

## Records Request – Must Owners Be Given Everything?

In light of recent national corporate and accounting scandals, some owners think their board has something to hide and they therefore request copies of each and every document related to the association's finances. Upon learning of a maintenance fee increase some disgruntled owners demand immediate access to all contracts and personnel files. Meanwhile, volunteer board members, whose time is already taxed, are getting fed-up and believe that some requests are nothing more than fishing expeditions, or worse yet, harassment. A board must carefully balance an owner's legitimate interest in community affairs versus the time and cost of fulfilling requests for records.

### A REQUEST FOR RECORDS MUST NEVER BE SUMMARILY REJECTED.

Recently, a South Carolina community association had to pay \$35,518.00 in damages to unit owners who were denied access to association records. The association president refused to permit a couple to inspect or copy insurance information they needed to secure a construction loan. The Appeals court found the association's Bylaws gave the owners the right to inspect the books and records at any reasonable time, and that the association was liable for breach of contract because of the president's refusal. This decision does not mean that an association has to submit to cumbersome, costly, time-consuming inspection requests that are motivated by harassment. Rather, the decision serves as a wake-up call to boards to review regulations and to create a written records inspection policy. This way, if limits are placed on an owner's inspections, or an inspection request is refused, the board's decision will rest on solid ground and help prevent the possibility of a successful lawsuit. Remember, however, the policy still must conform to Ohio law. A sample "Records Request Policy" can be found at the end of this article. Guidelines for boards to follow when drafting a records inspection policy include:

1. DEFINE THE RECORDS THAT MAY BE INSPECTED. Ohio Revised Code Section 1702.15, which is part of the non-profit corporation laws, states that: "Each corporation shall keep correct and complete books and records of account, together with minutes of the proceedings of its incorporators, members, trustees, and committees of the trustees or members. . .all books and records of a corporation, including the membership book. . .may be examined by any member or trustee or the agent or attorney of either, for any reasonable and proper purpose and at any reasonable time." (emphasis added) This law mandates that "books and records of account," as well as meeting minutes must be opened for inspection. However, this law provides a significant limitation on this inspection right. That is, the association may refuse inspection of all records until the unit owner provides a "reasonable and proper purpose" for the inspection request. Unfortunately, no court in Ohio has defined what is meant by the term "reasonable and proper purpose." Clearly, a unit owner's desire to learn more about how his/her maintenance fees are being spent is a proper purpose. A unit owner's request to obtain a copy of a maintenance contract bid so that he or she could solicit bids from other companies would not be proper as the board is solely responsible for such

decisions. For this reason, the board is not obligated to provide copies of bids received from contractors that have not yet been accepted for future projects. A request to obtain a membership roster to solicit credit card applications would be another example of an improper purpose. As a general matter, based upon O.R.C. 1702.15, the following documents should be open for inspection and copying:

1. Balance sheets and income statements;
2. Accounts receivable lists (arrearage sheet);
3. Bank statements;
4. All executed contracts, including insurance information;
5. Unit owner names and addresses (excluding telephone numbers); and
6. Board regular and special meeting minutes, but not executive session minutes, after approval of the minutes by a majority of the board and signature by the secretary.

2. PROHIBIT INSPECTION OF RECORDS THAT MAY INVADE AN INDIVIDUAL OWNER'S OR EMPLOYEE'S PRIVACY. The board will note that none of the legal requirements of O.R.C. 1702.15 mandate the disclosure of any records other than books and records of account, membership rosters, and meeting minutes. Non-financial records, such as unit owner complaints, violation notices, personnel appraisals and job applications, are within the board's power to maintain in a confidential manner. Furthermore, examples of private information include home telephone numbers and rates of pay. Do not permit inspection of any communications between the board and its attorney until approval for such inspection is obtained from the attorney. In general, the following documents should not be open for inspection:

1. Time sheets;
2. Rate of pay;
3. Job applications;
4. Performance appraisals;
5. Executive session board minutes, including penalty assessment hearings; and
6. Legal correspondence.

3. CONSIDER CHARGING FEES. Fulfilling requests for records takes time and materials. If an owner's request for records will require significant staff time or copying costs, the association should charge a reasonable fee. While some associations will provide meeting minutes and the owners roster at no charge, requiring twenty-five cents a page to cover copy costs of other records is certainly reasonable. In addition, if staff time or a manager's time will be tied up due to a records request, the requesting owner should pay up-front the estimated hourly rate of such personnel. If an owner is on a fishing expedition, the board can charge for the bait.

