



Gold Coast
Professional Schools, Inc.

COMPLAINTS, COMPLAINTS, COMPLAINTS

This course is approved by the DBPR Council of Community Association Managers for 4 hours of continuing education credit in the areas of:

Human Resources (HR) and Additional Instruction (ELE)

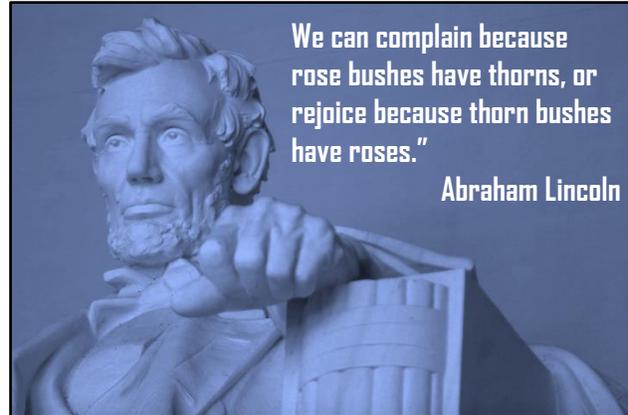
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INTRODUCTION

It can be reasonably argued that the most powerful force that drives human progress is not love or money, but dissatisfaction with the way things are. Without dissatisfaction, why would anyone work endless hours to invent such wondrous things like the wheel, the yoyo, ice cream, Q-tips, or Pokémon? Expressions of dissatisfaction are known as complaints, and you might think that, since they are a byproduct of this powerful creative force, they would be as happily received as expressions of approval or affection. But, as we all know, complaints are usually as welcome as a case of the pox. They are, nonetheless, the subject of this course.

Complaints and other expressions of dissatisfaction, unhappiness, or dissent are a daily occurrence in the professional lives of community association managers. To some, if not most, managers, they are often a hindrance to accomplishing their duties and a major source of workplace stress. But, we should view complaints as an opportunity to improve the operation of the association and/or to strengthen their management skills.



One of the primary objectives of community associations is to provide a harmonious community.¹ To many veteran CAMs, given the conflict they observe and/or experience, in even the best-managed associations, this may seem an unreasonable and unattainable goal. However, it is the responsibility of the association's board and management, to the extent of its powers, to promote the general well-being of the community, and certainly to do nothing that will unnecessarily increase dissatisfaction among its members. Boards must make decisions, usually related to levying assessments or enforcing use restrictions and other rules that are unpopular with an individual or a group of members. Unfortunately, both boards and management frequently aggravate a complaint or dispute by responding to it in a manner that unnecessarily results in resentment and hard feelings by all parties.

This course is written to provide managers with a greater understanding of the nature of complaints, as well as provide them with practical tools to enable more effective and less stressful management of complaints and complainers. It will provide an overview of the principles of complaint management, statutory requirements, types of complaints and complainants, political considerations, the role of the Division, alternative dispute resolution, and litigation.

DEFINITION AND SYNONYMS

Dictionary.com defines *complaint* as an expression of discontent, regret, pain, censure, resentment, or grief. In law, it's the first pleading of the plaintiff in a civil action, stating the cause of action. A civil action against the association for failure to resolve a

¹ Hidden Harbor Estates, Inc. v. Normen, 339 So. 2d 346

1 complaint often represents a failure of the association to successfully manage the
2 complaint, or the member expressing the complaint, regardless of its validity.

3
4 Thesaurus.com includes the following synonyms of complaint: accusation, charge,
5 criticism, grievance, gripe, objection, protest, annoyance, beef, cavil, clamor,
6 dissatisfaction, expostulation, grouse, grumble, guff, jeremiad, kick, lament, moan, plaint,
7 protestation, rap, reproach, rumble, squawk, stink, wail, and whine. This is in no way an
8 exhaustive list; there are many more words in the English language, some slang (bitch),
9 some of foreign derivation (kvetch), which are used to express dissatisfaction. And,
10 since many members of community associations speak languages other than English,
11 there is literally an unlimited number of words a CAM may hear that will indicate that an
12 owner or resident is less than happy the board, or with them, personally, or as an agent
13 of the association.
14

15 **THE PRINCIPLES OF COMPLAINT MANAGEMENT**

16
17 The following principles, if consistently applied, will permit the CAM to effectively
18 manage complaints efficiently. The principles are based upon effective communication,
19 self-control, thoughtful consideration, knowledge, and systemization. We discuss these
20 below.
21

22 **CREATE A SYSTEM**

23
24 Managers should create a written, standardized complaint management system that will
25 allow them to act on a complaint by diligently following the steps in the process.
26 The system might look like the following:
27

28 **Villa de las Quejicas Condominium Association**

29 **Complaint Management System**

- 30
31
- 32 1. Read all correspondence each morning immediately upon arrival (at least after the
 - 33 first cup of coffee).
 - 34 2. Determine the validity of each written complaint. All complaints, other than
 - 35 emergencies, must be in writing.
 - 36 3. Prioritize each valid complaint and act upon those that require immediate action.
 - 37 4. Determine whether to Do It Yourself (DIY), delegate to a subordinate, or refer the
 - 38 complaint to the president, board or committee member, service provider (vendor,
 - 39 attorney, accountant, and insurance agent), governmental agency, or other party.
 - 40 5. Communicate complaints of a serious, sensitive, or unusual nature to the president.
 - 41 6. Initiate action to resolve each valid complaint based upon priority.
 - 42 7. Document the complaint and action taken.
 - 43 8. Use a work order system to monitor property maintenance related complaints.
 - 44 9. Provide an initial written response to each complainant within 48 (24 if possible)
 - 45 hours of receipt of the written complaint.
 - 46 10. Monitor the status of unresolved complaints and provide a written status reports to
 - 47 each complainant, the president, board, and other relevant parties.
 - 48 11. Provide a written report describing the resolution, if successful, or an explanation, if
 - 49 unsuccessful, of the complaint to the relevant parties.
 - 50 12. Drink your second cup of coffee.

1 **Respond**

2

3 Regardless of the validity and source, all complaints received by the manager must be
4 evaluated and all complainants must receive a timely response to their complaint.

5 Specific methods of responding to common types of complaints and complainers are
6 discussed in greater detail in the **Types of Complaints** and **Know Your Complainer**
7 sections of the course.

