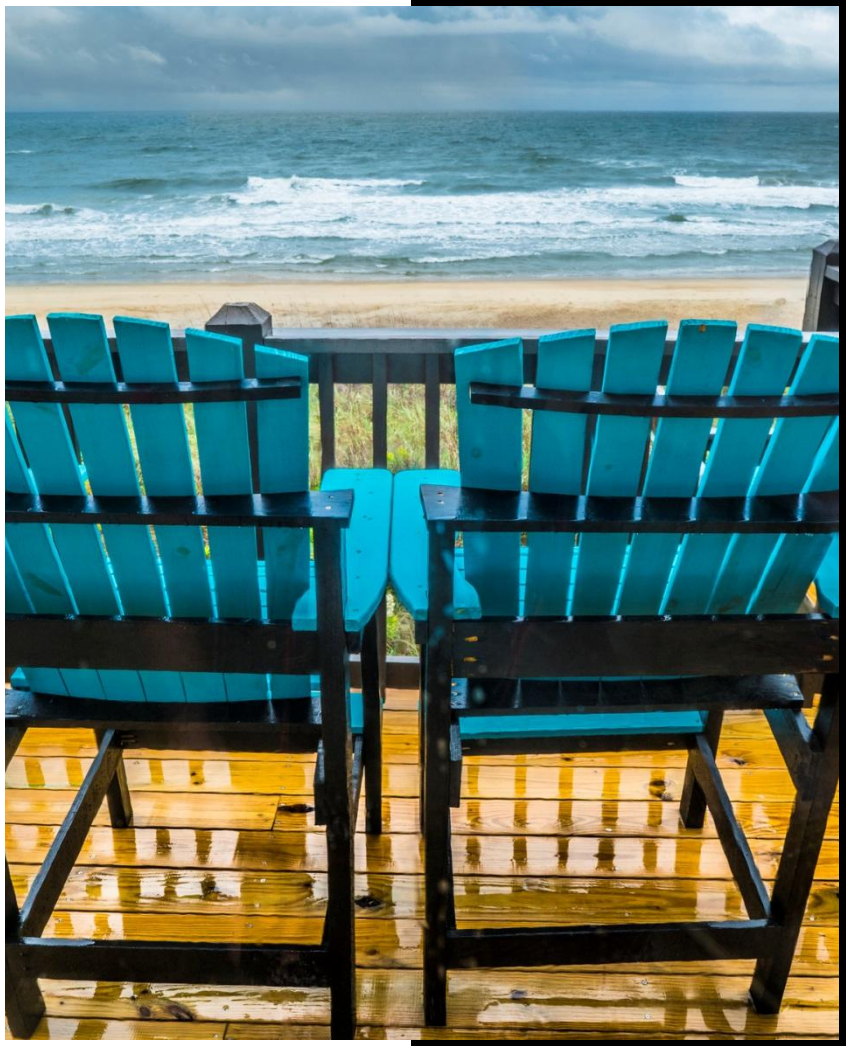
The Landscape of Community Association Functions and a Primer on Discrimination Claims Brief



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Primary Laws Governing Community Associations

Federal – FHA, FCC, ADA, FDCPA

North Carolina Nonprofit Corporation Act – Chapter 55A

Applies to all incorporated Associations

North Carolina Planned Community Act – Chapter 47F

Applies to all planned communities created on and after January 1, 1999

North Carolina Condominium Act – Chapter 47C

Applies to all condominiums created after October 1, 1986

North Carolina Unit Ownership Act – Chapter 47A

Applies to all condominiums created on or prior to October 1, 1986

Common Misconception: The Association is a Government Body

North Carolina Open Meetings Law – N.C. Gen. Stat. §. 143-318.10

- NOT APPLICABLE

North Carolina Public Records Law – Chapter 32

- NOT APPLICABLE

Governing Documents

Declaration

Supplemental Declaration

Articles of Incorporation

Bylaws

Design Guidelines

Restrictions and Rules

Board Resolutions

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"I think the seller will accept your offer, but the Homeowners Association will never approve that shirt."

