



The Elite Insider

2014 Spring Fling

Inside this issue:

2014 Spring Fling	1
What HOA fiduciary means to you	2
Calendar of Events & Office Closings	2
HOAs and pot : A complicated and volatile mix	3
Can HOAs levy a rental fee?	3

Please plan to attend the 2014 Spring Fling on Tuesday, April 8th from 5:30 PM-8:00 PM. The event will be held at our main office at 4112 Blue Ridge Road, Suite 100, Raleigh, NC 27612. Please RSVP to dawnhatcher@elite-mgmt.com.

We have an amazing lineup of speakers for this event.

Charles E. "Ed" Flowers III

Ed received his BA degree from the University of Alaska-Anchorage and his MA and JD from the University of North Carolina at Chapel Hill. He has been practicing law since 1996. In addition to being admitted to the North Carolina State Bar, is also admitted to practice in the United States District courts for the Middle and Eastern District of NC.

Ed has been practicing community association law since before the passage of the North Carolina Planned Community Act (PCA) in 1999. With the rapid growth of planned communities in NC in the late 1990's and the early part of the 2000's, he saw the need to provide high quality legal representation to HOA clients. At the time of the passage of the PCA, Ed was one of a handful of lawyers in NC with a firm understanding of the issues facing community associations. His early involvement in community association law has enabled him to keep abreast of the many changes facing HOAs, their boards and their management companies in the past 15 years. As community associations grew in NC, Ed gravitated his practice toward representing HOAs exclusively, founded his own firm, and

moved his practice from Durham to Raleigh in 2005.

Ed focuses his practice on all areas of HOA representation, including drafting and interpretation of corporate bylaw and covenants, enforcing covenants and architectural rules and regulations, collecting assessments and advising boards of directors on corporate matters. He has served as a board member of the North Carolina Community Association Institute (CAI) and has also served on that organization's Legislative Action Committee (LAC).

In his spare time, Ed enjoys traveling, hiking, fly-fishing and hanging out with Huck, his wonderful Chesapeake Bay Retriever.

F. Todd Whitlow with Brownlee Law Firm

Todd grew up in Oxford, NC where he learned the values of hard work, discipline and preparation that he continues to maintain in his legal practice. Todd attended the University of North Carolina-Chapel Hill for his undergraduate studies before attending Campbell University for law school. Todd has practiced in a variety of legal environments during his career, including a general practice in Oxford, NC where he built and maintained his own caseload dealing with residential and commercial real estate transactions and litigation, business formation, criminal matters and general

civil litigation. Todd began practicing law in Raleigh, NC in January of 2004 and became a member of the Brownlee Law Firm in January 2007 where he has continued to focus his practice on community association representation, residential and commercial real estate litigation, business litigation, construction litigation, commercial collections, and contract drafting. In May 2011, Todd became licensed to practice law in the State of South Carolina and has extended his practice to clients in that State through our office in Charleston, SC.

Erwin Williams III, P.E. with TerraTech Engineers

Back by Popular Demand
• BS in Civil Engineering and Masters in Civil Engineering, NC State University
• Registered Engineer, NC, SC, VA, GA
• NC Licensed Home Inspector

Since 1983, Erwin has been performing engineering evaluations on a wide variety of projects. His expertise includes geotechnical engineering, environmental consulting, and materials engineering. His experience includes foundation evaluations; settlement and slope stability analyses; environmental assessments; and construction materials engineering. Erwin has consulted on over 6,000 projects, from small residential and commercial structures to multi-story buildings, large retail and industrial facilities, and infrastructure projects.

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Office Hours

Mon.-Thurs. 8:30-5:30
Friday 8:30-1:00

What HOA fiduciary means to you- *Tiara Lisk Mesquite Citizen Journal*



No single word encompasses what a Board Member is, or what a Board Member should be, more than the word “fiduciary.” The word is thrown around a lot in the HOA world; I know I’ve mentioned it in many articles about serving on the Board. What does the word actually mean?

I reviewed many sources to try and find a good definition of the word, and while all the definitions had the same general idea, the most relevant in regards to HOAs was in the legal dictionary at www.thefreedictionary.com. Fiduciary: *An individual in whom another has placed the utmost trust and confidence to manage and protect property or money. The relationship wherein one person has an obligation to act for another’s benefit.*

This defines a Board Member’s role as a fiduciary quite plainly. So what are the responsibilities that Board Members should familiarize themselves with to become a competent and successful fiduciary for the HOA?

As the definition states, “act for another’s benefit.” It’s important for Board Members to put their own agendas and interests aside and

make decisions based on what is best for the entire community. Furthermore, decisions shouldn’t be based on any favoritism or personal gain. Board Members also shouldn’t expect favoritism or special treatment just for serving on the Board. While serving on the Board is an important job, setting an example for the members of the community is also important and absolutely necessary when it comes to rule enforcement.

Another part of being a good fiduciary is conducting Board business lawfully, so naturally knowing the limits of your authority, and acting within those limits, is vital. Authority is granted in the governing documents as well as state and local laws. These limits help define how a Board Member is to be a good fiduciary and play a huge role in the relationship between a Board Member and the people they represent.

I see violation situations test the Boards ability to act within their authority most often. There are some violations, like owners not picking up after a pet, that all owners should know better

about. These are the violations that Board Members often want to assess a fine upon right away. A hearing is required before enforcing a fine however, and it is outside of the Board’s authority to skip this step.