8

9 **Statutory Requirements**

10

11 **Condominium/Cooperative**

12

13 When a member of a residential condominium or
14 cooperative files a written inquiry (commonly
15 referencing an action or inaction on the part of
16 management or the board about which the
17 inquirer is unhappy) by certified mail with the
18 board, the board is required, by statute², to
19 respond in writing to the member within 30 days after receipt of the inquiry. The board's
20 response must either give a substantive response to the inquirer, notify the inquirer that
21 a legal opinion has been requested, or notify the inquirer that advice has been requested
22 from the Division of Florida Condominiums, Timeshares, and Mobile Homes (Division). If
23 the board requests advice from the Division, the board must, within 10 days after its
24 receipt of the Division answer, provide in writing a substantive response to the inquirer. If
25 a legal opinion is requested, the board must, within 60 days after the receipt of the
26 inquiry, provide in writing a substantive response to the inquiry. The failure to provide a
27 substantive response to the inquiry precludes the board from recovering attorney fees
28 and costs in any subsequent litigation, administrative proceeding, or arbitration arising
29 out of the inquiry.

30

31 The statutes provide that an association may, through its board, adopt reasonable rules
32 and regulations regarding the frequency and manner of responding to member inquiries,
33 one of which may be that the association is only obligated to respond to one written
34 inquiry per unit in any given 30-day period. In such a case, any additional inquiry or
35 inquiries must be responded to in the subsequent 30-day period, or periods, as
36 applicable.

37

38 **Occam's Razor**

39

40 Both written and verbal complaints should be responded to consistent with the law of
41 parsimony, also known as Occam's Razor, after William of Ockham (c. 1287–1347), who
42 was an English Franciscan friar, scholastic philosopher, and theologian. Simply put,
43 parsimony is a principle according to which an explanation of a thing or event is made
44 with the fewest possible assumptions or explanations. CAMs can apply the principle by
45 using the simple explanation with the fewest words needed to adequately respond to a
46 complaint or inquiry. Essentially, be brief and to the point. Anything said or written that is
47 unnecessary or extraneous to the specifics of the complaint can result in additional
48 communication or correspondence that will likely prove unproductive and time
49 consuming.



² F.S. 718.111 (2)(a)2, F.S. 719.106 (1)(a)3

No Apologies

Some managers have a tendency or have been trained to apologize upon receipt of a complaint. The Merriam Webster dictionary defines apology as an admission of error or discourtesy accompanied by an expression of regret. Managers should rarely, if ever, apologize for any action of the board or its agents, including themselves. Since an apology is an acknowledgement of fault, it could become a factor in a liability claim against the association arising from a complaint. Instead of apologizing, managers should express their regret for the complainant's negative or painful experience. An expression of regret demonstrates empathy but is not an acknowledgment of culpability.

COMPLAINT FORM

Please write your
complaint in the box
below

Write legibly



Records

Managers must be especially careful upon receiving a complaint or inquiry regarding failure to allow a condominium member to inspect or copy official records that are accessible to members within the required time periods. A violation of F.S. 718.111(1)(d) by a director or officer is punishable as tampering with physical evidence, which is a felony of the third degree, or as obstruction of justice.

Get It in Writing

The legendary movie producer, Samuel Goldwyn, once said, "A verbal contract is not worth the paper it's written on." CAMs and boards of directors generally assign greater importance to written as opposed to oral complaints. Once received, the written complaint, regardless of whether the method of delivery is hand, mail, fax, or electronic, becomes an official record of the association. Some written complaints are required, by statute, to receive a written response within a specified period (discussed in the previous section). Regardless of whether the complaint is within or outside the scope of a statute, management will typically understand that, since the member took the time to put their complaint in writing, it requires and deserves a written response. Some associations' bylaws or rules require that all complaints be made in writing.

Managers are frequently subject to oral expression of complaints by members. If it is a simple matter, requiring little effort, managers may legitimately choose to resolve the issue without requesting it be placed in writing. CAMs should require all other complaints to be in writing. Once in writing, further clarification can be requested, if needed, and any ambiguity reduced or eliminated.

Don't Take It Personally



Oftentimes, complaints take the form of personal, unpleasant attacks on officers, directors or the manager. Managers must, regardless of the language used, respond professionally and unemotionally. Of course, since the message was meant to be taken personally, this is easier said than done. An effective method of dealing with written communications meant to belittle, stigmatize, castigate, or otherwise inflict pain and suffering is to

draft as nasty a response as possible using as many expletives as come to mind. The CAM must now remember a very important rule, **DO NOT HIT THE SEND BUTTON**. Once completed, let the response sit until your anger has passed or dissipated to the point that your rational mind is back in control. Now, **HIT THE DELETE BUTTON**, and draft the response that you need to send. This response may be referred to as the *kill them with kindness response*. The following is an example.

Dear (name of member):

I sincerely appreciate your expression of concern regarding (restate the writer's complaint or complaints but not the personal attacks).

If all or some of the complaints are valid, describe how you intend to resolve them. For those that are not valid, explain the basis for your determination of their invalidity. An example of a conclusion is:

By bringing matters to our attention that may otherwise go unnoticed, members like yourself prove extremely helpful to the board and management. I sincerely appreciate the opportunity to be of service.

Very truly yours,

Ima Bigg Lyre

Community Association Manager

cc: Association president

Ima, similar to many CAMs responding to a nasty communication, does not appreciate the member's expression of concern (because it probably does not exist), does not likely believe that the member has been helpful, nor does she necessarily appreciate the opportunity to be of service to the member. But this is a situation, similar to many others encountered by managers, in which it does not serve the association or the CAM to express their actual thoughts and feelings. J.K. Rowling, in her book "Harry Potter and the Sorcerer's Stone," presents a very useful guide for manager's when they are tempted to express how they really think or feel. It is as follows, "The truth." Dumbledore³ sighed. "It is a beautiful and terrible thing and should therefore be treated with great caution."

³ Dumbledore is a fictional character in the Harry Potter book series by J.K Rowling. He is the headmaster of Hogwarts School of Witchcraft and Wizardry.

1 Vitriolic complainers probably do not expect the type of response used by Ima. They
2 may realize that their attempt to inflict harm has failed and be embarrassed by the
3 contrast of the courteous and reasonable response to their emotional and malicious
4 expression of unhappiness. Not infrequently, the quality of future communication
5 becomes more civil.

