

# WHEN RESIDENTS GO ROGUE

By Steven Anderson



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Dealing with difficult residents, enforcing rules and protecting the community from disruptive behavior are challenges many boards face. The methods used, however, depend on whether you govern a co-op or a condo. Co-op boards, through the proprietary lease and a landmark legal decision (the *Pullman* decision), have sweeping authority to enforce rules and, in extreme cases, remove shareholders. Condo boards, by contrast, face greater legal limitations and must rely on fines, foreclosures and injunctions. Steven Anderson, a partner at Becker, offers key lessons to help boards avoid costly missteps and protect your communities.

### ☑ BOARD CHECKLIST

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## 1. Understand the Legal Framework

■ The co-op proprietary lease gives the board the authority to terminate a shareholder's lease for "objectionable conduct." Courts apply the business judgment rule, meaning boards almost always prevail if they follow procedures.

- Because condo owners hold title to their units, boards cannot evict owners for objectionable conduct. Instead, boards must use fines, liens or foreclosure. Legal action to stop nuisances is possible but slow and uncertain.

## **2. Prevention Before Litigation**

- Litigation is costly and emotionally draining, and it can drag on for years. Even if the board ultimately wins, no one comes out completely whole.
- Encourage early resolution with conversations, mediation or warnings.
- Use the threat of legal action as leverage to encourage compliance.
- Remember: Like a doctor avoiding unnecessary surgery, a board should view litigation as a last resort.

## **3. Identify Problem Situations**

- Be alert to situations in which intervention may be required because these can escalate quickly. Be sure to balance patience with readiness to act.
- Safety issues: Hoarding that creates fire hazards or code violations.
- Nuisance behavior: Noise, harassment or repeated complaints from neighbors.
- Persistent disputes: Shareholders locked in personal conflicts requiring board intervention.
- Defensive tactics: Residents who raise disability or discrimination claims to stall proceedings.

## **4. Co-ops: Follow Due Process in Termination/Eviction**

- Board vote: Confirm what your proprietary lease requires. If the process requires only a board vote, it generally requires a super-majority (e.g., two-thirds of directors).
- The requisite notice before a meeting should be general, with some specificity of time frame and the objectionable conduct.
- Allow the shareholder to be heard.
- Allow legal counsel to attend.
- If necessary, adjourn and reschedule to ensure fairness.
- Document carefully:
- It's a judgment call whether to record proceedings — confer with counsel.

- Affidavits are necessary only for court — otherwise have counsel prepare minutes of meeting. The minutes are formal proof of decision-making.

- Court review: If the process was fair, courts rarely overturn board decisions.

## **5. Anticipate Financial and Legal Outcomes**

- Legal fees: In co-op disputes, the prevailing party recovers legal fees. Since boards nearly always win when procedures are followed, this provides strong deterrence.

- Enforcement mechanism: Boards can compel the sale of an apartment to satisfy unpaid fees or enforce a termination.

- Limitations: If the apartment has little or no equity, recovery may be incomplete. Litigation also carries emotional and reputational costs.

## **6. Condos: Specific Limitations**

- Reality check: Condo boards cannot rely on *Pullman*-type authority.

- Available tools:

- Impose fines for bylaw violations.

- Place liens and initiate foreclosure for unpaid fines or legal fees.

- Seek injunctions to stop nuisances — but expect lengthy court battles.

- Takeaway: Condos face far greater difficulty removing disruptive owners, making prevention and diplomacy even more critical.

## **7. Lessons for Directors**

- Know your governing documents: Proprietary lease, bylaws and house rules set the foundation for board authority.

- Work closely with counsel: A knowledgeable lawyer ensures the process is defensible.

- Be fair and consistent: Courts look for evidence of due process and good faith.

- Educate your community: Shareholders and owners should understand both the power and limits of their boards.