



SHEDDING SOME LIGHT ON HOLIDAY DISPLAYS!



Clark Griswold, in the almost Christmas classic, "Christmas Vacation" just wanted a "good old fashioned family Christmas". Unfortunately for Clark's yuppie neighbors, Todd and Margo, their family Christmas celebration was ruined by the 25,000 lights on the Griswold house. While we don't know if the Griswold's lived in an HOA or not, it is true that there are some people living in HOA's today who LOVE to celebrate the holidays in a huge way. And there are also those who live in associations that are not at all happy about holiday displays. The challenge for homeowner associations is finding balance on the issue, with reasonable rules regarding holiday displays.

According to one HOA attorney, "The association's goal is to develop and implement a reasonable set of objectives prior to the holiday season. Subject to overriding provisions in C.C. & R.'s, a complete set of reasonable rules can help associations preserve the community's aesthetic value and encourage seasonal celebrations." The holiday season now begins prior to Halloween and continues through the New Years holiday and includes not only Christmas, Halloween, and New Year's itself, but also Chanukah, Kwanzaa and Thanksgiving.

Some associations may want limits on decorations and some may not want any limits at all. Boards should not be inflexible and ignore the desires of most residents. Surveys or the Open

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THE ELEPHANT IN THE ROOM!

The "elephant in the room" for Common Interest Developments is the all-important conflict that divides owners, but is rarely discussed in open and healthy ways. Perhaps the most heated conflict that takes place in common interest developments occurs late in the year, typically November. Specifically, this is all about the amount of the monthly assessments for the next year. And the feelings on both sides are strong. What is this conflict about exactly?

Every HOA must approve a budget each year and distribute that budget in advance to all the owners. Some, likely many, owners oppose any kind of increase in the monthly assessments, and there are those who believe increases are necessary to maintain the property today, and in the future. The issue is significant for the future financial health and physical integrity of the association, and is largely decided by the board. Often, the strong personal opinions of one or two board members will decide the issue.

Let's examine the positions for each side.

The language of the "non-assessment" raisers goes something like this:

- We haven't had to raise our assessments in 15 years, and we are proud of that.
- Our assessments are high enough already and no one will be able to sell if they go any higher.
- We have owners who are on a fixed income and they can't pay any more.
- We will find a way to cut

expenses instead of raising our assessments by getting less expensive vendors, or eliminating expenses such as reserve funding.

- We will do Special Assessments as needed when issues come up.
- I won't be living here when the roof needs to be replaced, so why should I care about paying for it now?

To be fair, let's listen in on the voices of the other side:

- Our condos are an investment and we need to take care of it and our association must operate like a business.



- We don't like Special Assessments and hope that they never occur.
- We value having preventative maintenance performed regularly by contractors who are licensed and insured.
- We take pride in the appearance of our property and expect top dollar when we sell.
- We realize that expenses increase over time, and that the building is gradually deteriorating.

Which position is right? Is there a right or wrong in this issue? How can associations who are in this dilemma address the problem and at the same time maintain a civil and congenial community?

*THE ELEPHANT IN THE ROOM!
continued on page 6.*

HOA ADVICE FROM AN HOA PRESIDENT

By Strefan Fauble

I have three bits of advice: “Diversify the Board,” “Run a tight meeting,” and “Be far-sighted.” Left at that, the advice is scrawny. Let me put some meat on the bones:

Diversify the Board

Running an HOA requires the skills of a lawyer, a manager, an accountant, an interior designer, someone with knowledge of the history of your HOA, and someone with enough mechanical knowledge to know how to solve the physical problems of your building. I am not suggesting Board members act as your HOA’s attorney or plumber; for liability and other reasons, they shouldn’t. But those skills are essential to identify and anticipate problems and have a sense of how to proceed. Solicit owners who have those skills, not several owners who over-represent one skill. A word of caution, however: Solicit owners with the right temperament. Someone who can’t calmly accept being out-voted, shouldn’t be on the board.

Run a Tight Meeting

All of those who volunteer for the Board are indeed just volunteers. Use their time judiciously by publishing advanced agendas, sticking to the agendas, and keeping their time commitments to a minimum. The president (or whoever runs the meeting) should ensure that all and only the facts and considerations relevant to the issue on the table are addressed and that the Board arrives at a decision that squarely resolves the issue. Unanimity is great, but not required; Board members need to understand that. Through these efforts, Board members will know that the HOA values their time and expertise, and they will be more willing to share it.

