HOAMCO

PROFESSIONAL COMMUNITY MANAGEMENT
OUR ONLY BUSINESS

SEPTEMBER 2011

Current REVIEW

News and Information to help inform and educate associates of HOAMCO.

E-MAIL
hoamco@hoamco.com

WEBSITE
www.hoamco.com

LOCATIONS

9798 Coors Blvd. NW, Bldg. A
Albuquerque, NM 87114
(505) 888-4479

1421 Luisa Street, Unit R
Santa Fe, NM 87505
(505) 954-4479

2206 Sun Ranch Village Loop
Los Lunas, NM 87031
505-865-6102

2375 E. Camelback, Ste. 500
Phoenix, AZ 85016
(480) 994-4479

6586 Highway 179, Suite C-1
Sedona, AZ 86351
(928) 282-4479

3350 W. Sugar Pine Way
Bldg. A, Suite 100
Show Low, AZ 85901
(928) 537-1067

408 N. Kendrick Street, Suite 2B
Flagstaff, AZ 86001
(928) 714-0635

3205 Lakeside Village Dr.
Prescott, AZ 86301
(928) 776-4479
(800) 447-3838

AFTER HOURS EMERGENCIES
Arizona: 928-443-3593
New Mexico: 505-934-5296

How Does HOAMCO Handle Collection Efforts?

It's that time of year when you are taking action on collection issues, deciding how to handle bad debt, and budgeting for next year's bad debt. We understand that collection challenges have required boards to creatively, reasonably, and consistently determine how best to handle unpaid assessments. To help guide you through this process, HOAMCO has established recommended practices that we would like to share with you.

Handling current owners with outstanding assessments

The assessment collection policy is the foundation of an Association's collection efforts. The course of action outlined in the policy must agree with your governing documents, state and national laws, and fit with your Association's way of doing business. When an account reaches the final phase of the policy, the board is then confronted with deciding what best, next steps should be taken. Does it make sense to spend more on an alternative collection option then what is due? Have collection payment plans been attempted? Do threshold outstanding amounts need to be established that trigger next action, i.e., lien, collection agency, attorney? It's important that the board partner with the management company in assessing options and take input from legal counsel, as necessary. After exhausting all reasonable steps outlined in the policy, the next steps may include one or more of the following: (1) sending the account to a collection agency; (2) referring the account to legal counsel and pursuing an action for personal judgment against the delinquent owner; or (3) foreclosure action to foreclose the Association's assessment lien. Some of these options may be costly, so good judgment comes into play. The manager has the capability to organize and sort by action, amount, or account, to help you better analyze your next steps.

Handling foreclosed accounts with outstanding assessments

When HOAMCO receives a notice that foreclosure action is taking place for a property, HOAMCO provides a copy of the notice to the manager and identifies the account in the data/financial management system (TOPS) so that the account is identified in the Aged Owner Balances Report. Since likelihood of collecting the outstanding amount for an account in this status

continued on next page

Collections *continued from front page*

is low, accounting will automatically allocate the outstanding amount to Allowance for Bad Debt and expense as Bad Debt on Income/Expense for communities who are on an Accrual Basis Method of accounting. Reason being, it is important for a community to understand its cash position since the amount of Income stated under Income/Expense is the amount billed, and not actually collected. The balance sheet will then reflect a more accurate cash position and amount to be collected under accounts receivable. If the property does not proceed through the foreclosure process and the owner becomes current, then adjustments are automatically made to Allowance for Bad Debt.

For communities on a Cash Basis Method, the amount of Income under Income/Expense reflects the actual amount collected and will therefore not need to be adjusted.

When the foreclosure process is completed and a deed is received identifying the new owner (bank or new owner), then the previous owner is identified with a (P) on the Aged Owner Balances Report and remains on the report and as part of accounts receivable until the board decides to write-off the amount.

