefully live in their community being annoyed, harassed, or interfered with.

Altitude Law recommends including the following clause in your CC&Rs or as a rule:

Members and other residents shall not engage in any abusive or harassing behavior, either verbal or physical, or any form of intimidation or aggression directed at other members, residents, guests, occupants, invitees, or directed at management, its agents, its employees, or vendors.

This preventative clause (or rule) will hopefully do its job to protect everyone living in your association from all kinds of harassment and disputes that get out of hand. However, as is all too common, when tempers flare, residents can violate this clause and put your association at risk.

When HOAs and COAs are Liable for Neighbor-to-Neighbor Harassment

If a dispute is just that, try to stay out of it as much as you can. If a downstairs neighbor is complaining about noise to their upstairs neighbor, or if neighbors are feuding over leaves that were blown from one yard into another, your association isn't required to interfere. In all cases, the association should do its best to investigate the nature of the tiff and the associated behavior before making a decision whether to act or not. After investigating, consult with your association's legal counsel for the right course of action to prevent a lawsuit. You don't want to be coughing up legal fees if there isn't a need, but you also don't want to ignore something important either.

However, when the dispute escalates and it appears one homeowner is deliberately harassing another in ways that go against HUD and FHA regulations, the association should definitely get involved. There are two types of harassments the HUD recognizes: *quid pro quo* and *hostile environment*.

Quid Pro Quo Harassment: When a homeowner is subjected to an unwelcome request or demand to engage in conduct and making the submission related to a person's housing. For example, one homeowner (or association employed vendor) requesting inappropriate conduct in exchange for a service.

Hostile Environment Harassment: When a homeowner is subjected to unwelcome conduct so severe or pervasive it interferes with or deprives the owner the right to use and enjoy their home.

When the elements below are present in a case of harassment, the association is liable. And if the association doesn't take action, the owner is well within their legal rights to sue.

#1: Harassment is Because of Race, Color, Religion, Sex, Familial Status, National Origin, or

Disability

These are the protected classes by the FHA, but it's important to note that many states have additional protected classes, such as sexual orientation, age, and student status. If a neighbor is harassing another simply because they don't like the other person or due to another kind of dispute, the association is probably off the hook. However, if the harassment involves things like racial slurs, targeted insults, discriminatory actions, obscene gestures relating to physical characteristics, etc., the interaction has crossed the line into hostile environment harassment.

#2: Harassment is Severe or Pervasive

This is another requirement of hostile environment harassment. If the homeowner feels harassed for being in a protected class and the harassment is disruptive, upsetting, annoying, invasive, and overall affecting the quality of the resident's life, the association should step in. However, there should be documentation to back up the claims because courts require fact-specific instances and evidence.

The law does not require the victim suffer psychological or physical harm, only that the alleged harassment occurred.

#3: The Association Can Conclude Harassment was Occurring

The association must have knowledge from a reasonable source to know that harassment was taking place. However, the homeowner doesn't even have to complain to the HOA. A board member or third party can report the harassment. It's important to note that if the HOA could conceivably be aware this harassment is happening, the association is liable, even if no one has reported it. This applies to both quid pro quo and hostile environment harassment.

#4: The Association has the Power to Correct the Harassment

Your governing documents will describe the actions the association can take to address the behavior. As we previously mentioned, having a clause that prohibits harassment and offensive activity helps. You have the power to enforce that prohibition by whatever means you outline in your CC&Rs, declarations, bylaws, rules and regulations, etc. Per the Third Party Liability rule, an association can be liable as a third party if you can exercise control to stop the harassment but fail to do so. The association is responsible for taking prompt action to correct any type of harassment or discriminatory behavior against residents. Again, this applies to both kinds of harassment.

In a real-life example cited by Altitude Law, one resident was harassing another with physical threats and racial and sexual slurs. When the board refused to intervene, the victim filed suit against the association and won. The court decided the association has the same obligation as a landlord to protect residents from discrimination and ruled the association had to pay the victim \$550,000 and purchase her condo.

How to Intervene to Stop Neighbor-to-Neighbor Harassment

#1: Get Your Legal Counsel Involved

When you suspect harassment, address it immediately. Because this can lead to legal action, for any case of reported harassment, the association should always refer the complaint to legal counsel (or law enforcement if there is a threat for bodily harm, an owner's safety, or the security of the community). Then the HOA and legal team can work together to

investigate the complaint, evaluate if the complaint is valid, ensure it is addressed properly, keep written records of all steps taken, and inform the victim throughout the process.

When working to investigate the harassment taking place, a professional lawyer recommends that “boards evaluate the nature of the unwelcome conduct, the context in which the incidents occur, the severity, scope, frequency, duration, and location of the conduct, and the relationships of the people involved.”

Legal counsel can help with the following:

- Investigating the incident (don't wait for the resident to complain if you already have a source)
- Sending the perpetrator a cease and desist notice
- Holding a hearing before the board
- Charging fines
- Filing a lawsuit against the perpetrator

#2: Write a Letter to the Offending Resident

Depending on the circumstances, either send a letter or cease and desist notice to the perpetrator. If the harassment can be classified as breaking the prior four elements, the offender is breaking a law and would qualify for a cease and desist. For other forms of harassment prohibited in the governing documents, mailing letter with a return receipt to confirm the homeowner received it will do. Inform the homeowner their behavior has violated the law and/or association's governing documents. Be specific about the occurrences and describe the behavior in detail. Warn that if the perpetrator fails to discontinue the harassment, they will be subject to consequences such as fines, other specified sanctions, or legal action.