Be Far-Sighted

1. Establish and clarify procedures and key rules when the stakes are low.

What features, if any, besides improvement to a unit’s interior, is an individual owner responsible for? What changes to an individual interest are subject to Board

approval? What are the procedures and standards for that approval? Who is responsible for what kinds of damage, and under what circumstances? These and other questions about fundamental matters are not better left to a later day—because the later day will be when a dispute has arisen and the stakes, and, thus, each owner’s self-interest are high. Make sure in advance of a dispute that the rules in your association’s governing documents address these issues, that the Board agrees about the interpretation of the rules, and that the members have been given proper notice of the rules and the Board’s interpretation of them.

2. Ask lots of “what ifs.”

Will the rules in your governing documents actually work when you need them to? Find out by asking lots of “what ifs.” A real-life example: While reworking our CC&R’s, our Board realized that at least one “combined” unit in our building might someday be physically split and come under separate ownership, though no one expected that to happen. We asked lots of “what ifs” and realized that, if the unit split, then many provisions in the governing documents would become serious problems. The assessment percentages would no longer add up to 100%, the entitlement to certain parking spaces and basement lockers would become uncertain, and so on. If the Board did nothing and the unit split, the Board would have to address these issues at the worst possible time, namely when there would be two owners with competing interests. The Board therefore created contingency provisions designed to address fairly everything that would be affected if the units split, with the then-unitary owner not objecting. About a year later—surprise!—the unit split. Everything went smoothly, like following a cook-book recipe. Your association is unlikely to face this same situation, but it’s a useful example, I hope, of how to anticipate problems.

3. Responsibility should follow knowledge and power.

Make the party who can easily identify or deal with a problem

responsible for addressing it. A real-life example: Several of the units in our building have balconies with wrought iron. The balconies are exclusive-use common areas for their adjacent units. Shy of looking up at the building through a telescope, no one but the adjacent owners can assess the condition of their balconies’ wrought-iron. The Davis-Stirling Act’s default rule, which says that the HOA is responsible for repairs of exclusive use common areas, doesn’t make sense in this situation. When revising our CC&R’s, our Board made maintenance, repair, and, if necessary, replacement of a balcony’s wrought-iron the responsibility of the adjacent owner. This is to avoid an owner’s ignoring the growing rust on his balcony and then expecting the HOA to foot the bill for the resulting damage. Similarly, our Board revised our governing documents to provide that if the HOA’s sprinklers are causing on-going water damage to an owner’s unit, the HOA is not responsible unless and until the owner puts the Board on notice, since the owner is in the best position to see what is happening. The owner shouldn’t be able to sit back while the HOA’s sprinkler slowly rots the owner’s windows and then expect the Board to pay to replace them.

4. Make sure your rules are enforceable.

When you amend your governing documents, including creating or amending operating rules, make sure you follow all of the requirements in the Davis-Stirling

HOA ADVICE FROM AN HOA PRESIDENT: continued on page 5.

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BURNED OUT BOARD MEMBER SYNDROME: HOW TO PREVENT IT!

For the long term health of any association, it is best to have board members who actually enjoy working together as a board together for their association. We have worked with great boards since 1985 and we have worked with boards who had great difficulty leading their associations. Here are some of the traits of great Boards we have observed:

1. Great boards work as a team. There is a balanced sharing of the work load among all board members. This requires mutual respect and healthy dialogue especially when there is not agreement, which is common. For more information on the roles and functions of each Board member, go to <http://www.bevenandbrock.com/board-member/#positions>

2. Disagreement is OK and important, but only when the directors listen to other perspectives. The best decisions are made after an active discussion of all the issues and concerns. Decisions made, even though not unanimous, become **THE** decision of the Board. Minority members accept the decision of the majority. Decisions are made for the best interests of the entire association.

No single board member controls or dominates the board or association. Board discussion should be balanced with all members contributing. Board members with dissenting opinion are encouraged. The President leads, but should not dominate the discussion.