Article 3 in NRS 116 contains many laws pertaining to the powers granted to HOAs and by extension, the Board. This section of NRS is a great place to start and a great supplement to your governing documents in determining the limits of your authority as a Board Member. This is also great information for homeowners, because if you don’t know what your Board has the authority to do, you also don’t know when they’re exceeding it.

With so many different situations that arise in HOAs, it would be nearly impossible to fully master every aspect of the interplay between your governing documents and the various applicable laws governing fiduciary responsibilities. There are just too many variables. No one expects this, but a good fiduciary exercises a duty of care and takes the time to research and consult experts when the need arises.

Calendar of Events and Office Closings

APRIL

April 8th– 2014 Spring Fling 5:30pm-8:00 pm– Elite Management Professionals Raleigh Office
April 18th- Good Friday All Offices Closed

MAY

May 26th- Memorial Day All Offices Closed

JUNE

Board Education Seminar
June 9th– 6:00-8:00 PM at the Providence Glen Condominium Clubhouse located

right off I-40 in Chapel Hill, NC.

Come join us to review the important role of serving on the Board, how to review the financial statements, governing documents and review your community websites. Please contact Dawn Hatcher to register.

JULY

July 4th– 4th of July All Offices Closed

SEPTEMBER

September 1st- Labor Day All Offices Closed

NOVEMBER

November 27th and 28th- Thanksgiving All Offices Closed

DECEMBER

December 9th– Holiday Open House

December 24th, 25th and 26th– Christmas All Offices Closed

JANUARY 2015

January 1st 2015- New Year’s Day All Offices Closed



HOAs and pot: A complicated, volatile mix

By: Carlos Illescas, *The Denver Post*

"Not all legal analysts agree about what an HOA can and can't ban."

Homeowner associations are approaching lawyers to find out whether they can ban marijuana use, even in homes, much as they do garish paint colors and funky yard art—a question that may have to be settled in court.

Already, at Breckenridge's River Mountain Lodge, a condominium in which second-homeowners rent out their properties mainly to vacationers, growing pot and distributing it was banned last year for medical marijuana. And that now extends to recreational pot, as does a previous smoking ban in all units.

In Aurora, several HOAs have inquired about their rights regarding restricting the use, possession and cultivation of pot.

Lawyers who specialize in HOA law say they are getting inquiries from the homeowner organizations about smoking, possessing and growing pot anywhere in an HOA, including inside a residential unit.

"There are a lot of associations looking into it as far as (marijuana) use goes," said David Firmin, an attorney who specializes in HOA issues and works with the River Mountain Lodge.

But can an HOA ban someone from smoking weed in their home?

It's complicated.

As it stands now, people are free to light up in their homes, as long as they don't become a nuisance to neighbors.

When nuisances occur, HOAs can take some internal measures, from suspending certain privileges to seeking a court injunction, said Jerry Orten, an HOA legal analyst and spokesman for the Community Associations Institute.

If an HOA wants to ban the use or cultivation of marijuana, the homeowners can vote to do that, as long as they get a two-thirds vote to ban pot, according to Orten.

"People can agree to things which waive their constitutional rights. That's the essence of covenants," Orten said. "An association can have a covenant precluding use of marijuana."

Enforcing a pot smoking ban is a different matter altogether. When the issue of HOAs possibly banning pot use came up in Aurora, Police Chief Dan Oates said he wasn't going to waste the time of police officers who are summoned to an HOA on a complaint that someone is smoking marijuana.

Not all legal analysts agree about what an HOA can and can't ban.

Jeff Gard, a Boulder lawyer who specializes in marijuana law, said the HOAs might be able to do so, but he's not 100 percent convinced.

The attorney says the legal issues likely will be decided in court. "They can't themselves impose something contradictory to state law," Gard said of HOAs. "It's legal privately. They wouldn't survive legal challenges."

He notes that marijuana advocates in Colorado are well-funded and powerful, so court battles in the coming months and years are almost a certainty if an HOA decides to ban marijuana.

Gary Kujawski, HOA information officer for the Colorado Department of Regulatory Agencies, said his office has received only a few complaints from people about pot smoking since voters approved use and possession of recreational marijuana in 2012.

But he hadn't heard of an HOA actually voting to ban pot all together, whether on the grounds or inside a home.

His office has received more inquiries from folks in HOA communities wondering what can be done—if anything—regarding smoking pot on HOA properties now that pot is legal.

He expects that number to rise exponentially now that recreational marijuana sales are allowed under state law, although no one has called since retail pot has been legal.

Can HOAs levy a rental fee?

Q: May a North Carolina homeowners' association (HOA) impose a surcharge on units that are rented out by a homeowner? Our HOA has proposed a fee of \$25 per month to be assessed against all rental properties.

A: HOAs only have whatever authority is granted to them

under the North Carolina laws and the HOA's governing documents. The laws do not grant HOAs the authority to levy any type of fee or surcharge against owners of rental property. In fact, the law specifically states that "an association shall not levy, charge, or attempt to collect a service, collection, consulting, or ad-

ministration fee from any unit owner unless the fee is expressly allowed in the declaration."

So, unless your community's declaration specifically allows the HOA to impose a rental surcharge, it cannot do so.