4. IDENTIFY WHO MAY INSPECT OR COPY RECORDS. If owners want to have their representatives (attorneys or accountants for example) copy records, require the owner to designate the representative in writing. Representatives should be subject to the same rules as owners.

5. REQUIRE WRITTEN CONFIRMATION BY THE OWNER THAT THE RECORDS REQUEST IS FOR A PROPER USE. Require the owner to put into writing the reason and purpose of his/her request. The owner must agree not to use or distribute any information or documents obtained from the inspection for purposes other than those stated. If an owner requests a roster for the purpose of soliciting proxies and then mails all owners a business solicitation, such as a request for a real estate sales listing, such business use can and should be legally enjoined.

6. REQUIRE ALL REQUESTS FOR INSPECTION AND COPYING BE MADE IN WRITING. USE A WRITTEN "REQUEST TO INSPECT" FORM. A sample "Request to Inspect Records" form follows:

1. SAMPLE REQUEST TO INSPECT RECORDS

1. Instructions: This request form must be completed by any owner desiring to inspect or receive copies of any Association books of account, meeting minutes, membership roster, or other Association documents. A minimum of five (5) business days is needed to process a request. If there is a question with any request, the owner will be notified within a reasonable amount of time of the reason for any delay. The Association requires that the owner provide the reason for each record requested and the intended purpose of the request to protect the Association and personal confidences where necessary. The Association's goal and intent is to allow inspection of most Association documents. However, given the personal and legal nature of some documents, the Association must place reasonable restrictions on the inspection process. This includes a requirement that any inspection take place in the presence of an Association representative. Inspections of the Association's records shall take place during normal business hours at:

\_\_\_\_\_

\_\_\_\_\_

2. Copying charges are \_\_\_\_\_ per page and a minimum clerical fee of \_\_\_\_\_ for the copying of pages 1 through 50 plus an additional clerical fee of \_\_\_\_\_ for every additional increment of 50 pages copied. The actual cost of all mailing charges will also be the owner's responsibility. To preserve the sanctity of the records, a physical records inspection requires the presence of a staff member. You, the owner, agree to pay \_\_\_\_\_ per hour in quarter hour increments for staff attendance at the records inspection. All inspection, copying, and mailing charges will be assessed to the home owner's account and/or paid in advance, as the Board shall determine. This form must be completed in full, signed, and dated in order to process the request.

3. Owner's Name: \_\_\_\_\_

Address: \_\_\_\_\_

Phone Number(s): \_\_\_\_\_

4. Record Requested \_\_\_\_\_

5. Reason and Purpose of Request

1. \_\_\_\_\_

2. \_\_\_\_\_

3. \_\_\_\_\_

4. \_\_\_\_\_

6. Preferred inspection dates and time: \_\_\_\_\_

7. Do you anticipate making copies of any records to be inspected? \_\_\_\_\_ Yes/ \_\_\_\_\_ No

8. If you prefer receipt of copies of the records listed above via regular U.S. Mail to an actual inspection, please check here: \_\_\_\_\_

9. Requests for mailed copies of records will be filled within \_\_\_\_\_ business days of receipt.

10. The charges listed in the instructions will be assessed to your account. If the charges are expected to exceed \$25.00, do you wish to receive a total estimate of the charges before receiving the records? \_\_\_\_\_ Yes/ \_\_\_\_\_ No

11. I hereby agree not to use or distribute any information or documents obtained from the inspection or copying of any Association records for any reason or purpose other than as stated above. I agree to indemnify, defend, and hold \_\_\_\_\_ (name of Association), its board members, officers, and its managing agent, and their respective successors, heirs, and assigns, harmless for any claim made or damage sustained by any person arising from, related to, or concerning my inspection, use, or receipt of copies of Association records. I further consent and agree that all inspection and copying charges incurred pursuant to this request, as outlined above, will be assessed to my account or paid in advance, as directed by the Board.

12. \_\_\_\_\_ Owner

Signature

Date

7. REQUIRE REQUESTS FOR INSPECTION TO NAME OR LIST THE DOCUMENTS TO BE INSPECTED AND/OR COPIED. This will eliminate time-consuming, disorderly "fishing expeditions."

8. LIMIT THE NUMBER OF REQUESTS THAT MAY BE MADE WITHIN A CERTAIN TIME FRAME. One inspection per month is reasonable.

9. PRESERVE THE INTEGRITY OF YOUR RECORDS. Inspections should take place only at the association's management office whether on or off site. Limiting the site inspections to a certain place will help prevent theft, destruction, or alteration.

