

CHAPTER 13

HOW TO COMPLAIN *EFFECTIVELY*

Whenever people live together, conflict and complaints are inevitable. Sometimes, conflicts cannot be resolved at all and the group or organization falls apart. Usually, however, conflicts *can* be resolved, and often in a way that improves the relationships between the members of the group as well and the performance and satisfaction of the group as a whole.

This is true for community associations as well, such as homeowner associations, condominium associations, and cooperative housing corporations. (For convenience, we will refer to all of these common ownership communities as “COCs.”) Currently, in Montgomery County, there are well over 1,000 COCs, with over 134,000 homes or units. This is 1/3rd of the County’s housing stock, and since most new construction is in COCs, the proportion is constantly growing. So is the importance of these communities and their members to the County as a whole.

While COC Boards of Directors and community managers usually try to act in the interests of all members, there are occasions when a conflict of interest or a simple ignorance of the rules of the HOA or of the law can lead to an erroneous or unreasonable action by the Board and a reasonable complaint from a member. Is it possible to challenge the Board and win? The answer is yes, but association members with legitimate grievances should understand the legal environment in which they are living and be sensitive to the best way to “prosecute” their cases. How to do so is the purpose of this Chapter.

THE CONTEXT IN WHICH WE LIVE

A COC is not a free-for-all. Nor is it a club or hobby group. COC’s are mini-governments. They are created by builders and developers, who write their basic documents. These documents are legally binding and will be enforced in court. The documents regulate how the association operates. They bind the association as a whole as well as the individual members. Both the association, and the individual members, have the legal right to enforce the documents. Simply put, a COC is a two-way street: the HCOC can enforce its rules against the members and the members can force the COC to obey its rules too.

There are many characteristics of an HOA, but these are the most important:

1. COCs are either corporations, or at least operated as corporations. **Most powers of the association and its members are delegated to an elected board of directors, which has the right to make most of the operational decisions for the COC.**

2. **There are checks and balances.** Members elect the boards, and retain certain rights, including the right to call a general meeting to adopt rules, repeal rules, amend the governing documents, and even to remove directors from the board.
3. **The COC must maintain itself in good condition and do so with its own funds.** All the money necessary to pay for the maintenance must be raised directly from the members. Therefore the COC has the right to charge fees, or assessments, sufficient to pay for the COC's operations.
4. **All COCs regulate what their members can do with their homes or units.** Members cannot alter the exterior appearances of their homes or lots without their COC's advance permission. In condominiums and cooperatives, the association can also regulate some conditions inside the units as well. (For example, they often have rules requiring carpeting or banning laundry appliances.) Members must also maintain their homes and lots in good condition and make necessary repairs.

The Board is essential to your COC. Board members are volunteers, and cannot be paid for their services. The work can be difficult and require many hours of service every week or month. But many Board members have had no experience or training in managing an organization as big as a COC. It therefore can happen that they misunderstand the limits of their authority, or don't know how to handle disputes and complaints properly. If you have a problem with your Board or your COC, this chapter will help to walk you through your options.

A FEW WORDS ABOUT THE MANAGER

Before we discuss how best to complain, let's clarify the role of your COC's manager. *Your manager does not run your association!* That's the Board's job. The Board hires and supervises the manager, and only the Board can tell the manager what to do. The manager does not make decisions for the COC. The Board must do that, and the Board cannot delegate that duty to the manager. The manager's duty is to help the Board make wise decisions and to carry out the tasks the COC needs to be done, such as paying the bills, collecting the assessments, maintaining records, inspecting the property and dealing with the contractors.

If you have a problem with how well the manager performs his or her duties, or with how the manager treats you or other members, you should first discuss it with the manager, and if that doesn't resolve the problem, you should notify the Board and ask for action.

HOW TO MAKE SURE YOU PROBABLY WON'T GET WHAT YOU WANT

Make it personal! Insult your manager or directors. Accuse them of evil motives and immoral conduct. Call them names. Tell yourself that the Board is attacking you or your good faith personally, and respond the same way. Once you put such things in writing, other people will see them too, and more people will think you're a jerk. This is a good way to encourage decision-makers to avoid you and alienate possible supporters, if that's what you want.