6
7 Managers should never get into the gutter with unhappy members. Our task is to
8 facilitate the resolution, if possible, or minimize problems and conflict. It is not to add to
9 them by improper action or language. To be effective, we need to remain, in almost all
10 instances, emotionally detached from the issues that confront us, at the same time as
11 being fully engaged intellectually. A complaint that includes a personal attack on a
12 director, the board, or the manager, should be regarded as an opportunity to hone the
13 skills required to become a master of complaint management.

14 15 **Avoid Confrontation**

16
17 Angry members often show up at the office and cannot wait to confront the manager with
18 their complaint. Managers should avoid these encounters to the greatest degree
19 possible. Front office personnel should be well trained on how to manage angry
20 members. Such members should be given a choice of making an appointment with the
21 manager or putting their complaint in writing. They should not gain admission, except for
22 emergencies, until they have calmed down. If they continue to be disruptive, security or
23 law enforcement personnel may have to be notified.

24 25 **UNDERSTAND THE COMPLAINT AND COMPLAINER**

26
27 As you might guess, there are many types of complaints. To start with, there are verbal
28 complaints and there are written complaints. Of course, people may express their
29 complaint silently, by means of body movements, facial expressions, and gestures,
30 some of which may speak louder than words. However, the study of the kinesics⁴ of
31 complaints is beyond the scope of this course.

32
33 As we all know, regardless of any existing rule or prohibition, people will give voice to
34 their unhappiness. Identifying which of the numerous types of complaints a CAM has
35 received is often the key to understanding and to responding appropriately. The
36 following section describes some of the more common types.

37
38 It is also important to understand, to the greatest degree possible, the nature and
39 motivation of the complaining party. This topic is discussed in greater detail in the **Know**
40 **Your Complainer** section.

41 42 **TYPES OF COMPLAINTS**

43
44 There are valid complaints and invalid complaints. A *valid complaint* has a sound basis
45 in logic or fact, is reasonable and cogent. It is also within the scope of the association's
46 authority and responsibility to achieve resolution. An invalid complaint is illogical, non-
47 factual, unreasonable, lacks cogency, and/or is outside the scope of the association's
48 authority and responsibility.

⁴ The study of the how certain body movements and gestures serve as a form of nonverbal communication.

1 Within the association, a complaint's validity is determined by someone in authority. For
2 example, the validity of a complaint such as "the fitness center is dirty and needs to be
3 cleaned," is subject to validation by maintenance personnel, the manager, a chair of the
4 maintenance committee (if one exists), or even the association president. People vary in
5 their standards of cleanliness. Some members may be "clean freaks" or germaphobes.
6 The need for remediation, in these types of situations, depends upon the standards of
7 the association as understood and interpreted by its agents.

8
9 The standards of an association are often determined by financial considerations. Board
10 contracts for janitorial services typically specify the frequency that certain areas are
11 cleaned and the specific tasks that are to be performed. The contract specifications may
12 prove inadequate to properly maintain the appearance and cleanliness of the property,
13 because the board is unwilling to pay the extra amount necessary to achieve a higher
14 level or frequency of performance. Cash strapped associations may hire the lowest
15 bidder, with the understanding that the service will not satisfy the more demanding
16 members. The same issues of quality and cost apply to maintenance, security, pool,
17 landscaping, and all other services that associations provide, including legal, accounting,
18 financial, and management.

19
20 Managers may believe that a member's complaint is valid but are rendered powerless to
21 adequately resolve the complaint. Ultimately, in the real world of community
22 associations, the formal definition of a valid complaint presented above may be
23 disregarded by the board because it reserves the right to determine whether a complaint
24 is valid or invalid, based upon its standards.

25
26 However, members have the legal right to appeal to the Division on certain issues,
27 submit their complaint for alternative dispute resolution, or initiate a lawsuit. Ultimately,
28 the validity of a complaint that is not resolved to the member's satisfaction may be
29 determined by the Division, an arbitrator, or the courts. The board's financial position
30 and standards will not likely be factors that a third party will consider when rendering a
31 decision on a complaint's validity.

32
33 Some complaints are resolvable by the manager, either directly or by delegation to a
34 subordinate or service provider. Others, especially those for which the manager is
35 uncertain of the president's position or the absence of clear policy, must be referred to
36 the president for direction. Some complaints, such as those involving interpretations of
37 the governing documents, require a legal opinion. Others may require guidance from a
38 government official, such as a complaint regarding the association's requirement for a
39 member to obtain a building permit as a condition for granting approval of an
40 architectural modification request.

41
42 There are easy complaints and difficult complaints. The easy ones are resolved quickly,
43 without much effort. The difficult ones often require research and thought. Some may
44 argue that the easy ones also require thought, because they are, at times, not as easy
45 as they initially appear. Sometimes, not often, we get lucky and a difficult complaint is
46 easily resolved. So, now we can add another type, the *deceptive complaint*, in which a
47 difficult complaint is masquerading as an easy one, or an easy complaint is in the guise
48 of a difficult one. Managers are best served by processing all complaints in a systematic
49 manner, as described in this course or adapted to serve the needs of a specific
50 association.

1 Some complaints require immediate attention, especially those that alert the manager to
 2 an unsafe condition that if not remedied, may result in death or injury to people, damage
 3 to property, a violation of law, a lawsuit, or insurance claim. These are referred to as *act*
 4 *now complaints*. Most other complaints can wait to be acted upon until the manager can
 5 free up time from their busy schedule. We will refer to these as *to do list complaints*.

6
 7 Some complaints will simply go away because either the complainer has forgotten about
 8 it or it has been resolved on its own. This type of complaint can be referred to as the
 9 *disappearing complaint*.

10
 11 Sometimes a complaint becomes a high priority because it originates with the president,
 12 an officer, a director, or their spouse, child, or other close relative or friend. We will refer
 13 to this type as the *VIP complaint*.

14
 15 A complaint originating with a
 16 difficult or contentious member
 17 sometimes becomes a high
 18 priority complaint simply because
 19 not addressing it will later result in
 20 time consuming and unproductive
 21 interactions. This type of
 22 complaint can be referred to as the *squeaky wheel complaint*.