If a write-off is the desired action, the amount in Allowance for Bad Debt on the balance sheet decreases and the amount is removed from the Aged Owner Balances Report for the Accrual Basis Method. If the association follows the Cash Basis Method, the account is removed from the Aged Owner Balances Report. If income is derived in the future, the income will be reflected as Income-Recovered Bad Debt.

Handling bankruptcy accounts

When a notice of bankruptcy is received by HOAMCO, the account is identified on the Aged Owner's Report. The ledger is split so that amounts due from the date of filing forward continue to be added to the account and the Aged Owner Balances Report will show two amounts outstanding for the account – pre and post. HOAMCO stops sending collection letters until the discharge is received. The pre-bankruptcy amount (from the date of filing, back) is allocated to Allowance for Bad Debt if on an accrual basis. No action is required for cash basis. When a discharge is received, HOAMCO will notify the manager and propose write-off of the pre-bankruptcy amount. The manager will then work with the board for write-off action. HOAMCO recommends write-off once discharged.

Considerations for Payment Plans

If the Association agrees to a payment plan with an owner, HOAMCO strongly recommends that this plan be in writing and clearly identified in TOPS. HOAMCO encourages that an auto-debit method for monthly installments be a part of the payment plans. Follow-up must occur, so managers will establish a tickler system to follow-up to ensure owners have honored the payment plan.

Collection Agency as an Alternative Action

HOAMCO is currently working with NCSPlus collection agency and board approval is required before any account is sent to the collection agency. Additionally, prior to submitting to the collection agency, HOAMCO sends a notice that the account is being sent and gives the owner one last attempt to become current. This final letter has been very effective in getting a response from owners with outstanding amounts.

It is important that the board understand that the likelihood of collection on an outstanding amount that was attached to a foreclosure is low and that the collection agency may not be successful in the short term. However, the action does demonstrate that all efforts have been exercised, and since the amount is reported to the credit bureaus, it may be collected in the future when the responsible party makes an attempt to cure all outstanding debts. A report of collection agency status with NCSPlus may be obtained at any time from the manager.

Legal Action as an Alternative Action

Some laws offices have developed effective collection packages that may be of interest to your communities. Please work with your manager to determine what services attorneys are currently providing, as the services / fees may change over time.

Budgeting for Bad Debt

For associations on an Accrual Basis Method (HOAMCO's recommended method), the amount budgeted for projected uncollected

assessments should appear on the Income/Expense statement under Expenses with its own line item titled, Bad Debt. Most associations have been placing this budgeted amount under Administrative Expenses or Other Expense. When accounts are designated to be reflected in Allowance for Bad Debt, the amount designated will appear as an actual expense in the Income/Expense statement.

The amount budgeted for bad debt should be in line with the current delinquency rate of the association. The recommended formula for determining the delinquency rate is:

$$\frac{\text{\# of current owners } \textit{(not previous owners)} \text{ over 60 days delinquent}}{\text{\# of total owners}}$$

HOAMCO does not recommend budgeting the projected uncollected assessment amount as a contra-income amount. Technically, bad debt is an expense and should be reflected under the Expense section of the Income/Expense report.

For associations on a cash basis, budget the income for what is expected to be collected. Allowance for Bad Debt does not appear on the Balance Sheet for cash basis associations, so it might make sense to add a note that explains how the budgeted income amount was derived.

If you have any questions, please do not hesitate to contact me directly at judy@hoamco.com. We appreciate and value our partnership with you.

Judy Smeltzer, Chief Operating Officer, HOAMCO

What HOAs Need to Know about Recent Amendments to the Americans with Disabilities Act ("ADA")

Introduction to the ADA

The ADA protects the rights of individuals with disabilities in employment (Title I of the ADA), access to state and local government services (Title II), and places of public accommodation, transportation and other areas (Title III).