3. There are no decisions or actions outside of board meeting, unless the President is required to take emergency action, in which case it is reported to the other members as soon as possible. Board members would enjoy their job more if they didn't take on the role of on-site manager as well. Board members need to realize that they are board members only at board meetings, and homeowners the rest of the time.

4. Board members do not directly undertake tasks/jobs that are more suitably handled by a designated professional such as the CPA, attorney or consultant. Outside counsel is sought and followed from the management Company, attorney and other consultants as needed. The board utilizes professional and competent vendors and maintains reasonable expectations of their vendors. Board members do not

act as "on-site" managers.

5. Being a board member is not a position of power, but one of service. It is about helping to provide a great place in which to live and own.

6. Board meetings are regularly scheduled, with proper notice to owners. Board members are prepared in advance with material read, and arrive ready to make decisions. Minutes are taken that reflect the decisions made and distributed to owners in a timely fashion.

7. Maintenance contracts and vendors are selected primarily based on a determination of value, rather than cost. Value involves an understanding of the reputation and integrity of the vendor as well as a sense of long term effectiveness.

8. Owner input on pending issues is welcomed at board meetings. On some issues, owners participate by serving on committees, under the direction of the Board.

9. Conflicts of interest, which can occur in a variety of ways, are strictly avoided. Board members should always be aware of conflicts that can occur and avoid even the perception of a conflict of interest.

INSURANCE CLAIMS: WHERE IS THE LINE DRAWN?

Picture this: You come home in the evening to find your kitchen ceiling full of water from a broken water line in the unit upstairs. Now what? Who pays to fix....well....everything? Where is the line of responsibility drawn for all of this damage? To answer the question you must look at any applicable insurance policies, but you have to begin with your CC&R's.

Some CC&R's require the unit owner to MAINTAIN the interior of their unit, but then require the HOA to provide INSURANCE for the interiors. This may come as a surprise to many board members, but the insurance section of the CC&R's must be reviewed if the event could be a covered loss under the insurance policy. Broken water lines will trigger an insurance claim and subsequent review of the insurance section of the CC&R's.

Typically the insurance section will require one of 3 types of coverage:

BARE WALLS: The HOA provides insurance up to and including the bare walls of the unit. The unit owners then insure all of the interior of the unit.

WALLS IN AS BUILT: The HOA provides insurance for the building and units as it was originally built. The unit owners are only responsible to insure any upgrades done inside their unit.

WALLS IN INCLUDING UPGRADES: The HOA provides insurance for the building and units including any upgrades installed by a unit owner.

Before we go any further let me recommend that all unit owners should have a Condo Owners Policy (HO6) for their unit regardless of the type of coverage

on the master policy. HO6 coverage will protect the unit owner from multiple types of losses at a very reasonable annual premium. Board members should not make specific coverage recommendations to unit owners about HO6 coverage, but should simply recommend each owner contact their own insurance agent to review their individual insurance needs.

Many condo associations are required to provide "Walls In As Built" coverage. Although the maintenance of the interior of the unit is the responsibility of the unit owner, the damage caused by the broken water line in the kitchen is now an insurance claim on the HOA policy. Be sure and review the insurance section of your CC&R's

INSURANCE CLAIMS: Where is the line drawn?: continued on page 6.

TO AIRBNB OR NOT TO AIRBNB?

By Lori Lacher, CCAM

To Airbnb or not to Airbnb? That is the question that many HOA boards are discussing with their attorneys since Airbnb's website was created. The answer for HOAs and Planned Developments is—absolutely not!

For those of you who are unfamiliar with Airbnb, it is a

website that allows off-site owners to list their homes as short-term vacation rentals. The benefit to the off-site owner is that they make more money renting their home out as a vacation rental than they would if they leased their home. The benefit to the vacationer is that, for a lot less money, they get to stay in a home, townhouse or condo rather than a hotel.

This new trend has sparked interest to some off-site owners who own in HOAs and Planned Developments because of the benefits to them. But, they are not looking at the big picture and how it affects the complex negatively as a whole. In addition, they don't realize that they are accountable for the conduct and behavior of all visitors, guests and invitees.

There are many reasons why HOAs should not allow homeowners to rent their units out as vacation rentals on Airbnb or any other similar website.