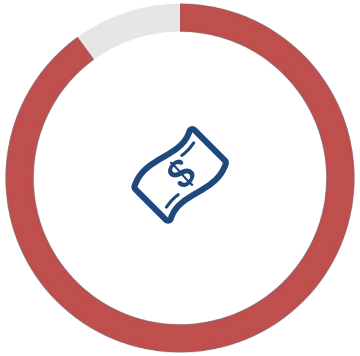
Purpose of an Owners' Association

1. Manage, maintain, repair, and replace the common area elements

2. Follow the governing documents

Board of Directors

Exercise corporate powers



Manage corporate affairs

Articles and bylaws – specify, limit role and function

Can be elected by members or appointed/designated

Board Manner of Acting

Majority of directors = quorum (articles or bylaws can reduce to no less than 1/3)

Affirmative vote of a majority of the directors present normally constitutes "official board action"
(Articles of Incorporation or Bylaws may raise without limitation)

Board Action

Meetings

- General
- Special

* No proxy voting,
* May participate via telephone or videoconference

Members are allowed to attend, at regular intervals, a portion of a Board meeting for the purposes of addressing their concerns with the Board.

Board Action

Board Meetings (cont.)

Board may establish time limitations and number of members who can speak on a particular topic

No obligations for Board to respond or make part of the minutes

Transparency is key to this process

Board Action

Board Meetings (cont.)

Open Session – members may attend general business

Closed Session – no members

- Personnel Matters
- Legal Matters
- Contract/Negotiations
- Delinquencies/Fines/Suspensions

Working Sessions?

Agenda

Board Action

Uniform Written Consent

- All Board members must participate **AND**
- Agree

*Email voting is only permitted if the above conditions are met

*Ratification of actions taken outside of a Board meeting

Minutes

They are called "minutes" not "hours" or "days" or "months"

Minutes are a record of what action was taken by the Board or the membership, it is not a verbatim record of everything that was discussed at the meeting

Date/Time/Location/Attendees

Follow Agenda as a roadmap for minutes

- Recording the action taken

Membership Meetings

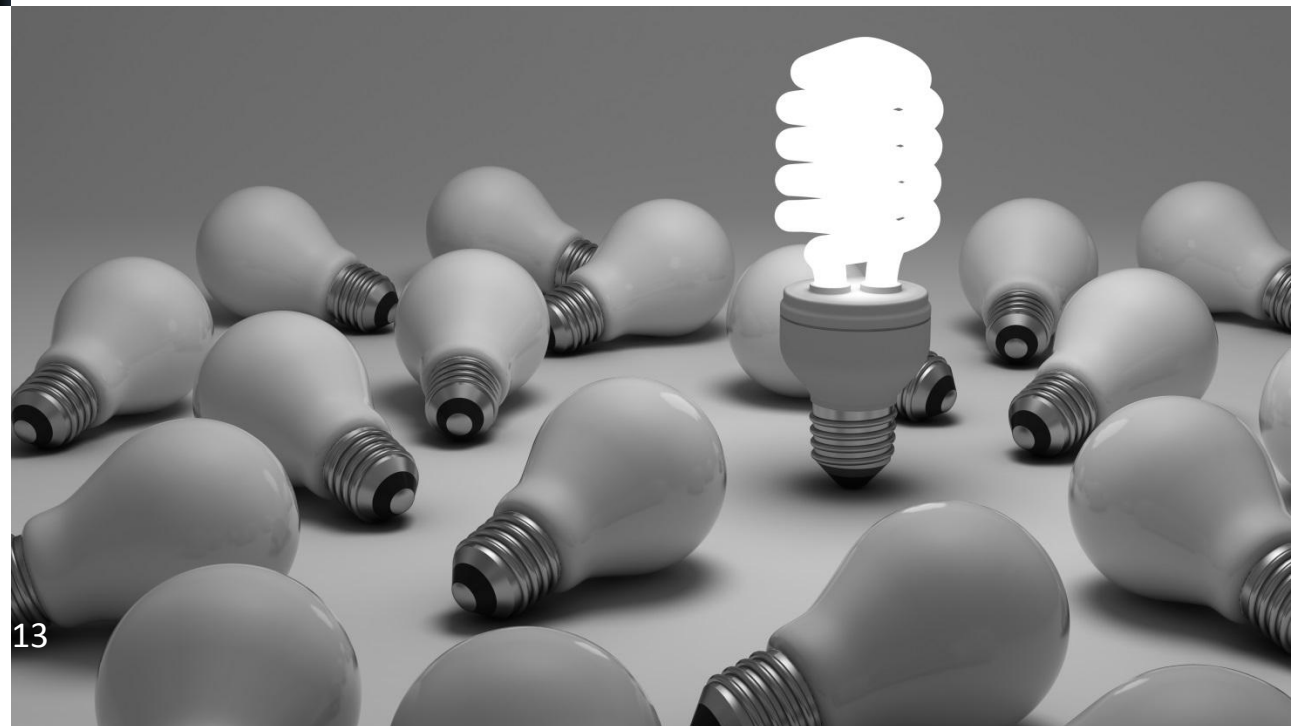
Annual Meeting – must meet once per year