23
 24 Some complaints are presented as questions or inquiries. Don't be fooled. They are
 25 often complaints. We will refer to this type of complaint as a *questioning complaint*. An
 26 example of a questioning complaint is, "Why isn't the grass greener?" This is most likely
 27 an expression of dissatisfaction with the frequency of watering or the quality of the
 28 irrigation system or landscape company. Less likely, it could just be a philosophical
 29 musing about the lack of rain. Either way, the answer is **not** "Because you're not living
 30 on the other side of the hill."

31
 32 Some complaints are masked by complimentary or flattering language. For example, the
 33 member begins their communication with a statement such as, "I very much appreciate
 34 the great job you and the board are doing." Ignore the fluff, it may or may not be sincere,
 35 and look for the complaint that is on its way. We will refer to this as a *complimentary*
 36 *complaint*.



37
 38 Complaints are often presented in the form of
 39 suggestions, such as, "I suggest that a suggestion
 40 box be placed outside the manager's office." The
 41 implied complaint is that there are insufficient or
 42 inadequate channels of communication to the
 43 manager or board. This is known as the *suggestion*
 44 *complaint*. Some members load up their
 45 communication with multiple, often irrational,
 46 complaints and demands, about different subjects
 47 with the objective of creating problems for the CAM

48 and board. We will refer to this as the *bust-your-chops* or *BYC complaint*. The following
 49 serves as an example.

1 *Dear Ms. Manager:*

2

3 *I have walked the earth a long time, but I have never encountered such a poorly run*
4 *organization.*

5

6 *The distance between my property line and the lake is receding rapidly and soon my*
7 *house will be under water. The association is not controlling the birds who do their*
8 *business on the tennis courts with great accuracy and enthusiasm. The president's*
9 *eleven-year old son rings his bicycle bell loudly every time he passes my house around*
10 *11 A.M. every day. My neighbor, a convicted felon, lets his black olive tree deposit its*
11 *seeds on my yard. My ex-wife is still being permitted access to the association fourteen*
12 *years after the divorce. I'm also unhappy about my high property taxes and insurance*
13 *rates.*

14

15 *A good manager would have been pro-active and prevented the lake, the birds, the*
16 *president's son, my neighbor, my ex-wife, the tax assessor, and my insurance company*
17 *from making the remaining few years of my life miserable. Fix these problems*
18 *IMMEDIATELY or you'll be hearing from my lawyer.*

19

20 *Have a nice day,*

21

22 *Roscoe Z. Smiley*

23

24 A BYC complaint must be disassembled into its component parts and each part
25 responded to individually. Although the motivation of the *BYC* complainer may be to sow
26 confusion, the CAM still must determine if any of the component claims are valid and
27 subject to remediation. An example of a response is as follows:

28

29 *Dear Mr. Smiley:*

30

31 *I sincerely appreciate your email expressing your concerns about recession of the*
32 *shoreline near your home, bird droppings on the tennis court, the bicycle bell*
33 *disturbances, your neighbor's black olive trees, your ex-wife's access to the association*
34 *property, your property taxes, and insurance rates.*

35

36 *The board is aware of the problem of receding lake shorelines and has contracted with*
37 *its lake management company to install riprap and gabions to prevent further erosion.*
38 *Bird droppings on the tennis court are cleared as often as possible by janitorial staff.*
39 *Unfortunately, the annual migration route of black-bellied plovers takes them directly*
40 *over our property during September of each year. The problem should abate beginning*
41 *early next month.*

42

43 *The president's son does not have a bell on his bicycle.*

44

45 *Please ask your neighbor to trim the branches of his black olive tree that overlap your*
46 *property and let me know his response. These types of problems are best resolved by*
47 *the owners without board intervention.*

48

49 *Your ex-wife has access to the association property because she is on the permanent*
50 *guest list of an owner.*

51

52 *The association does not set property tax rates or property insurance premiums. You*
53 *may want to consider contacting your county commissioner or your insurance agent.*

1 *Thank you for providing an opportunity for management to address your important*
2 *concerns.*

3
4 *Very truly yours,*

5
6 *William of Ockham*
7 *Community Association Manager and Medieval Theologian*

8
9 *cc: Association president, association attorney*

10
11 Responses to all complaints, especially to *BYC complaints*, should be brief, informative,
12 and to the point. The president should always be copied. In this response, the
13 association's attorney is also copied, not because his intervention is needed, but to alert
14 Mr. Smiley that his threat of a lawsuit was not ignored.

15
16 Students are free to create their own list based upon their management careers or
17 simply add other types to those given above that may have been inadvertently omitted.

18 19 **THE POLITICS OF COMPLAINTS**

20
21 In addition to serving as a means of expressing dissatisfaction, complaints can also
22 serve to bind members together in common cause against the president or board of
23 directors. Persons, who seemingly have no common interests or attributes, find
24 themselves as allies in efforts to discredit or unseat their opponents. They may, in fact,
25 begin to socialize with one another and seek to enlist their families and friends in their
26 efforts. Members who had been leading quiet and peaceful lives now find themselves as
27 soldiers in a righteous cause whose goal is to cast off the evil leaders of their
28 community. Their mutual complaints have given their lives a new and interesting
29 dimension. The complaints, have, in fact, added meaning to their existence. Some
30 members emerge as leaders of the dissident factions, willing, and sometimes able, to
31 take the place of incumbent directors who are not, in the dissent group's opinion,
32 adequately performing their duties.

33
34 And the association, many of whose members lament the lack of attendance at board
35 meetings, now has an abundance of involved owners who cannot wait to make
36 themselves seen and heard.

37
38 Of course, there is a downside of this greater participation for the dissident members.
39 The objects of their hostility, usually the president and selected, if not all, directors, don't
40 like it and are not going to be passive in their response. It is not uncommon for boards
41 under attack to retaliate in creative and unpleasant ways. The complainers are shouted
42 down or insulted at meetings, rumors are spread regarding alleged unethical conduct;
43 they begin to receive notices of use restriction violations, as well as cease and desist
44 legal letters, threatening to sue for slander or other illegal activities, real or imagined.