#3: Engage in 3-Way Mediation

Address the behavior in a structured conversation between the two owners and someone representing the association. This approach is particularly helpful if the harassment began over a

minor dispute like borrowing and not returning an item, but grew to a point of aggressive attacks. Use your association's legal counsel as a facilitator to resolve the issue and avoid a lawsuit. If an informal mediation is unsuccessful or unrealistic, try a formal mediation and split the cost evenly between the three parties present. Confer with your attorney before pursuing mediation to make sure it follows protocol and adequately protects the association.

#4: Impose a Fine or Sanctions

In your CC&Rs, define what the consequences are for violating policies. Fining the offender is effective in enforcing most policies. We also suggest revoking privileges like using shared entertainment and fitness/recreation facilities.

#5: Take Legal Action

Work with the victim to get a restraining order against the offender. This is the most extreme course of action, but if the victim feels unsafe and threatened, this will be effective and will avoid the victim taking the association to court. Get a restraining order that's appropriate for the type of harassment—the offender may be banned from stepping on the victim's property or ordered to remain a specified distance away in public.

Civil restraining orders are a serious matter, and so getting a court to grant you one may be a challenge. The California Courts system has composed a resource to see if you qualify for a civil restraining order. You can ask for a restraining order if "the offender has abused (or threatened to abuse), stalked, or seriously harassed the victim and this victim is scared, seriously annoyed, or harassed." However, what qualifies for a civil restraining order may vary by state. In many cases as well, harassment must be patterned behavior rather than isolated incidents. Having evidence of the harassment helps as well.

Additionally, you can take the offender to court for breaking the law.

#6: Implement Fair Housing Training and Other Preventative Measures

Bring in an industry expert to provide training sessions with your residents and board members to recognize and prevent harassment. Continue the momentum by adopting specific anti-harassment rules (including measures to prevent retaliation). Specify how to report the alleged harassment as well as procedures for investigation and action. Additionally, make complaint forms available to residents. Consult with your attorney or an association manager to determine what's right for your COA or HOA.

Dealing with Homeowner Disputes is Tricky

Your association wants to minimize its exposure to liability. Consider bringing on an association manager to handle all of the unpleasanties involving residents as well as reduce the amount of liability you face. A professional property manager has the skills and training to help properly navigate situations like resolving conflicts and dealing with legal matters. This makes sure they'll take care of any harassment issues and try to avoid lawsuits as best as possible. An association manager can also help collect dues, manage the group's finances, handle maintenance issues, and deal with any other crucial responsibilities a board may have. If you're ready to start talking to your board about hiring some help, get free quotes from HOA and COA managers in your area.

If you found this article to be of help, read [What To Do When Homeowners Are Harassing Board Members](#).



APM

Stay in the know!

Get the latest property management trends delivered right to your inbox.

Subscribe now

More Stories in Condo & HOA Tips & Advice Blog | All Property Management

The Steps Your HOA Can Take to Abate Airport Noise Pollution

If your neighborhood is located near an airport, chances are things can be pretty noisy between the aircraft take-offs and landings. New technology has contributed...

Allison Rebecca Penn

on Tue Jun 11 2019

| 7 min. read

What to Do When Homeowners Are Harassing Board Members

As a board member, you've surely seen emotions run high at your association meetings. Whether you lead a condo association or homeowners association, you know...

APM on Tue May 21 2019

| 6 min. read

Do You Need a Property Insurance Policy for HOAs? | APM

Determining the appropriate insurance for an association property—whether it's owner-occupied or rented

5 Secrets to Shorter Homeowner's Association Board Meetings

Real talk: No board member has ever wished that

out—often involves a lengthy review process with many facets that require your attention....

Jason Van Steenwyk

on Fri Jul 13 2018 | 5 min. read

association board meetings could last longer....

Robin Young on Fri Jun 22 2018

| 2 min. read

Find A Property Manager

Home/Condo

Apartment Complex

Homeowners Association (HOA)

Commercial

For Property Owners

FAQ

Blog

Ask A Pro

Resources

Property Management 101

For Property Managers

Join Our Network

Resource Center

My Client Center

Company

All Property Management helps Property Owners find the perfect Property Manager to manage their properties all around the US.

Send us a message



[Join Our Network](#) [Blog](#) [Get Help](#) [About APM](#) [Site Map](#)



[Privacy policy](#) • [Do not sell my personal information](#)

Copyright ©2021 All Rights Reserved. All Property Management™ A Buildium Company.

[Back to Top](#) ^

[Join Our Network](#) · [Blog](#) · [Help](#) · [About](#)

[Buildium Property Management Software](#)



[Privacy policy](#) • [Do not sell my personal information](#)

Copyright ©2021 All Rights Reserved.
All Property Management™ A Buildium Company.