- Elect Board
- Ratify Budget
- Other items properly noticed

Special Meetings

- Specific items listed in Notice

Informational



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Membership

Meeting Conduct

- Establish general discussion (i.e. new business) at the end of the meeting
- Raise hand to be recognized
- Please stand and state name and address
- One (1) member speaks at a time
- Respectful language only
- Limit on time and how many folks may speak on a given issue
- Sign-up sheet at start of meeting

Americans with Disabilities Act

Title III of ADA (42 U.S.C. § 12181-12189) prohibits discrimination of disabled individuals by owner, lessor, lessees, or operators of places of public accommodation.

Americans with Disabilities Act

Requires places of public accommodation to be designed, constructed, and altered in compliance with established accessibility standards.

Americans with Disabilities Act

- Typically, 47A, 47C, and 47F community amenities are not considered places of public accommodation under ADA.
- The North Carolina Building Code also incorporates many of the ADA accessibility standards.
- If ADA does apply, cost to meet accessibility standards in an Association.

Federal Fair Housing Act

FHA (42 U.S.C. § 3601-3619) prohibits discrimination in housing based on:

1. Race
2. Color
3. Sex
4. Religion
5. National Origin
6. Familial status (42 U.S.C. § 3602(k)) – 18 years of age or younger living with parent or legal guardian
7. Handicap (42 U.S.C. § 3602(h))

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Federal Fair Housing Act (Cont.)

- Unlawful for community associations to discriminate against any person in the providing of services or facilities because of race, color, religion, sex, religion, national origin, familial status, or handicap (collectively, "Protected Classes").

- Unlawful for community associations to allow harassment within the subdivision because of Protected Class, if the community Association has the authority to intervene.

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Federal Fair Housing Act (Cont.)

- Reasonable accommodations – providing a reasonable accommodation in the rules, policies, practices, or services, when such accommodations may be necessary to afford such persons equal opportunity to use and enjoy a dwelling - common area. The community association is responsible for the costs of the reasonable accommodation requested

- Reasonable modifications – allowing a modification of the existing premises to afford such person full enjoyment of the premises. The party requesting the reasonable modification is responsible for the cost of the reasonable modification.

