

Ask the HOA Expert - May 2021

'THE SHAKEDOWN'

What to do when an owner is withholding assessment payment

The Shakedown There's a gangster in the 'hood. He's rough, he's tough and he's gonna show the board who's boss. He's holding his monthly assessment hostage to extort action from the HOA. It could be something he wants fixed or some rule he wants changed but no change is going to come until he gets his way.

This kind of shakedown is common in homeowner associations. It usually comes up when an owner's requests for maintenance have been ignored. Sometimes it's because of how the board is doing business: secret meetings, abuse of power, poor or unequal rule enforcement. So, there is a demand for change which often includes an element of righteous indignation: "I'm not gonna TAKE it anymore!"

Sometimes the excuse for the shakedown is legitimate. Repeated maintenance requests have gone ignored. The roof has been leaking for weeks and damage is being done to their personal property. Or there's been a junk car with flat tires and a growing oil slick parked in front of their unit for months and yet still no action. So, one morning, Mr. Irritated wakes up and thinks "Hey! I pay my fair share. If I can't get service, I'm not paying any more!"

There are several courses of action that the board can take. Keep in mind that anyone that has withheld money has already had the last straw broken and is not likely to be very cooperative. There's going to be a certain level of resentment built up that must be overcome before communication can take place. So, rather than write a letter or email which can easily be misconstrued, a personal phone call or visit is the best first step. This will address the feeling of being ignored. Express concern and get to the bottom of the problem. This is a fact-finding mission so get the facts: dates, places, he saids and she saids. Keep notes. Then ask what it will take to resolve the issue now. This is where it gets tricky. The answer you get may or may not be reasonable. If the request is entirely reasonable, assure that steps will be taken to move it forward. Give a timeline for getting the task done and ask that you be called personally if it isn't. Ask that the assessment be brought up to date in the meantime so late fees aren't incurred. Offer to waive any that may have already been assessed if the balance is resolved within 48 hours. This will allow a graceful way out and demonstrate that you sympathize.

If the request is not reasonable, not the HOA's responsibility, not budgeted or planned, explain that to make sure that it's understood. Maybe it has not been properly explained before. If it has and the response is "I could care less. I'm still not paying until it happens." then conclude the conversation by saying you understand what's being requested but can't accommodate the request for such and such reasons. Add that the request can be formally appealed to the board, but that withholding money could negatively affect the board's decision. Ask that the hold back be paid so late fees and collection costs aren't added to the balance.

Another scenario to consider. The hold back may be a cover up for a lost job or some other financial setback. That throws a different light on the issue and solution. Ask if there is something else, like a financial problem, that's driving it. You might be surprised how often it is and, when caught off guard with your question, an owner will 'fess up. If this is the case, focus on the truth of the matter. If there is a financial problem, maybe there is an accommodation the board can help. Shaking down the HOA can be based in exasperation, a hidden agenda, or personal finances. It's important to understand the underlying motivation so that reasoned action can be taken. Getting to the bottom of it will help you make nice.

Presented by
Richard L. Thompson, Esq.
The HOA Expert™