45
46 The community has now been split into warring camps, each opposing faction
47 demonizing the other. Civility has been thrown to the winds, and the out's are organizing
48 to get rid of the in's at the next election or possibly sooner, by achieving a recall. Of
49 course, the in's are also organizing and are doing their best to discredit the out's, so they
50 can retain control. Sound familiar? Welcome to America. And all this resulting from a
51 simple or maybe not so simple complaint.

1 **KNOW YOUR COMPLAINER**

2
3 Does it matter who's complaining? Aren't all complainers created equal, endowed by
4 their creator with the right to complain, kvetch, and even nag? The answer to the second
5 question is, "Yes," all members have an equal right to complain. The answer to the first
6 question is a reluctant, "Yes, it does matter," because the manager must consider the
7 identity and motivation of the complainer to respond appropriately.
8

9 **VIPs**

10
11 On the practical side, a complaint from a director,
12 especially the president (*VIP complaint*), is ordinarily
13 given priority over an equally valid and consequential
14 complaint from a member who is not a director or officer.
15 Is this proper? No, it's not. Holding a position on the
16 board does not entitle a member to greater rights or
17 privileges than any other member.
18



19 However, managers understand that their level of salary
20 and benefits, and even their continued employment, is
21 dependent upon the goodwill of the president and board, which often requires prompt
22 resolution of their complaints. Of course, there are pitfalls here. If there is conflict among
23 the directors or between the president and one or more directors, prioritizing the wrong
24 director's complaint can prove damaging to the manager. Additionally, if there is a
25 change in officers and directors, the new directors may have observed the CAM favoring
26 the former president or directors and decide that a change in management is needed.
27

28 Preferential treatment of a director's complaint is a relatively minor issue if the complaint
29 of the director and that of the non-director member are of essentially equal validity and
30 consequence. However, if the non-director's complaint is of a more serious nature, with
31 potentially damaging consequences to the member and/or others if remedial action is
32 delayed, then the non-director member's complaint must be prioritized before the
33 director's or officer's.
34

35 **The Dissident**

36
37 A *dissident* is a member who expresses unhappiness with the board and seek to change
38 its composition. As described in the Politics of Complaints section, dissidents may use
39 complaints to advance their political agenda. Directors, basing their judgment on the
40 source, rather than the content of the complaint, may view any complaint from a
41 dissident as invalid. They may also prefer the complaint be ignored, to punish the
42 dissident for his or her opposition.
43

44 Regardless, the CAM must evaluate their complaints, and if valid, remediable, and within
45 the scope of the association's authority, accomplish their resolution.

The Chronic Complainer



A CAM related the following story to me. A young woman frequently visited his office, and each time, without fail, would complain about something or somebody, typically a board member. She was always polite and even friendly. Her complaints were of a wide variety and at times even interesting. However, upon investigation, they invariably proved to be without basis. Despite never having her complaints resolved to her satisfaction, she continued to stop in the office and of course, complain. One day, she showed up with her eight-year old daughter and after pleasantly greeting the manager, proceeded to voice her latest complaint. The CAM, turned to the little girl and said, "Your mother complains a lot, doesn't she?" To which the little girl responded, "Yes, it's her talent."

We all know people whose purpose in life appears to be to find fault with the elements of their world, be it the condition of the association's common elements, the quality of their relationships, or the state of the nation or planet. They typically express their unhappiness to as many people as possible, taking no personal responsibility for the conditions they are criticizing, and never failing to identify someone, other than themselves, as the cause of the evil. If it's an association related complaint, it's usually the board or the CAM, or both, that they identify as the perpetrator.

Some chronic complainers complain to gain attention and sympathy. Their complaints, like all others, must be evaluated and receive a response.

The Elderly or Impaired

Florida associations are the home to many persons of advanced age, some of which are subject to periodic symptomatic outbursts caused by dementia or other cognitive disorder. Others may be experiencing grief over the loss of a loved one or simply be in physical or emotional pain caused by an illness or disability. Although less common, younger persons are not immune from physical or mental conditions that make everyday life difficult and stressful.

Managers must be extremely sensitive to these persons when they present a complaint or grievance and exercise patience and understanding. Frequently, managers know these members and can often rely on a spouse, aide, or other caretaker to assume control of the situation. In extreme situations, the CAM may have to enlist the aid of security or the police.

The Lonely

Lonely members and/or residents often stop by the manager's office to complain about something, often trivial, simply to talk with the manager or other staff. Engaging these persons can be extremely time consuming. Managers, courteously but with firmness, can recommend that the grievance be put in writing, and then excuse themselves from further interaction explaining their need to meet a board-imposed deadline or some other matter that



1 requires immediate attention. Front office staff commonly know these persons and
2 should be trained to accommodate their need for interaction for a brief period before
3 making their excuses and returning to their duties. Responding effectively to persons
4 seeking human interaction is often challenging for both the CAM and the front office
5 staff.

6
7 Employees of community associations are commonly hired for their ability to empathize
8 with and obtain personal fulfillment from their interaction with others. We develop
9 affectionate and caring relationships with residents, and sometimes they simply present
10 an opportunity to take a break from our labors and enjoy their company. They even give
11 us gifts, usually during the holiday season, but other times as well. Relationship building
12 is essential to achieving success in our profession, and managers must be visible as
13 well as accessible. So, there is a balance to be struck between getting the job done and
14 making the customer happy. Unlike most businesses, in community associations, the
15 customer is not always right and often they are dead wrong. However, members, even
16 when they don't get what they want, can experience their interaction with the CAM in a
17 positive light. If they believe that they were treated courteously, respectfully, and
18 cordially, that their complaint was fully addressed, that the CAM acted within their scope
19 of authority as directed by the board and the association's rules, and that their grievance
20 was addressed in a timely manner, members will often experience satisfaction with their
21 interaction with the CAM, even if they are unhappy that they did not get the result they
22 desired.

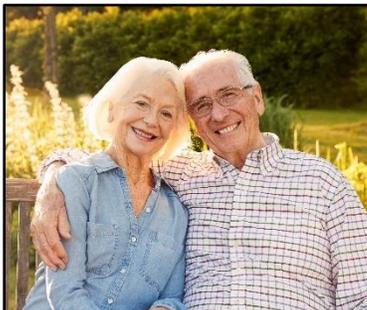
23 24 **The Friend**

25
26 CAMs sometimes develop friendships with
27 members and residents of their associations. This
28 type of relationship can have a significant
29 downside, especially if the friend asks for
30 preferential treatment with a grievance, or
31 complaint against another member or the board. If
32 this occurs, it's time to reconsider the friendship.
33 There is often an unspoken rule to many
34 friendships, which requires agreement on matters
35 of importance for the friendship to be sustained.