Wear them out! Send the directors and managers many long emails. Repeat the same things over and over so they won't want to read anything you write anymore, then accuse them of ignoring you.

Don't do any homework before you complain. Don't read the rules, or the proposed budgets, or the audits and studies. Assume that you have the right to do whatever you want and the Board is simply wrong. Ignore everything your association sends you so that you can complain that Board is keeping secrets from the membership and doesn't tell you where the money is going.

Insist that the Board or its manager answer every email and question you send them, and send them a lot of questions that are time-consuming to answer. After all, the directors are volunteers so it won't cost them any money to respond to you, and they have time on their hands, and the manager is being paid to do such things anyway. Right? If the board doesn't respond to every email and question, that gives you something else to add to your complaints.

Make threats about legal actions when you don't really know if you have a case or when you're not prepared to spend the time and money necessary to file one. This is a good way to shut down any conversation between you and your Board, because you'll force the Board to refer the matter to its attorney rather than talk to you directly.

Stick your head in the sand. Ignore your COC as long as possible. If the COC notifies you of a rule violation, or late payment fee, or other problem, assume that the problem will go away, or the COC will give up, sooner or later. Convince yourself that if you didn't intend to break a rule, then you didn't really break the rule, and so the association should leave you alone.

Make your only contacts with your community unpleasant ones. Rather than become involved in a helpful way—such as volunteering to serve on the Board or one of its committees—wait until you yourself have a problem and then blame the Board for causing it.

HOW TO COMPLAIN AND GET RESULTS

1. Do your homework.

The place to start is with your COC's governing documents, especially the covenants and the bylaws. Yes, it's boring, but you don't have to become an expert. What you really need to know is the major topics they cover. Start by reading the sections on the powers and duties of the Board of Directors, and then look for the sections which are most likely to be relevant to your dispute. For example, if you're worried about whether an election is going to be held properly, look up the section on Elections.

Then, inspect your COC's paperwork. Don't expect the Board to do your research for you. You have the legal right to inspect almost all of the records of your association. Ask to see the kinds of records that are relevant. For example, if you think the Board is wasting money, or raising the assessments without good reason, you will want to see the proposed budgets for the year and maybe the years past, and the most recent audits. You can see the financial records, contracts, invoices and checks that back up the budgets and reports. If you think you're being

discriminated against because the Board sent you a violation notice when other members with the same condition were not sent violation notices, ask to see the files for your home and for all the other homes with similar conditions.

Do some outside research on the topic, too. You can find a lot of information on COC management online. The relevant Maryland laws can be found online easily. There is much free information on the CCOC website, including the mandatory training class for association directors. You can email or call the CCOC staff for advice on relevant laws and best practices and for advice on how to best pursue a complaint. Finally, think about consulting a lawyer for an objective legal evaluation of your situation.

2. Document Your Problem

If the COC is taking action against you, it is typically in order to require you to take some action or to collect past dues and fines. If you are taking action against your COC it is usually to require the COC to perform the responsibilities it is obliged to perform under the rules -- for example, to approve your reasonable request for improvements to your home or to hold its annual meeting.

If the COC is claiming you violated a rule, it should inform you of the specific rule involved. If it doesn't do so, ask for a copy of the rule. You may have to find it in the governing documents. Sometimes, the rules do not say what the COC's Board members think they say. Look for general or ambiguous language. (Or, for that matter, look to see what the rule does NOT say.) In some cases, different sections in the COC documents internally conflict, i.e. say opposite things regarding the same issue.

Then, document your actions. In general, keep copies of emails, letters, bills, and warnings from the COC and date everything. If you have a conversation with anyone acting as a representative of the COC, be sure to write down your understanding of the conversation in the form of a confirmation letter, and mail a copy of that letter to the COC. This gives the COC an opportunity to correct anything you might have misheard. If the COC does not correct your understanding, as set forth in your letter, the statements in your letter could serve as strong evidence of what was actually said.