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North Carolina Fair Housing Act

- Mirrors the Federal Fair Housing Act (prohibits discrimination based on race, color, religion, sex, national origin, handicapping condition, familial status)

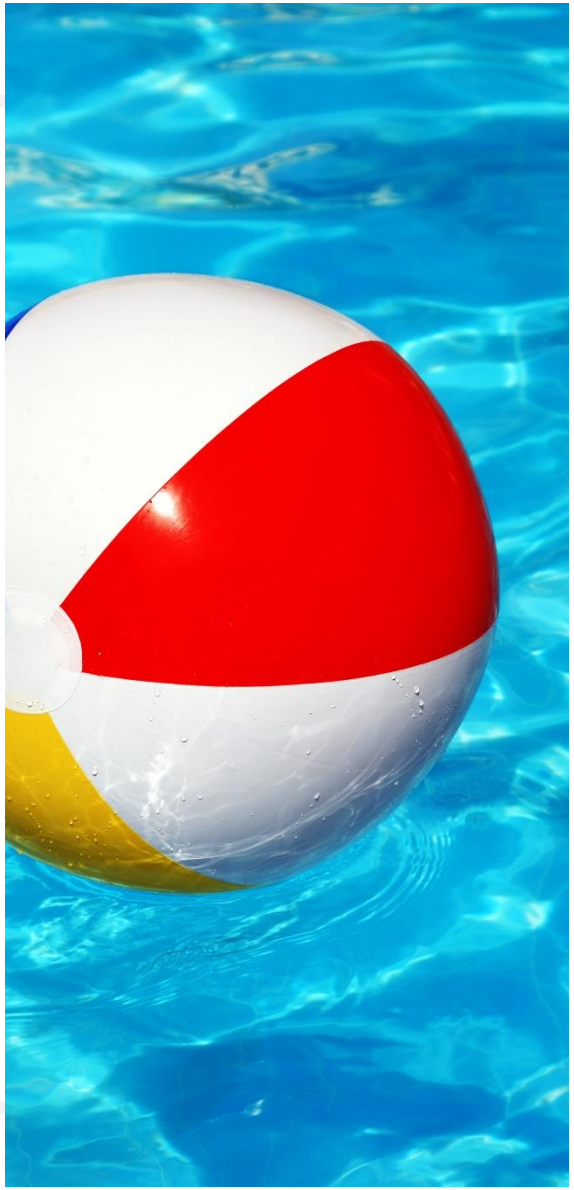
- Enforced by the North Carolina Human Relations Commissions ("HRC")

Fair Housing Act

- Familial status issues
  - Rules and regulations adopted by Association that treat owners and residents differently because of age or which have disparate impact on owners and residents because of age.
  - Age not a protected class under the Act, but limiting access to services and facilities based on age negatively impacts families with children under the age of 18 and, therefore, constitutes familial status discrimination.