The main reason is that most governing documents prohibit short-term rentals by requiring owners, if they choose to rent, to rent their units for certain minimum periods, such as thirty days or twelve months. By using a unit as a short-term vacation rental, the homeowner is violating the governing documents.

Liability is another very important factor that HOAs need to consider. If a vacationer slips and falls in the common area, the HOA is liable for the damage, not the unit owner. This could increase the cost of the HOA's insurance drastically.

Another very important reason is security. If you live in a gated or secured community, allowing short-term rentals means that the common area keys and remotes will always be changing hands, giving strangers access to the complex and all common area amenities, which could result in increased theft and a security breach of the complex. If there is a breach of an HOA's security, the cost to reprogram access codes, purchase new keys, etc. are borne by the HOA.

Excessive noise and nuisances are also issues that HOAs would have to deal with by allowing

short-term vacation rentals. All governing documents state that owners are entitled to quiet enjoyment in their community and that illegal, offensive and obnoxious behavior plus noxious odors are prohibited. Since short-term rentals on Airbnb are normally used for vacationers, who will not receive the HOA's rules and regulations, you can bet that they will violate these rules. They have no concern for neighbors, as they are staying in the residence for a short time.

There is a homeowner in an HOA that I manage who was very delinquent on his regular assessments and rented his unit out on Airbnb to supplement his income. He was making a lot of money using his unit as a short-term vacation rental and started bringing his account current. At the same time, homeowners noticed that there were different people residing in the unit each week and hanging out by the pool. They also noticed that the owner of the unit was constantly in the laundry room washing all of the sheets, towels, etc. The board was notified, found the ad on Airbnb, got an attorney's opinion advising the HOA to send a Cease and Desist letter and request a hearing with the owner. After the hearing, the board voted not to allow the owner to use his unit as a short-term vacation rental because of the violation of the governing documents, even though they knew that the owner may no longer be able to bring his account current.

I have received feedback from on-site homeowners, and they do not support short-term rentals in their HOA. They feel that it is a breach of their security and safety and a violation of their quiet enjoyment. I recommend if this issue arises in your HOA, ask the board of directors to get an attorney's opinion on how to deal with short-term vacation rentals.

Lori Lacher is a community manager at Beven & Brock in Pasadena. She can be reached at lori@bevenandbrock.com.



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ANNUAL FINANCIAL DISCLOSURES

The preparation and distribution of the two annual disclosure packages to all owners is one of the most important requirements of the board of directors. The annual disclosures are now required to be organized into two distinct packets and there are also some new requirements as of 2014.

The disclosures that are required have now been placed into two different reports, now known as the "Annual Budget Report" and the "Annual Policy Statement".

November is the last month of the year in which this material must be assembled for associations which operate on a calendar year. If a management company is involved with your association they should be handling this for you.

The specific sections of the law that can be referred to for more specific information are Sections 5300 and 5310. Below is a summary of the requirements for each report.

ANNUAL BUDGET REPORT

1. Approved operating budget and reserve allocation for the next fiscal year.
2. The most current Reserve Study which contains the following information:
 - a) The Executive Summary from the most recently updated Reserve Study.
 - b) Reserve Funding Disclosure Form/ Table
 - c) Board statements regarding the reserve study.

HOA ADVICE FROM AN HOA

PRESIDENT: continued from page 2.

Act. (If you haven't done so, do it now.) Otherwise an owner could assert, correctly, that the rules are unenforceable. That will occur, of course, precisely when you're desperate to enforce the rules.

5. Think twice before you send that email!

Finally, resist the impulse to send that snarky email, even if the recipient deserves it. Think about whether the email could create other problems or liability. In particular, consider whether the email could be interpreted to suggest that the Board is making a

3. Master Policy Insurance and information regarding other policies.

4. Insurance disclaimer language verbatim from Civil Code

5. Association Loan Statement (if applicable)

ANNUAL POLICY STATEMENT

1. *Communication with the Association* statement
2. *Overnight Mailing Address* statement
3. *Secondary Address* statement
4. *General Notices* statement
5. *Association Minutes* statement
6. *Assessment Collection Policies* statement
7. *Collection Policy*
8. Association Rules and Regulations including Fine Policy, if any
9. Dispute Resolution Procedures (ADR/IDR Rules)
10. Architectural change rules and procedures

The deadline for all associations is thirty days prior to the end of the year, unless your documents have a more strict time frame. While these disclosures may appear excessive, they do also serve to alleviate the Board of future liability. These disclosures meet the annual requirement of the association to disclose important aspects of your association to owners, who are then responsible for disclosing it to future owners. Boards are encouraged to take this legal requirement seriously.

decision based on animus or other illegitimate grounds. Imagine a neutral third party—a judge, say—unfamiliar with the background of the dispute, and ask yourself what that judge would think of the email. If you wouldn't be totally comfortable with the email being labeled "Exhibit A" in a lawsuit before the judge, don't send it.