- If the COC has routinely violated or ignored the rules in the past, while presently seeking to enforce a rule against you arbitrarily, you will have evidence to document that it is not treating you fairly and reasonably.
- As a member, if you were granted an exception to the COC rules, be sure to get that exception in writing, specifying precisely what was granted, who granted it, when, and for what time period. Some such exceptions might need to be recorded with your county recorder's office in the same way as your property deed.
- To avoid keeping heaps of paper, scan these documents and keep electronic copies, ensuring that you have adequate file backups in case of a computer malfunction, burglary, or catastrophic loss.

Make sure your COC has updated and amended their rules to incorporate County and State governing statutes. If not, some of your COC's rules may be found to be unenforceable by the court or other agency. For instance, laws governing flags and solar panels placed upon structures and the Federal Communications Commission rules regarding the placement of antennas and satellite dishes may supersede provisions of older COC documents.

Anonymous complaints are seldom useful. If the violation cannot readily be confirmed, the Board will need witnesses at any hearing who can verify the violation and give details.

If you are claiming the COC violated a rule, it will help if you document your claim and try to state it as factually as possible. Refer to the specific rule or law you think is involved, show how the Board did something (or didn't do something) that violated the rule or law, and say what you think the Board should do now to correct the violation. Attach photos if relevant, or copies of the sections of the rules or laws, and documents that are relevant. For example, if the Board was required to make documents available to you and refused, attach a copy of the law, of your written request to see the documents, and of any reply you received.

3. Follow the Procedures Established by Your Association

Your COC probably has rules on how it should enforce its governing documents against its members. Learn what the rules are so you can make sure the COC obeys them and so that you can use them to protect your rights. If you get a violation notice, don't ignore it. Answer it and explain what your defense is, and ask for a hearing with the Board on it if necessary. The COC should not penalize you for a violation without first offering you a hearing to defend yourself.

However, most COCs don't have rules that state how members can complain about their *COC's* violations of the rules, or about *other members'* violations of the rules. If your COC does have such rules, follow them when you make your complaint. If the COC does not have any specific regulations, you should at least give the Board a clear and objective written notice of the problem and ask it to respond by a certain date (see above). You might also have the right to raise the issue at a Board meeting during "member time."

If you disagree with a fee or new assessment, it's vital that you pay them on time anyway and challenge them later. If you ignore the COC's bills, not only will they begin to add up, but they likely will begin to accumulate additional late fees, penalties, and/or interest. The COC usually has the power (and likely the will and ability) to place a lien on your property and even to foreclose on the property in order to collect the fines.

- If you are successful in your fight against the COC, you likely will be able to get your payments refunded with interest.
- Remember, however, to make an effort to negotiate a resolution of fines and/or collection disputes between you and your COC or its lawyer. Your COC may be incentivized to settle your matter in order to avoid future expensive attorney fees.

4. Present your case in a way likely to make the board want to help you.

Complaints may eventually result in disagreements and anger, but they don't have to start that way and most of them don't have to sink into hostility.

Be positive. The best way to start preparing a complaint or request is to assume that the Board and its manager sincerely want to make the members happy and to make the COC a pleasant place to live in. Try to put yourself in the shoes of (or the minds of) the people you're going to speak and write to, and to think about the kind of approach most likely to make them want to help you.

This approach is something that you can begin early. One of the wisest comments we received in preparing this chapter was this:

Members must set the stage to have their needs addressed long before they need something. Congratulate board members on important milestones—elections, promotions, writing a good budget proposal. Send cards and emails of support. Send holiday cards and express satisfaction with whatever job they are doing. Then, if you are lucky and respectful, they might just not take offense at your complaint and will want to help you when the time comes. Start every request with a sincere compliment—state how you understand the difficulty of their job and that the last thing you want to do is to add to their workload—and then proceed.

Or, in other words, the Board is more likely to pay attention to a member who has generally been respectful and appreciative of others, and who has shown a helpful interest in the affairs of the COC. Such an attitude is also good preparation for serving on the board someday.

Consider also that Board members and managers are human beings, subject to all of the limitations that the rest of us are. Most of them have no formal training in how to handle conflict. Many of them will have invested a lot of time managing your COC and might take criticism of their efforts personally. Take this into account and avoid making the situation worse.