The ADA Amendments Act of 2008 expanded the interpretation of "disability," so that more individuals qualify as "disabled" under the ADA and, thus, more individuals qualify for the ADA's protections. For associations covered by Title III, regulations set to take effect this year will narrow the definition of "service animal" but broaden the definition of "mobility device."

If an association employs more than 15 employees, it is likely covered by Title I of the ADA. If an association offers services or facilities (such as a pool or clubhouse) to the public rather than just its members and their guests, it may be covered by Title III of the ADA. For those associations covered by Title I or Title III, the managers and board of directors must become familiar with the ADA and its recent amendments and regulations.

What is a "Disability" under the ADA?

So, how is the new, expanded interpretation of "disability" different from the old interpretation? After all, under both the "old" ADA and the "new" ADA amendments, "disability" is still defined as:

(1) A physical or mental impairment, that

(2) Substantially limits

(3) A major life activity.

Some important changes to how "disability" is interpreted can be summarized as follows:

Courts focus on whether ADA rights were infringed, not on whether the individual is disabled. In the past, courts made it hard for an individual to prove he or she was disabled by narrowing the interpretation of "disability." As a result, many individuals with conditions such as diabetes, cancer and epilepsy were not considered disabled under the ADA.

Today, courts are directed to define disability broadly, so that more people are covered by the ADA and its protections. Less attention is now paid to whether an individual has proved they are disabled and more attention is paid to whether the individual's rights under the ADA were infringed.

Disability is determined in its uncorrected state. In the past, an individual was not considered disabled under the ADA if the individual could take medication, use a medical device or use some other correcting device so that his or her condition did not substantially limit a major life activity.

Today, courts must look at the alleged disability in its uncorrected state. For example, an individual may still be "disabled" under the new ADA amendments even though that individual can control his or her diabetes or epilepsy with medication, or can walk with the help of a prosthetic.

More activities are now "major life activities." In the past, "major life activities" included activities central to life such as breathing, taking care of oneself, walking, or working.

Today, along with those activities, other activities now qualify as "major life activities," including reading, learning, concentrating and sleeping. Also, "major life activities" now include bodily functions, like the operation of the immune system or the operation of the respiratory and reproductive functions.

Due to these changes, more individuals with a wider range of conditions will be considered disabled under the ADA and entitled to its protections.

New "Mobility Device and Service Animal Regulations"

New ADA regulations scheduled to take effect this year will affect associations with facilities or services open to the public, or those associations covered by Title III of the ADA. For example, new regulations will expand a disabled individual's choices with respect to "mobility devices" but will narrow the individual's choices with respect to "service animals."

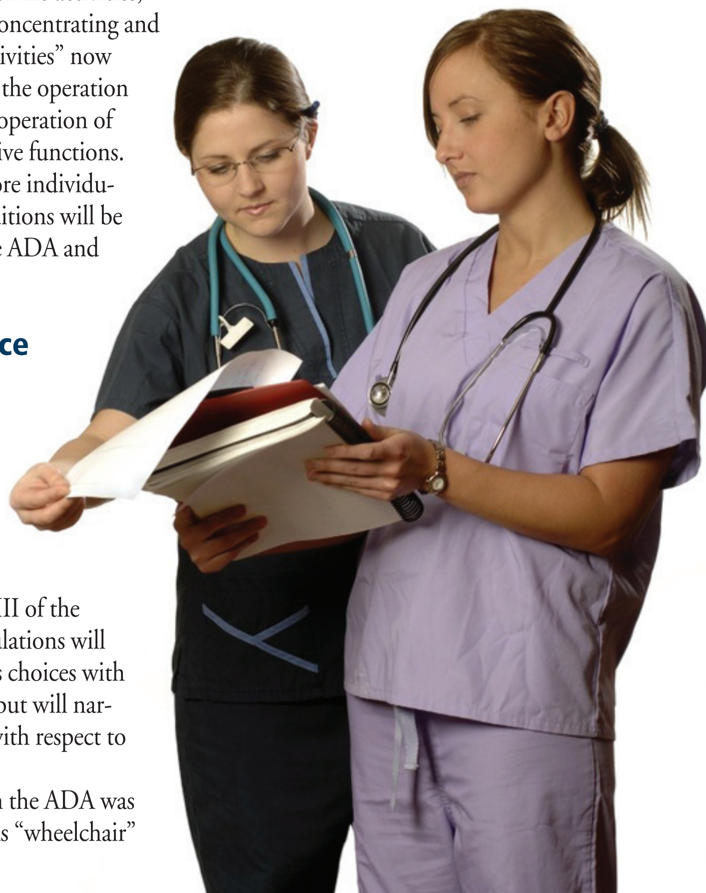
Mobility Devices: When the ADA was enacted in 1991, terms such as "wheelchair" and "mobility devices" were not defined. Since that time, individuals with mobility disabilities have used devices such as Segways, golf carts, ATVs, etc. to aid their mobility.