36 Managers must exercise objectivity in evaluating and responding to complaints. CAMs
37 are better served by being friendly with most members, friends with none, and
38 professional with all.



39 40 **The Real Good Friend**



41
42 Romantic relationships between a manager and a
43 resident, especially a director, can be especially
44 problematic. How does the CAM respond to a
45 complaint from their romantic interest when the CAM
46 knows that it lacks validity? Is the CAM even rational
47 enough to determine whether the complaint is valid?
48 Yes, we all know that "love conquers all." However, in
49 these types of situations, the CAM may be the one who
50 is vanquished, putting their job and career at risk, as
51 well as their rationality.

1 **The Accuser**

2
3 It is common for managers to be confronted with verbal accusations from members that
4 the board or individual directors or officers are engaged in illegal activities, typically
5 stealing the association's money or taking kickbacks. The CAM should ask the member
6 making the allegation if they have any corroborating evidence. If the member replies in
7 the affirmative, the manager should refer them to the state attorney's office and
8 terminate the conversation. The manager should not, if offered, accept documentation
9 from the member. The manager's responsibility does not include investigation of
10 corruption allegations. The CAM should document the conversation and inform the
11 association president.

12
13 If the CAM has personal knowledge of criminal activities committed by a director or
14 officer, they should, if employed by a CAB, inform their employer. The CAM, regardless
15 of whether he or she is employed by an association or a CAB, should seek personal
16 legal counsel to clarify their fiduciary duties and legal obligations. Any ethical
17 considerations should be discussed with the attorney before being acted upon.
18 As for the accuser, they may be at risk of being sued for slander (false spoken
19 accusation) or libel (false written accusation) by the board or by an individual director or
20 officer, for making a false accusation. The member may be found liable and have to
21 compensate the accused and pay associated legal and court costs, for any damage
22 caused to their reputation.

23 **The Intimidator**

24
25
26 Some members have learned that they can get their way by use of intimidation.
27 Dictionary.com defines intimidation as:

- 28
29 1. To make timid; fill with fear.
30 2. To overawe or cow, as through the force of personality or by superior display of
31 wealth, talent, etc.
32 3. To force into or deter from some action by inducing fear.

33
34 Intimidators may make use of their physical
35 qualities (size, voice, menacing demeanor),
36 their occupation (lawyer, police officer,
37 government official), their superior intellect,
38 or great wealth, to frighten or belittle the
39 CAM. If successful, the intimidator may gain
40 the CAM's assent or cooperation in their
41 attempt to achieve successful resolution of
42 a complaint or other objective. There is
43 often an implied threat that something
44 negative will happen to the CAM unless
45 they cooperate with the intimidator.



46
47 Faced with an intimidator, a CAM should remember and employ three of the major rules
48 in responding to members with complaints: never argue with them, speak only when
49 necessary and appropriate, and be brief and to the point. As with all other types of
50 complainers, the manager should listen carefully and take notes. They should also seek
51 to obtain the complaint in writing. If that fails, once the member has completed their
52 narrative, the CAM should respond that the matter will be evaluated and appropriate

1 action taken, if warranted. The manager also has the option to inform the member that
2 the authority to address the issue rests with the president or the board. This response
3 may be entirely true, especially if the association has a strong president that dislikes
4 delegating authority and requires review of important or sensitive issues prior to
5 authorizing action. Regardless of whether communication with the member is written or
6 oral, it should be concluded with the CAM expressing appreciation for the member's
7 sharing of their concerns.

8
9 If the intimidator threatens legal action, the CAM should bring the discussion to a close
10 as soon as possible. The president and the board should be made aware of any threat of
11 litigation against the association. Once alerted, the president may choose to refer the
12 issue to the association's attorney for advice or direct the attorney to respond to the
13 member. Once an issue has been referred to the attorney, the CAM must not engage in
14 further discussion on the subject with the member, unless directed to do so by the
15 attorney.

16
17 Being a successful CAM requires a high degree of self-confidence and courage.
18 Managers cannot permit themselves to be intimidated by a member under any
19 circumstances, short of being physically threatened, a subject we will address in the next
20 section.

21 22 **The Real Threat**

23
24 There was a time, in most areas of our country, when adults went to
25 work and children to school without a thought or concern that they
26 would return home safely. Yes, there were bullies in school and
27 occasionally we returned somewhat bruised and battered, if not
28 physically, then emotionally. But, we still returned. Today, we live in a
29 different America. Neither children nor adults, regardless of whether
30 they live or work in low crime areas, can take for granted that they
31 are safe in their workplaces, schools, or other locations. The use of
32 lethal weapons by terrorists, criminals, and mentally disturbed
33 persons have resulted in the killing and wounding of thousands of
34 innocent persons. And, unfortunately, persons with the potential to
35 act violently and with lethal force against innocent persons, live and work in our
36 community associations.



37
38 Managers, because of the nature of their jobs, may be more likely than most professions
39 to experience threats of violence. Since people often keep their weapons in their homes,
40 typically located in close proximity to the management office, managers may also be at
41 higher risk of becoming a victim of a resident, outraged by an action of the board or
42 management.

43
44 An incident may begin with a complaint from a member who has arrived in the
45 management office in a highly emotional and agitated state. Efforts by staff to restore
46 calm may have failed and the situation escalated by threats from the member to inflict
47 harm on the manager or others. The member then leaves the office, stating that he will
48 return.

49
50 Most likely, neither the front office personnel, nor the manager has been trained to
51 properly respond to this type of situation. And it is beyond the scope of this course to
52 provide that training. However, at the very least, in-house security (if available) should
53 be immediately alerted, as well as the police, by using the 911 line to report the threat.

