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Bad HOA Owner Behavior, But Is a Board Member "Visit" Wise?

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An [HOAleader.com](#) reader asks, "This actually happened recently. A burly neighbor backed his pickup into his diminutive elderly neighbor's driveway and parked just as she was coming outside. As he stepped down, she wordlessly gestured with open arms as if to say, 'What's up?'"

He then said, with a straight face, 'This isn't your private driveway. It's common area. Anyone can park here.'

Bad manners aside, this man's behavior illustrates a misunderstanding of our association rules, specifically our articles and bylaws, which clearly state that adjacent driveways, patios, stairways, and sidewalks are limited common areas for the exclusive use of each unit owner. You can't park in someone else's driveway without that owner's permission.

Common areas are of two types, general and limited. General common areas include roads, landscaping, front sidewalks, and visitor parking lots. Every owner has an undivided ownership interest in these areas and an equal right to use these facilities subject to rules established by the board. Driveways aren't general common areas.

The problem is how to deal with this troublesome owner. If he gets a notice from the management company, he may retaliate against his 80-year-old neighbor, who lives in constant fear of him. If nothing is done, he'll continue the unacceptable behavior. Should a board member pay him a visit?"

Yikes. We were with this reader, nodding our heads, until the "visit" was mentioned. Here, four of our experts weigh in on whether personal contact by a board member is wise and, if not, the best route for making this bully back down.

Four Experts, Four Advise Against

To a person, our experts aren't fans of the personal approach. Here's a quick rundown on their thinking and advice for this reader:

- **Andrea L. O'Toole, a Walnut Creek-based principal at Berding Weil, a law firm that does only community association law throughout the state**—"Pay a visit only if your board member is Bruce Lee," she jokes. "But, seriously, I'm 100 percent with you.

"Board members often take this upon themselves," she says. "They say, 'I'm really good buddies with this person; we play golf, so I'll talk to them.' Maybe there's a scenario when this makes sense, especially since, if you jump to enforcement, owners often say, 'Why did you send me this nasty letter?' But board members don't always know what they're signing up for, and they typically have a management company that can do this.

"Also, this guy has already shown he's purposely intimidating someone," adds O'Toole. "So here, I wouldn't come out of the gate with a nastygram, but maybe do the contact at the board level through an internal dispute resolution procedure. You start with notice saying essentially, 'It was reported to us that you're engaging in this, and we'd like to sit down and have a talk with you. There might be an underlying problem, and maybe we can help.'

"Maybe the owner is really *that* kind of person and won't show up to dispute resolution," she states, "If that's the case, remember that the association has an obligation to step in and protect this other owner, especially under U.S. Department of Housing and Urban Development regulations designed to prevent a resident from creating a hostile environment."

- **Harry Styron, a community association attorney at Styron & Shilling in Ozark, Mo.**—"I don't think boards ought to expose themselves to ill-tempered people," he says. "I don't think being a board member requires that they get into those very-stressful situations.

"But it really depends on the composition of the board and the nature of the dispute," adds Styron. "If there's a confrontation, I think it's best handled on the board's terms, where the board gives the person an opportunity to appear before the board or a panel appointed by the board. A hearing like that is somewhat formal, and there's a chair who can manage the discussion so that it's less likely to get out of hand. It's also less likely that it's one or two board members who are singled out for the tongue-lashing they're likely to get.

"Also, if there's professional management, one of the advantages of the manager handling this is having someone who's not emotionally involved take care of it," he states. "That's true of the lawyer, too. I've been happy to do this for clients. Because I don't have an emotional stake and am accustomed to controversy and dispute, I don't mind and have developed some skills to approach the unhappy person or bully in a way that brings the tension level down.

"One of the first ones I handled like this was an association meeting in a school gym," Styron recalls. "I introduced myself and said I'd been asked by the board to come and chair the meeting and that we were going to stick to the agenda. A voice from the back of the room said, 'I want to make a motion that we don't allow guys with neckties to come to our meetings anymore!' People thought it was funny and clapped.

"So I said, 'That seems to have been passed by acclimation and it will go into effect at the annual meeting next,'" he states. "Because I reacted with humor, we got through it.

"But I wouldn't want to send a board member to confront someone alone," advises Styron. "You need witnesses, so it's best done in groups if it's done at all. And it's best done in a formal setting so board members are in control of the situation. Board members need to explain the rules before the hearing starts, and the chair needs to have a firm hand."

- **Bruce Masia, LCAM, the Broward/Palm Beach County, Fla.-based vice president of the southeast region for KW Property Management**—"When you have these bullies, a personal visit isn't going to help, anyway," he says. "The manager should be the one to have a chat to try to rectify the situation. No board member should pay a visit. It shouldn't happen that they put themselves at risk.

"Also, when you're coming from a board side, you're coming from a negative view," adds Masia. "This person is irrational and will automatically think you're protecting the board. When you have the manager do it, the manager can start by saying something nice. I'd go ahead and educate that owner. That helps sometimes. Then I'd follow up with a letter saying, 'As per our conversation, please take a look at the declarations...'. That owner should be advised as to living under the declarations.

"If it continues to escalate, legal counsel should be brought into the mix," he states. "They're sending almost a cease-and-desist letter. When I see those, the language I always see at the bottom of the letter is, 'Conduct yourself accordingly.'

"I don't like to put anyone in harm's way," says Masia. "I don't like to create a contentious situation. Instead, try to deal with it in steps. You

start off nice, then get a little tougher, and then get counsel involved—that's the hammer that's going to drop."

- **Joe Wloszek, a member at Hirzel Law in Farmington, Mich., which represents more than 100 community associations; he lived in a condo for seven years and now lives in an HOA**—"Absolutely don't do that, nor do we recommend it," he advises. "This shouldn't be done in person."

"All communications over bylaw violations should be done in writing by the property manager or attorney," he advises. "And given the contentious nature of this owner, they should be done by the attorney directly to the offender. The attorney will state why his claim that this is a common element isn't correct and that this owner needs to immediately cease and desist—and to acknowledge in writing that he'll do that."

"The fight then becomes between the individual and not the old lady but the association, its governing documents, and the attorney for that individual," he states. "Does the elderly person have a right to pursue a claim against that individual? Yes, but if she's fearful and doesn't want to, that's a decision for her to make."

"But we typically recommend to associations that they should step in because often matters like this escalate, and the only way they're going to stop is the attorney sending a letter or, if it continues, filing a lawsuit against the individual," says Wloszek. "And in most governing documents, if someone violates the bylaws, the association can seek attorneys' fees and legal costs. Co-owners don't get that remedy if they pursue the matter themselves. That's a great leverage point for the association in sending the cease-and-desist letter as opposed to the elderly woman."