When you make a complaint:

1. Stick to the facts and don't make personal attacks. Describe your problem in a way that will help the association see the issue from your point of view. Include supporting documents or photos when you can.
2. Say what resolution you want, or offer solutions.
3. Thank the person in advance for helping.
4. Suggest a meeting in person to discuss the problem informally.
5. Ask for a time by which you want the HOA to reply.

Deal only with the person designated by the Board to handle your complaint as long as possible. Swamping the entire Board with your emails and other correspondence could make the Board want to avoid you entirely. Give the Board's representative a chance to work with you.

Don't assume that the response of one manager or Board member represents the position of the entire Board. The full Board is less likely to react emotionally than one person might, and more likely to be objective if you treat the Board and its representative decently.

If the Board does not respond to your concerns, *request a hearing.* Write a professional letter respectfully asking for a hearing on your issue. Attend the hearing with multiple copies of your evidence and/or a signed petition showing neighborhood support. When you speak, keep it factual. While you may feel anger and frustration, keep your statement clear, concise, and professional. In your written request for a hearing, request copies of the COC's records that were used as a basis for its action against you, or the denial of your request for improvements to your property. (However, some executive sessions of the Board meetings may be able to be held back from you, so check the laws that govern your type of association.)

You can also consider filing a grievance with the Board against specific individuals in the COC (or under the COC's control) who are harassing you or violating the COC's rules (for example by causing loud noises at night). Again, even though such grievances might become personal, avoid making them worse, and do not trade insults. If you have to make a complaint against another member or resident, keep it factual and avoid abusive comments.

Finally, be willing to compromise. Listen to what the Board says. Sometimes, the COC's rules or the law gives the Board little choice in how to act. Sometimes, especially when there is a claim against you about an architectural or maintenance matter or too much noise, the Board might be in the middle, because it's trying to respond to a complaint made against you by another member, whom it should not ignore. Try to understand the Board's situation. The end of a complaint does not have to be an all-or-nothing conclusion.

On the subject of compromise, consider solutions that might not have been raised so far, but which might satisfy the Board's concerns while still giving you what you really need. For example, if you install a shed without permission, the Board might be willing to grant an exception or "variance" that allows you to keep the shed until you move or it has to be replaced, at which time you will remove it. If you have a commercial vehicle which is not permitted in your association, the board might allow you to park it as long as you keep it covered when not in use.

6. Look for support.

Connect with your neighbors. If you are having an issue with your COC, your neighbors might be having the same issue. They can help to advise, support, and strengthen your case. The more members that join together, the more likely the Board will reconsider its position. It could be

useful to gather signatures of neighbors who agree with you into a petition that you can present to the Board. As a unified group, you can more easily make positive changes by convincing board members to vote for specific changes to the rules or by voting in (or out) specific board members.

Remember, that the members have the right to amend the governing documents and to pass or repeal rules and regulations.

A word of advice on changing or adopting rules: remember, the Board must consider the wishes of the entire community. What seems like a fair and reasonable new rule to you might not seem so to many of your neighbors, and their opinions must be taken into consideration as well.

7. Appeal Your Case to a Higher Authority

Think outside the box. Remember that internal hearings or meetings are not the only ways to challenge the Board. For instance, if you can attract the attention of local media, you might cause your COC to reconsider its actions or else at least to explain them more fully.

Another option is to take your case to the Montgomery County Commission on Common Ownership Communities (CCOC). The CCOC was established pursuant to Montgomery County Code Chapter 10-B with a three-fold mission: to advise the County Executive and County Council on problems and solutions arising in common ownership communities, to promote public awareness of the rights and obligations of living in common ownership communities, and to serve as a means of alternative dispute resolution involving conflicts between association members and boards within the scope of its charter. The CCOC has jurisdiction to handle disputes between two or more parties involving the authority of a governing body, under any law or association document to

- Require any person to take any action, or not to take any action involving a unit;
- Require any person to pay a fee, fine or assessment;
- Spend association funds: or
- Alter or add to a common area or element.
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The CCOC charter also includes jurisdiction on matters involving the failure of a governing body, when required by law or an association document, to:

- Properly conduct an election;
- Give adequate notice of a meeting or other action;
- Properly conduct a meeting;
- Properly adopt a budget or rule;
- Maintain or audit books and records: or
- Allow inspection of books and records.