10. SET A TIMEFRAME FOR MAKING RECORDS AVAILABLE AFTER A REQUEST IS MADE. Five to ten business days is reasonable.

11. LIMIT HOURS WHEN RECORDS WILL BE MADE AVAILABLE FOR INSPECTIONS. Make appointments for inspection during normal business hours.

12. ESTABLISH PROCEDURES FOR PHOTOCOPYING. For example, require documents to be clearly identified for copying and define a reasonable turn-around time for the copies to be made and sent to the owner or representative.

13. SET RULES OF CONDUCT. For example, "Owners shall not exercise their inspection rights in order to harass any other owner, resident, agent, director, or employee. All people inspecting records shall conduct themselves in a reasonable, businesslike manner."

14.KEEP A LOG OF ALL INSPECTION AND COPYING REQUESTS. Require owners to sign the log when they inspect the records or receive copies. The log serves two purposes: a) proves the association made the records available and b) provides proof of the person who inspected the records.

15.ENFORCE THE POLICY. Stop inspections if an owner refuses to comply with the policy. Even if an association has not had problems with inspection requests, it is still wise to adopt a policy before a problem arises. A written policy sets ground rules for everyone to follow; owners, board members, and managers alike. A sound policy will protect and likely prevent harassing requests from occurring. In addition, a policy will protect the association from legal liability because it protects owners' rights to open the association's books while, at the same time, it also protects the integrity of the association's records.

#### 16.SAMPLE RECORDS REQUEST POLICY

##### 1.RECORDS AVAILABLE FOR INSPECTION

1.The Association's Board may withhold from inspection any records that in its reasonable business judgment would:

- 1.Constitute an unwarranted invasion of privacy;
- 2.Constitute privileged information under the attorney-client privilege;
- 3.Involve pending or anticipated litigation or contract negotiations; and/or
- 4.Involve the employment, promotion, discipline, or dismissal of a specific Board Member or employee

##### 2.ALL REQUESTS FOR RECORDS MUST BE IN WRITING

1.An owner who wants to inspect or copy the Association's records must submit a written request to the Board or Manager. The request must specify the particular record(s) desired, including pertinent time periods, and shall state whether the request is for inspection or copying. The request must be sufficiently detailed to allow the Association to retrieve the record(s) requested.

##### 3.ONLY OWNERS OR AUTHORIZED REPRESENTATIVE MAY INSPECT

- 1.Every owner shall have the right to inspect or copy the Association's records in compliance with the rules and procedures contained in this policy.
- 2.An owner may authorize, in writing, an attorney or other designated representative to conduct this inspection or request copies on the owner's behalf.

##### 4.RULES OF CONDUCT AND PROCEDURE GOVERNING REQUEST TO INSPECT/COPY

- 1.All inspections shall take place at the Association's office or at such other location as the Board designates. No owner shall remove original records from the location where the inspection is taking place.
- 2.The Association shall make records available for inspection on or before the \_\_\_\_\_ business day after the Association actually receives the written inspection request. This time frame may be extended if the records requested are so voluminous or otherwise in such condition as to render this time frame unreasonable. The Association will notify the owner (by telephone, in person, by email, or in writing) that the records are available, and specify the time, date, and place for the inspection.

3.No owner shall alter Association records in any manner.

4.All people inspecting or requesting copies of records shall conduct themselves in a businesslike manner and shall not interfere with the operations of the Association's office or such other location where the inspection or copying is taking place. The Association office, or place of inspection or copying, shall assign one staff person to assist in the inspection. All requests for further assistance and copying during an inspection shall be directed only to that one staff person.

5.During an inspection, the owner may designate for copying such records by use of a tab, clip, or Post-It note upon the page(s) desired.

6.Owners shall not exercise their inspection or copying rights to harass any other owner or resident, board member, its managing agent, officer, director, or employee.

#### 5.CHARGES FOR COPIES/INSPECTION

1.Upon written request, owners shall be provided meeting minutes at no charge.

2.Other than meeting minutes, the owner must pay \_\_\_\_\_ per page for copying regular or legal sized records. In addition, the owner must pay a minimum clerical fee of \_\_\_\_\_ for the copying of pages 1 through 50 plus an additional clerical fee of \_\_\_\_\_ for every increment of 50 pages copied thereafter.

3.To preserve the sanctity of the records, a physical records inspection requires the presence of a staff member. The owner must pay \_\_\_\_\_ per hour in quarter hour increments for staff attendance at the records inspection.

4.The owner must pay the costs of copying and/or inspection at the time of billing for copies or actual inspection. However, the Board may, in its sole discretion, require advance payment.