1 The employees should exit the office after being directed to a designated safe area and
 2 the office itself locked down. Security, if available, and the manager should follow the
 3 instructions of law enforcement personnel during the incident.
 4

5 It is understood that most threats of violence remain verbal. However, neither the
 6 manager nor anyone else knows for certain whether a verbal threat will be acted upon.
 7 All such threats must be reported to both security and to local law enforcement. If there
 8 have been incidents of harassment or threats by a resident, the board has the option of
 9 petitioning the court for a restraining order. A restraining order issued by a court may
 10 order the “restrained person” to stop specific acts against everyone named in the
 11 restraining order as a “protected person.” It may also be used to keep the restrained
 12 person a certain distance away (such as 50 or 100 yards) from the protected person or
 13 persons, their residence, vehicle, or place of work.
 14

15 Some managers carry a concealed weapon; others may have a weapon in their office or
 16 vehicle. This may occur despite an association or CAB policy prohibiting the presence of
 17 weapons on the worksite. There is an on-going debate on whether teachers should carry
 18 weapons in schools. The issue is not altogether dissimilar to the question of whether
 19 CAMs should be prohibited from or permitted to carry weapons on their properties. Both
 20 teachers and managers have legal and ethical requirements, often ill defined, for the
 21 safety of their students and residents, respectively. Teachers typically see themselves
 22 as protectors of their students. Similarly, CAMs often see themselves as protectors of
 23 the association’s residents. It is not inconceivable that an armed CAM would take it upon
 24 him or herself to seek to prevent or neutralize someone presenting either an immediate
 25 threat of violence or an active shooter.
 26

27 Few CAMs are adequately trained on how to respond to dangerous members, much
 28 fewer to active shooters on the premises. This is an area that community associations
 29 and the industry, for humanitarian as well as liability concerns, need to effectively
 30 address.
 31

32 **ALTERNATIVE DISPUTE RESOLUTION**

33
 34 For certain types of complaints that cannot be
 35 resolved between the member and their
 36 condominium, cooperative, or HOA association,
 37 the member or the association have the option to
 38 seek alternative dispute resolution⁵. Alternative
 39 dispute resolution is a term used to describe
 40 several different methods of resolving a dispute,
 41 including mediation and arbitration, without going
 42 to court.
 43

44 Mediation is a form of alternative dispute resolution
 45 where an impartial third party, the mediator, assists
 46 the parties to negotiate their own settlement. Associations and their members may
 47 pursue voluntary mediation through Citizen Dispute Settlement Centers. Such Centers
 48 are created pursuant to F.S. 44.201, by the chief judge of a judicial circuit, after
 49 consultation with the board of county commissioners of a county or with two or more
 50 boards of county commissioners of counties within the judicial circuit, with the approval



Shirley, the mediator, resorted to her last negotiating tool - Rock, Paper, Scissors!

⁵ F.S. 718.1255, F.S. 719.1255, F.S. 720.311

1 of the chief justice. Their purpose is to provide an informal forum for the mediation and
2 settlement of disputes.

3 Arbitration is a form of alternative dispute resolution, either voluntary or mandatory
4 pursuant to a contract or statute, in which the parties to the dispute refer it to one or
5 more persons (the arbitrators, arbiters, or arbitral tribunal), who will render a decision.
6 The decision may or may not be legally binding.

7
8 Mandatory, non-binding arbitration for condominiums and cooperatives is required, by
9 statute, to be used for disputes relating to:

- 10
11 • The authority of the board or association to require a member to take, or not to take,
12 action involving that member's unit or the appurtenances thereto
13 • The authority of the board or association to alter or add to a common area or
14 element
15 • The failure of a governing body, when required by statute or an association
16 document, to:
17 ○ Properly conduct elections and recalls
18 ○ Give adequate notice of meetings or other actions
19 ○ Properly conduct meetings
20 ○ Allow inspection of books and records
21 • A plan of termination pursuant to F.S. 718.117
22

23 Disagreements over the following issues are excluded from mandatory non-binding
24 arbitration:

- 25
26 • Title to any unit or common element; the interpretation or enforcement of any
27 warranty
28 • The levy of a fee or assessment, or the collection of an assessment levied against a
29 party
30 • The eviction or other removal of a tenant from a unit
31 • Alleged breaches of fiduciary duty by one or more directors
32 • Claims for damages to a unit based upon the alleged failure of the association to
33 maintain the common elements or property.
34

35 Decisions of the arbitrator can be appealed to the county or circuit court within 30 days
36 after the decision. If there is no appeal within 30 days, the decision of the arbitrator is
37 final.

38
39 Disputes between an HOA and a parcel owner regarding use of or changes to the parcel
40 or the common areas and other covenant enforcement disputes, disputes regarding
41 amendments to the association documents, disputes regarding meetings of the board
42 and committees appointed by the board, membership meetings (excluding election
43 meetings), and access to the official records of the association are required to be subject
44 to pre-suit mediation upon service of process by an aggrieved party before the dispute is
45 filed in court.

46
47 The HOA Act also requires DBPR to conduct mandatory binding arbitration of election
48 and recall disputes between a member and an association, pursuant to F.S. 718.1255
49 and rules adopted by the division.

THE ROLE OF THE DIVISION

The Division of Condominiums, Timeshares, and Mobile Homes of the Department of Business and Professional Regulation has authority to enforce compliance with community association statutes and administrative rules. During the period of developer control, it has jurisdiction for disputes, other than those of HOAs, involving development, construction, sale, lease, ownership, operation, and management. Once members assume control of the association, the Division's jurisdiction is limited to disputes involving elections (for all types of community associations), financial issues, and records access (for all types except HOAs). The Division is not empowered to enforce individual restrictions of an association's documents and it will not interpret unclear provisions or ambiguous provisions of those documents.

Complaints from a member against the association or from the association against a member are filed with the Division's Customer Service Bureau, the section in charge of complaint intake and inquiries. If compliance is an issue, the complaint is referred to the Division's Bureau of Compliance. The Division or the Bureau of Compliance has authority to investigate, take sworn statements, accept evidence, and subpoena individuals and documents.

If the agency finds that a violation has occurred, it may begin enforcement action in one of four ways. They are:

- Voluntary compliance where the violator consents to an order ending the improper activity without formal proceedings. If voluntary compliance cannot be achieved, one of the following three actions are available.
- Issuance of an administrative order to cease and desist from the unlawful activity.
- Filing of an enforcement action in the circuit court on behalf of members to seek declaratory or injunctive relief.
- Imposition of civil penalties in amounts up to \$5,000 for each violation.