Under the new ADA regulations, any motorized conveyance qualifies as a power-driven mobility device, regardless of whether it was designed for individuals with disabilities or not. However, associations affected by these new regulations would still be able to establish reasonable safety rules for those devices, such as speed limits and other regulations.

Service Animals: When the ADA was enacted in 1991, the definition of "service animals" included "any guide dog, service dog, or other animal." The new ADA regulations narrow the definition of service animal to include only dogs or miniature horses trained in a way that directly relates to the individual's disability.

On the other hand, associations should keep in mind that they may need to permit animals other than trained dogs and miniature

continued on next page



ADA *continued*

horses as a "reasonable accommodation" under the Fair Housing laws. For example, some animals that may not be "service animals" under the new ADA regulations may still qualify as a "support animal" under the FHA.

Summing Up

Under the expanded interpretation, more individuals will qualify as "disabled" and, thus, more individuals will qualify for protection. Associations with services or facilities open to the public may also be affected by changes to the ADA's definitions for "mobility devices" and "service animals."

The information contained in this Homeowners Association Tip© of the week is provided by Ekmark & Elmark for informational purposes only and is not specific legal advice or a substitute for specific legal counsel. Readers should not act upon this information without seeking professional counsel. www.ekmarklaw.com

E-Mails Could be Considered Association Records

Have you ever thought about what could happen to all of those e-mails you are sending or receiving on behalf of the association (whether as a board member or a community manager)? Did you realize that those e-mails could be considered official association records?

Did you know that, if you don't keep those e-mails and other association electronic records in a separate place (such as, by use of a separate e-mail address), your entire inbox (and, potentially, your entire hard drive) could be subject to discovery and review in the case of litigation?

How can you avoid this from happening? Board members should consider establishing a separate e-mail account solely to send and receive e-mails that relate to association business. There are many different sources of free e-mail accounts that are completely web-based (meaning that nothing becomes stored on your computer). Additionally, board members should consider viewing documents through these web-based accounts, and not storing the documents on their computer. By only using the web-based e-mail account for association business, a board member could help prevent all of their personal e-mails from being subject to review and scrutiny in the case of litigation.

If you have any further questions on this issue, or would like to consider adopting a record retention policy (to address these types of records as well as other records of the association), please contact Lynn Krupnik at (602) 478-9361 or lynn@krupniklaw.com in New Mexico or 480-922-9292 or lynn@ekmarklaw.com in Arizona.

The information contained in this Homeowners Association Tip of the Week© is provided by Ekmark & Ekmark, L.L.C, for informational purposes only and is not specific legal advice or a substitute for specific legal counsel. Readers should not act upon this information without seeking professional counsel.

This newsletter is provided for informational purposes only and is not intended to take the place of individual legal advice. Readers should not act upon this information without seeking professional counsel.

3205 Lakeside Village Dr.
Prescott, AZ 86301

HOAMCO
PROFESSIONAL COMMUNITY MANAGEMENT
OUR ONLY BUSINESS