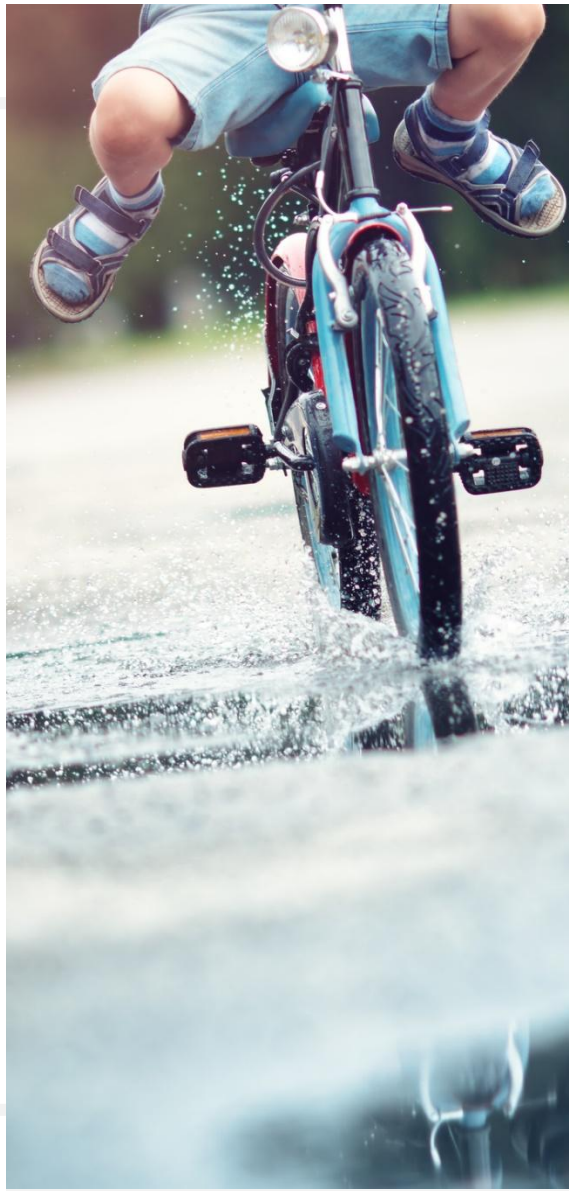
Familial Status Issues Examples

1. Pool
   - Adult only swim time
   - Cannot restrict children to use only some of the pools
   - Cannot require supervision of swimmers under a certain age
   - Cannot require supervision of children in pool to be by parent or guardian only
   - Diapers
   - Saunas/Hot Tubs – legitimate health and safety concerns allow rules restricting saunas.



Familial Status Issues Examples (Cont.)

2. Rules restricting bike riding, skating, and skateboard riding – be careful.
3. Supervision of children on common areas
4. Storage of children's play things
5. Exercise rooms – supervision can be reasonable.
6. Internet access in clubhouse
7. Limitation on number of children per unit



Fair Housing Act

Disability Issues

- Requests to create an exception to a non-discriminatory rule, policy, practice, or service to allow a handicapped individual equal access to the Association's facilities or services

- Requests made to modify the physical nature of the common area or owner's property to accommodate a handicap

Fair Housing Act (Cont.)

Pets – an owner or resident with a disability can request a reasonable accommodation exception to the rules or regulations to allow a pet.

1. Requesting owner must offer proof of disability unless readily apparent,

2. Describes the needed accommodation, and

3. Must be a nexus between disability and need for the requested accommodation.

Fair Housing Act (Cont.)

Service animals vs. emotional support animals

1. Service animals are specifically trained under the ADA.

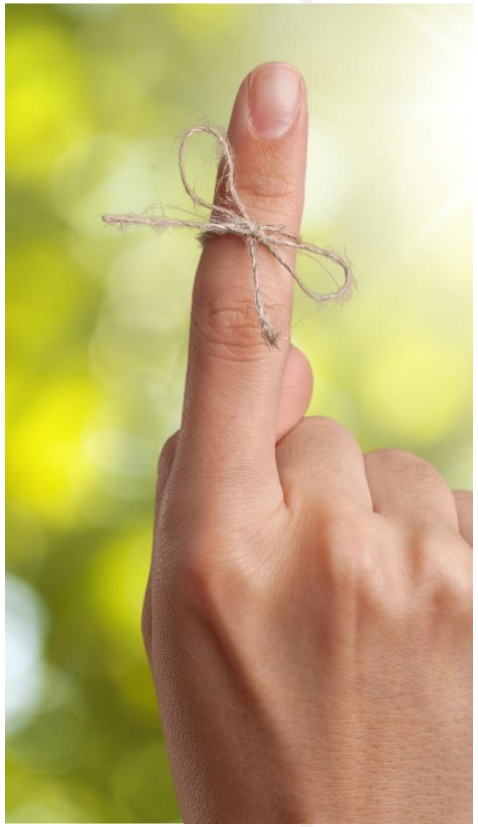
2. Emotional support animals receive no special training or certification, but must be allowed as an accommodation to a disability.

Fair Housing Act (Cont.)

Parking – request for assigned parking spaces

- Cannot interfere with other owners' vested property rights to provide reasonable accommodations.
- Owner pays costs for installation.

*Purpose is to provide person with equal access, not an increased benefit or greater opportunity than those individuals without disability with respect to matters unrelated to the disability.



Things to Remember

1. Acting in a consistent manner assists with defense of a disability claim.
2. It does not cost the plaintiff anything to maintain the dispute.
3. There is generally an insurance deductible. Think about settling for this amount before things get heated up.
4. Don't wait to get attorney and insurance agent involved.
5. Be reasonable.

Questions?

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