Filing a complaint with the CCOC is relatively straightforward and involves completing a standard form and submitting a filing fee of \$50. As part of the initial process, the CCOC staff will offer mediation to help reach a settlement agreement. If mediation fails and the complaint be accepted by the CCOC, your case will be assigned to a Hearing Panel consisting of an impartial licensed attorney and two members of the Commission. You need not be represented by a lawyer, although you may retain one if you wish. Decisions by the CCOC have the force of law, but may be appealed to the Circuit Court. There is a wealth of material regarding good governance and best practices for managing common ownership communities, including detailed instructions on filing a complaint against your COC, on the CCOC's website.

Consider discussing your concerns with a lawyer. Doing so does not necessarily mean that filing a lawsuit will be necessary—the lawyer's advice might be sufficient to help you through your complaint. The mere presence of a lawyer in the case often can persuade the COC to reconsider its position. You can also hire a lawyer for the limited purposes of sending letters and demands on your behalf. Hire someone with experience in handling COC disputes. This might not necessarily be a real estate lawyer. COCs are not-for-profit organizations similar to corporations, which is a different thing entirely from typical real estate issues. The Montgomery County Bar Association can refer you to lawyers that practice in the area of law that applies to your type of case.

You can also file a small claims action by yourself. The Maryland Small Claims Courts (a division of the District Courts) can hear cases seeking less than \$5000 in damages and which do not request injunctions (orders to do something). Claims seeking injunctions or damages greater than \$5000 must be heard by other, more formal, State courts.

- You can bring a cause of action against the Board claiming that it acted wrongfully and, as a result, you have suffered a financial loss.
- If you are successful in small claims court against the COC, the court can order it to reimburse you for the amount of fine you were wrongfully required to pay as well as your court costs.
- Personally visit your local District Court, or visit the State court's website, to obtain instructions and forms on how to proceed with your action.

Watch for discrimination. If the COC is citing and fining you, but not other members for the same infractions, it possibly is acting in an arbitrary and capricious manner, which opens the door for lawsuits based on discrimination. For instance, if you are denied permission to build a pool, but other neighbors of a different race or nationality have been allowed to do so, it is worth the effort to catalogue which neighbors, the location of their pools, and the approximate dates your neighbors installed their pools. If you can show that your denial was based on a "protected characteristic" such as your race, gender, national origin, religious belief, marital status, etc. you are well on your way to winning your fight against the COC.

Courts may find against COCs when their actions fail to be fair and uniformly applied to all homeowners' and you do not necessarily need to prove that they discriminated against you based upon a protected class. If you can show that your COC treated you differently than it did other

homeowners' in your similar circumstance, its case against you will be weakened dramatically in the court's eyes.

8. Some Closing Thoughts

If someone give you information, advice, or assistance, THANK THEM, even if it wasn't what you wanted to hear.

Your COC must give you proper notice that you are in violation of a rule as well as an opportunity to contest any fine. If no such notice was given, you might be able avoid the citation and/or fine.

Some claims must be made quickly or your right to make those claims could expire. Thus, if you have been wronged, it makes sense to fight sooner than later—before you are legally barred from fighting by a statute of limitations.

BE PERSISTENT. This is especially true if you are trying to change a longstanding COC policy or rule. People are used to what they know and reluctant to change, and this applies to the general membership as well as to the Board. You may have to think in terms of months, or even years, to achieve the changes you think are necessary. Be prepared to reach out to, and persuade, your neighbors, not just once but often, in spite of the early setbacks you might experience.

We have covered a lot of different topics and ideas in this article, but many of them are just illustrations of the Golden Rule: treat other people the way you'd like them to treat you. It's a good rule for all members, those who are on the Board as well as those who aren't. Keep it in mind.

Bruce Fonoroff, Commissioner

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Sources

1. *Much of this material was taken from “How to Fight Your HOA (Homeowners’ Association), article provided by wikiHow and used with permission, <http://www.wikihow.com>.*
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