Stefan Fauble serves as President of a 14 unit historic association in Pasadena. He is the recipient of one of the 2015 Great HOA Presidents awards this year. In future issues, we will reprint advice that was provided by other award winners.



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The basis of working to resolve this conflict is first flexibility, and not becoming entrenched in your position. Perhaps, there is another perspective that has validity. Owners who are adamantly opposed to any increase before even looking at the proposed budget need to reconsider their position. At the same time, the other side should realize that years and years of neglect in maintaining the property and setting aside reserves can't be corrected in a year or two.

Compromise and balance are two essential aspects to HOA leadership. Very seldom does it occur that one side is always right. Learning to balance the needs of the association, while not ignoring the needs of the owners, is critical. It is possible to responsibly budget for the future, while at the same time, being sensitive to the membership's needs.

The importance of real estate values and how they are created and maintained is important to understand. In California we are fortunate to experience increases in value over time. The price per square foot at the state level has been on an upward trend since early 2012, and has been rising on a year-over-year basis for 43 consecutive months. For long term owners this increase in value works to their advantage as you down-size or move to a less expensive area. An investment in real estate represents one aspect of our retirement financial planning since you can experience equity growth by not only increases in value but also by debt reduction.

However, there are factors that will restrict your ability to achieve maximum value when you sell. Perhaps you remember when you first visited your association. The fact that you purchased where you did has something to do with how the property appeared to you. Likely the grounds and common areas were well maintained. Are they still that way? It's easy to lose sight of those first impressions after we have lived some place for a few years. After you own, it is more preferable to look at the dollars being spent and how to save money. Always remember the value of first impressions.

Value is maintained by paying attention to the appearance of the property from an outsiders perspective.

Another important aspect of value is in the financial health of the HOA. Every buyer should receive the latest annual disclosure package which must include the percentage of reserve funding. The reserve disclosures must be received by every owner thirty days prior to the start of a new year, and include statements about the current level of funding of the reserve funds compared to the projected reserve study recommendations. The Board must also indicate if there is any expectation of a Special Assessment in the future. More buyers are looking at this information when they negotiate the purchase price. In addition, lenders are looking for associations to fund at least 10% of their budget into reserves each year. If reserves are not funded and lenders deny loans to future buyers, the value will be definitely affected.

Do you, as a board member have a short-term view or long-term view? Do you only see the budget for the next year and what should the assessments be for the next 12 months? Or do you see further out, such as 5-10 years? The fiduciary duty of a Board member requires the board to act in the best long-term interest of the association.

How does an association move toward changing the dynamics of the past? The best answer is for the board to operate with business-minded reasonableness and sensitivity to your membership. The association is not a charity, and decision making on the basis of a few owners who are on fixed income is irresponsible to the association as a whole.

Communicating to owners the larger story that responsible long-term budgeting is the way the association must operate. Providing your owners with plenty of notice while the board is discussing the budget is appropriate.

The Board should not attempt to try to resolve years of improper budgeting in one year. Work with your professional advisors, such as the Reserve Study professional and

your manager to develop a strategy that will put your association on the right path. Incremental changes are ideal, as they start you the right direction, without creating other problems in the community.

Change and progress are difficult for many, but focusing on the long term future will provide a sense of hope for your owners that you are doing everything you can do to provide a beautiful place to live and at the same time do the best for the future values of all your owners.

You can begin this year to take steps forward in your association. It's time to start addressing "the elephant". There is an old question, how do you eat an elephant? The answer is one bite at a time and it should be done slowly and carefully.

INSURANCE CLAIMS: Where is the line drawn?: continued from page 3.

to determine what type of coverage is required. If the board is not aware of this requirement prior to a claim it can cause conflict and delays processing a water damage claim.

