

Rambo at the Reigns:

When Boards Abuse Their Power

By Greg Olear

The homeowners association is, in theory if not always in practice, democracy in action. Once elected via popular vote by the members of the association, the board members—again, in theory, if not always in practice—represent the organization as a whole. As representatives, they make their own interests subordinate to those of the community.

To some degree, this system works quite well in New Jersey homeowner associations. The vast majority of building and community association boards run their respective communities in good faith, and with the best of intentions. But, human nature being what it is, there are a few who use their position as directors to bully others, push irrational personal agendas and generally make mischief.

But what happens when the board as a whole, or just one influential member, shirks this responsibility? What happens when democracy goes out the window, replaced by dictatorship? What happens when the Jeffersons and Madisons morph into Caesars and Napoleons? How can the situation be prevented? How can its adverse impact be arrested? Can a tyrant be impeached?

Warning Signs for Individuals

It's the HOA equivalent of abstinence: The easiest way to prevent a board member from turning into a despot is to avoid electing him or her to the board in the first place. The difficulty lies in identifying the potential tyrant. While anyone is capable of egomania when given the keys to the proverbial car—power corrupts, as the old saying goes—there are certain traits potential dictators have in common.

Communication is a two-way street. The best of arguments, if wasted on tuned-out ears, does little to persuade. The most obvious trait a potential problem board member possesses is a fundamental inability to listen. What are some warning signs of this deficiency?

"Dominating conversation, speaking over others on the board, not debating merits of different approaches," says Chuck Graziano, president of Thundering Brook Associates, a management company in Ramsey. "They want to force their opinions on people, because they think they're always right."

"Single-mindedness," says David Byrne, a partner with the law firm of Stark & Stark in Lawrenceville, "where they're not listening to people's opinions," is another sign to look out for.

Tyrants tend not to be the nicest folks in the community when things don't go their way. They have short fuses and bad mouths.

"Harsh language," Byrne says, is a big red flag.

"They can be hot-headed, overzealous," says Graziano. "They go off the deep end on certain issues."

Another telltale sign of the tyrant: they act on the sly, because they don't understand the concept of transparency. This may be well and good for the CIA, but not for the functional democracy that is the homeowners association.

"Surreptitious behavior," Byrne says. "You find out about things they've done, about meetings they had that you didn't know about."

Finally, the tyrannical board member usually comes to the table with his or her own agenda—an agenda that doesn't prioritize the needs of the community as a whole.

"They have alternate agendas," Graziano says. "They want to be on the board to correct something, or to get back at someone, or to crack down on a rule."

This sort of person—in kindergarten, they would say he or she doesn't play well with others—can be a major headache on a board.

"Nothing can be added to a cup which is full," Graziano says, "and they come to the board with a full cup."

Warning Signs for Boards

Sometimes, a board comprised of seemingly level-headed people can preside over a real estate Reign of Terror. Maybe it's the chemistry of the people involved. Maybe it's a certain dynamic. Maybe it's an extension of the truism that your closest friends can be intolerable jerks if you work with them.

"Some people get on a board and get a heady sense of power," Graziano explains.

This can result in a board overreaching: "Adopting policies that are on the radical side, or overreacting to situations instead of a moderate response," he says.

For example, a condominium association might have rules prohibiting any decoration on the outside of the units. Technically, flying the POW/MIA flag discreetly on a pole by the mailbox is a violation of the rule. So, too, might be hanging a wreath on the door in December. But is it in the best interests of the association to crack down on patriotism and non-sectarian holiday spirit?

"It's a gray area," Graziano says. "It's difficult for the board to deal with. You don't want to have no decorations at all, but on the other hand, you have to abide by the rule. You have to walk the line."

"To be effective," Byrne says, "board members have to put the interests of their neighbors and the community over their own. Not an easy thing to do. Maybe we humans are psychologically selfish, out to protect ourselves and our families first. It takes a special person to be able to always do the right thing."

Fighting Back

While all boards have their moments, fortunately, the truly tyrannical board member is relatively rare.

"We just don't see it," says Elisabeth Berkely, president of Residential Properties Management in Keyport. "In the last 10 years, it hasn't come up," she says, speaking of the bad-apple board member. "It's all about good management."

That's good news, because there's not much you can do about a tyrannical board member—other than wait a year and vote him or her out.

What recourse do residents have to instantly overthrow the board member/emperor? "Almost none," Byrne says, "unless the board member does something really bad, like discriminate against a protected class, or steal money."

You can legislate against things like discrimination, larceny, fraud, and negligence. You can't legislate against someone being unpleasant. There's no law against being rude, or arrogant, or hotheaded, or intimidating, or condescending, or any of the other negative characteristics a tyrant might possess.

That said, there are ways to make a miserable situation, if not wonderful, at least less miserable. It's easy to express - slightly less easy to accomplish: improve communications.

"Boards get in the most trouble when they don't listen," Byrne says, "when they don't communicate."

"Set ground rules," Graziano suggests. "Spend a few minutes agreeing on ground rules for the meeting, to create a safe environment for expressing opinions. When someone runs amiss of the ground rules, you have to remind them."

One way to stick with the ground rules is to rotate who is the chair of the meeting.

"Engage in constructive process," Byrne says. "Try to have meetings. Try not to be adversarial. Assume the good faith of the people on the board."

And if the board tyrant isn't nice, that doesn't mean you can't be.

"You catch more flies with honey than with vinegar," Byrne says.

However, a bad situation should not be ignored. A tyrant left to his or her own devices will only become more tyrannical. Just as the citizens of a democracy have an obligation to vote—and, if the government becomes too corrupt, as Jefferson said, to overthrow it—the unit owners are obliged to participate in the governance of the association.

The best thing an individual owner can do to combat a runaway board is to get involved.

"Getting together a group, going to board meetings, participating—people don't do that enough," Graziano says. "They complain, but they don't do anything. Go to a meeting. If it doesn't work the first time, go a second time. Keep going until you're heard. A board is a representative form of democracy, and the members are representing the homeowners."

Homeowners "have an obligation to attend meetings. They have an obligation to be good citizens, to read all the documents," Byrne says. "Otherwise, they have no context to complain."

If a board member doesn't listen, make them abide by ground rules. If they are mean or dismissive, don't take it personally, and don't give up. Not everything needs to be a major battle, but that doesn't mean the homeowners should stop paying attention.

"It's a moving target," says Byrne, of how to spot a potential tyrant. "It depends on the circumstances. A lot is in the eye of the beholder. It's like the saying, 'One man's terrorist is another man's freedom fighter.'"

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