In addition to its enforcement powers, the Division also has the authority to resolve a conflict before it becomes an official inquiry or complaint, by responding to a petition seeking a declaratory statement. A declaratory statement is the Division's opinion on the applicability of the respective community association statute and/or rules to the inquiry presented by the petitioner. The petitioner is either an association member or the board itself. Once a declaratory statement is issued, it is considered an order from the agency and it is binding on the petitioner. It may, however, be appealed to the courts by any party affected by the statement.

The condominium ombudsman is statutorily empowered to assist condominium owners and boards to resolve disputes that are outside the jurisdiction of the Division.

SEE YOU IN COURT OR MY LAWYER IS BIGGER THAN YOUR LAWYER

Complaints that are not resolved, by the association or the division, or through alternative dispute resolution, may end up in court. Such an outcome is, in most instances, unfavorable for all parties, other than the attorneys. For the association, it can be extremely expensive, especially when insurance does not cover the legal costs. Some associations may have to levy a special assessment to cover the unbudgeted

1 legal expense and, if the outcome is unfavorable, any damages, costs, and/or fines
2 imposed by the court.

3
4 Lawsuits can have a significant negative impact on the manager. Managers must
5 respond to requests for copies of relevant documents, many of which may be years old
6 and difficult to locate, as well as attend meetings with attorneys, depositions, and court
7 appearances. CAMs who are struggling to meet the ordinary demands of their job, now
8 have additional demands on their time that likely interfere with the routine operation of
9 the association. If the manager is also engaged in managing special projects, the impact
10 of litigation becomes even more burdensome.

11
12 A lawsuit often results in additional stress for directors and members, as well as the
13 manager. The workplace environment may change from supportive and friendly to
14 adversarial and hostile. Attorneys from both side of the dispute can be extremely
15 demanding. The plaintiff's counsel, especially if a skilled litigator, can be especially
16 difficult when encountered in depositions or, if the case cannot be settled before a trial,
17 in the courtroom.

18
19 A particularly difficult situation can occur when a member with a grievance, a personal
20 grudge against one or more directors, and ample funds to pay the costs of litigation,
21 uses their attorney as a weapon to punish the board. This is a case where the member
22 is telling the board, "My lawyer is bigger and badder than your lawyer." and they are
23 going to make your life as miserable as possible.

24
25 Although some lawsuits are unavoidable, many, if not most, can be prevented by
26 effective complaint management by the CAM and board, or failing that, by alternative
27 dispute resolution.

28 **CONCLUSION**

29
30
31 This course was designed to help CAMs handle community complaints. We identified
32 the types of complaints that a CAM or the board may receive. In categorizing complaints,
33 the CAM may be able to more clearly identify how each should be handled.

34
35 An important point is that the CAM should never take a complaint personally.
36 Remember, you are just a convenient target. The complaint is not about you; it is about
37 the complainant. Handling complaints in an unemotional, professional manner will most
38 likely provide the best results for the CAM and the association.

39
40 Not all complaints can be settled by the CAM and board. Sometimes, despite the efforts
41 of the board, a member will ask for outside intervention – through the Division or through
42 legal action. The objective of the CAM and association should be to resolve the
43 complaint, if possible, while carrying out the board's fiduciary responsibility and acting
44 fairly to all members.

45
46 Finally, having a written procedure for receiving and responding to complaints will help
47 ensure that complaints do not drop through the cracks.

FINAL EXAM

1. How should a CAM view a complaint?
 - a. A complaint is an expression of satisfaction.
 - b. A complaint is the first pleading of the defendant in a civil action.
 - c. A complaint may present an opportunity to improve the operation of the association.
 - d. A complaint must always be in writing, including for emergencies, in order for the CAM to respond.

Ref: Introduction, Definitions and Synonyms

2. If a member is protesting or whining about the condition of the property or other association matters, the CAM should:
 - a. Blame the board
 - b. Use the complaint as an opportunity to improve management practices
 - c. Deny, deviate, and distract
 - d. Have the association's pest control company remove the member

Ref: Introduction, Definitions and Synonyms

3. The principles of complaint management include which of the following?
 - a. Take complaints personally
 - b. Refer all complaints to the DBPR
 - c. Self-control
 - d. Denial

Ref: The Principles of Complaint Management

4. An effective system of complaint management includes which of the following methods?
 - a. Monitoring
 - b. Caffeination
 - c. Minimization
 - d. Confrontation

Ref: The Principles of Complaint Management

5. If the board requests advice from the Division regarding an inquiry from a member, the board must, within how many days after its receipt of the Division's response, provide in writing a substantive response to the inquirer?
 - a. 10
 - b. 30
 - c. 45
 - d. 60

Ref: The Principles of Complaint Management

6. Effective methods of complaint management include which of the following?
 - a. If the complainant calls in the complaint, do nothing unless they follow up in writing
 - b. Take the complaint personally
 - c. Argue with the complainer about the validity of their complaint
 - d. Respond to vitriolic complaints courteously and unemotionally

Ref: The Principles of Complaint Management

7. The determination of whether a complaint is valid or invalid is subject to which of the following factors?
 - a. It is non-factual.
 - b. It is illogical.
 - c. It is within the scope of the association's responsibility and authority to achieve resolution
 - d. It is beyond the board's financial ability to cure.

Ref: Types of Complaints

8. Which type of complaint requires immediate attention to avoid such consequences as possible death or injury to people, property damage, violation of law, lawsuits, or insurance claims?
 - a. *VIP complaint*
 - b. *Deceptive complaint*
 - c. *Act now complaint*
 - d. *Disappearing complaint*

Ref: Types of Complaints

9. The *squeaky wheel* complaint:
 - a. Involves the need to oil an exercise machine part to eliminate squeaks that are bothering one or more members
 - b. Is a high priority complaint, because it can result in time consuming and unproductive interactions, if not promptly addressed
 - c. Is a complaint that will disappear if it is ignored
 - d. Is a complaint from a member who speaks in a squeaky, high-pitched voice, causing a painful ringing in one or both of the manager's ears

Ref: Types of Complaints

10. Complaints from directors and officers:
- a. Are typically irrational if they are complaining about the CAM
 - b. Must always be given priority
 - c. Can be ignored if they are not candidates for re-election
 - d. Should not be given preferential treatment

Ref: The Politics of Complaints, Know your Complainer, VIPs