Once the type of coverage is determined you must ensure your agent provides the correct coverage on the policy. At this point you must find an insurance agent with experience in condo associations. HOA insurance is unique, and it is not advisable to call your local auto and home insurance agent and expect him to provide the unique coverage and endorsements required by your condo association. Ask the agent how many associations he has insured and how long he has been in this market. Due to the complexity of HOA insurance many agents do not pursue these types of accounts. Find an experienced agent that wants to be a part of this market and let him help you determine the requirements of your CC&R's and then provide the coverage you need. Do this today, before that claim occurs.

Robb Good operates The Good's Insurance Agency, Allstate Insurance. Mr. Good can be reached at 888-770-0505, or by email at: RobertGood@Allstate.com

NO ONE WILL SERVE ON THE BOARD! ADDRESSING APATHY IN HOA'S!

One of the most commonly faced issues in HOA life is APATHY which impacts practically every association. Ideally, homeowner associations should have a continuous swinging door of Board members coming on and going off the Board. More often than not, there are only a few willing owners who serve on the board for many years. Eventually, those board members move away, get tired, or decide for other reasons to stop serving on the board.

A great strategy would be for every board member to recruit their predecessor while they are on

the Board. A great way to get to know fellow owners is to provide a couple of opportunities through the year to meet, other than the Annual meeting.

But in the likely event, that your association is like many, and the upcoming election does not have anyone willing to serve on the Board, consider sending this letter to your membership. Of course, change the name of the Association first.

If you think this letter can help you in your association, feel free to use it. May it accomplish great results in your community.

TO: All owners of Apathetic Villas HOA

Your Homeowner's Association is facing an unprecedented challenge. The current Board of Directors will not be able to continue serving as your Board, and so far, no one has expressed interest in serving on the Board.

There are several important reasons why you should be very concerned:

1. For most owners, the equity in your property represents a significant amount of your net worth. Even for newer owners, who currently have little equity, over the coming years, your equity will grow and become significant.

2. The best way to preserve and enhance your value is with an active board of directors.

3. With no board in place, the only option will be receivership which will eliminate any control the owners have and significantly increase costs for you. Receivership is very expensive and is very difficult to reverse. This must be avoided at all costs. Not only will you lose your say in the affairs of the association, but you will pay dearly for it.

Here is what serving on the Board involves:

1. You work as a team to help decide issues pertaining to your association. Board members are not required to possess technical knowledge or expertise in serving on an HOA Board. Common sense and an ability to think on behalf of all the owners and what is best for the Association is all that is required.

2. Time commitment is minimal. You should have 4-10 meetings a year, which should last no more than 90 minutes each. There may be some minimal involvement between meetings related to your position on the board. Meetings can occur by telephone as long as one board member is on-site or in a location where owners can attend.

3. Seminars and classes are always available.

4. An understanding of your role as a Board member is important. As a board member you are not the on-site manager. You work as a group to make decisions for the benefit of the association.

We urge you to strongly consider serving on the Board for the sake of your investment.

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SHEDDING SOME LIGHT ON HOLIDAY DISPLAYS!: continued from page 7.

Forum time at board meetings are great ways to gather community input. Forbidding holiday decorations will create more problems than is warranted. An outright ban is unreasonable and may likely damage the community



more than the decorations themselves.

It is best that Associations adopt rules pertaining to holiday decorations and not allow any bias toward a particular holiday.

So, what are "reasonable" rules that associations should consider adopting?

1. Set time limits for holiday

displays. For example, allow decorations only between Thanksgiving and January 15. Remember that some religions celebrate Christmas on January 7.

2. Require that lighted or displays with sound be turned off by 10 PM, and perhaps later on weekends.

3. To avoid the risk of fire, require that circuits not be overloaded, with no exposed wires, and only fixtures that are rated for exterior use. Clark Griswold would have been prevented from his yard display if this was a requirement in his community.

The holiday season is one of the best times of year to build community by gathering owners in social ways and celebrating our diversity. By actively pursuing the building

of community you create a climate where the residents enjoy living and the issues of apathy and excessive rule violations become less frequent. It does take effort, usually a committee should be involved, and you will find that over several years people will get more excited and interested each year.



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