

By
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PAID BOARD
MEMBERS MIGHT
BE THE NEXT
STEP IN THE
EVOLUTION
OF COMMUNITY
ASSOCIATION
GOVERNANCE.

Last of the Breed

OR A TOTAL
CORRUPTION OF IT.





LINDA STOVER NEEDS HELP. She's president of the Clayton Crossing Condominium Association, which has its annual meeting in November, and, per usual, she expects no one in the Ellisville, Missouri, community to step forward to fill a vacancy on the three-person board. Meaning that Stover might have to go door to door, looking for volunteers. Or, as it's done before, Clayton Crossing will limp through the year with an understocked board.

"Most of these people have been residents since 1985," Stover says. "The feeling was, 'I've already done it. It's somebody else's turn.' We have 23 units, but most of those people have taken a turn. But what I have found, the new people moving in are in their 70s or 80s. So we're not attracting a younger group of people." And, while Stover says most of her neighbors are still active, showing up at meetings and social events, "they're tired of stepping up to the plate."

Stover herself volunteered for a second term in July 2005, having stepped down just a few months before that. But with only one other person on the board at the time, Clayton Crossing was still shorthanded—and feeling the pinch. The

voter turnout in national elections. And books like *Bowling Alone*, by Robert D. Putnam, have exhaustively dissected the corpse of American civic engagement.

But industry experts say the situation is particularly dire in several types of communities—including those like Clayton Crossing, where residents moved in during their early retirement years and have aged to the point of not being able to serve in what can be a challenging position. Equally problematic are HOAs with high numbers of young, first-time homeowners in the early part of their career, with little time for anything else; vacation communities in which residents spend only part of their time each year; small communities where the pool of applicants can be fewer than 100 residents; and assisted-living facilities, where residents can be both physically and mentally unable to serve. "It's pervasive everywhere," says Clayton Crossing's attorney, Marvin J. Nodiff, ESQ. "It's least of a problem in single-family, detached communities, because the board doesn't have that much to do. Condo ownership is definitely complex, and the high-rise is the worst." Adds Benny L. Kass, ESQ., an attorney with Kass, Mitek & Kass, in Washington,

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association doesn't have professional management, meaning board members are responsible for not only big sweeping policy decisions but also day-to-day operations.

With no solution in sight and this year's annual meeting looming, Stover has come up with a proposal that may be a tougher sell than getting residents to run for the board. She wants residents to amend the association's documents before the meeting to allow an outside, independent agent to be hired—that is, paid—to fill future gaps on the board. The plan is drastic, yes, but not exactly unheard of. The notion of paying board members for their service has been debated off and on throughout the industry. But with communities across the country facing similar chronic shortages of volunteers, is it an idea whose time has finally come? If so, is it ethical? Or even legal?

THE ROOTS OF APATHY

The reluctance of many residents to get involved with their communities' governance shouldn't come as a surprise. After all, this is a country that barely breaks the 50-percent mark for

D.C.: "Unfortunately, people go into a condo or an HOA with the thinking that everyone else takes care of everything."

Attorneys and managers agree that the dream demographic—if you want to make sure your board is filled—is found among new retirees, who are usually 60-something, with lots of time to fill and lots of energy with which to fill it. Just watch out if they stay. In 1985, Clayton Crossing, while not an age-restricted building, was home to just such a population. Twenty years later, those residents are in their 80s—still social and active, Stover says, but while they'll show up for a community party, they don't want to have to plan it.

And, in some ways, can you blame them? Association board service is a notoriously thankless job. Often the only thing board members hear from residents are complaints—everything from "How long are you going to let that burned-out light go in the third-floor common room?" to "What do you mean we need a 12-percent fee increase to pay for the new roof?" Or the feedback is even more, shall we say, direct. Kass tells the story of a 1,200-unit, upscale condominium association he represent-

ed in Washington, D.C., where the board president was pushed into the pool and had molasses poured into his car's gas tank.

BABY STEPS

That's an extreme case, but the point is taken: Board service can be unappealing. Stover's proposed solution is simply a way of making it more appealing—or less unappealing. But before you go as far as paying board members, you may want to explore less-dramatic ways of making the job more enticing.

Most obviously, if your community doesn't have professional management—in the form of an onsite manager or a contract with a management company—you may want to remedy that. A manager can shoulder much of the association's daily business and also act as a buffer for resident complaints, shielding board members from some of the tedium of governance.

Of course, that could mean absorbing the cost of a full-time salary—an expense your residents might be unwilling to incur. Fortunately, sometimes all it takes is a little perk, a seemingly unimportant something to make the thankless job seem like it comes with a little more appreciation. For example, Marge Imfeld, PCAM, co-owner of I&I Property Management, in Fresno, California, says that when one of the communities she manages was particularly desperate for board members, it decided to sweeten the pot—somewhat literally—by adding a

budget item to pay for the board's dinner during meetings. "It was not a real expensive restaurant," Imfeld says, "but the food was okay, and that did help get some people involved." Residents had little problem with the added expense, she says,

"because at least someone else was doing it for them...."

This was a way to give a little outing to the board members.... The [association's accountant] and legal counsel did not have any problems with it either." And the board avoided any accusations of nepotism by requiring guests who attended a meeting to pay their own way.

Perks can come in other forms as well. J.

David Ramsey, ESQ., an attorney with Ramsey Berman, in Morristown, New Jersey, advises a community that waives a month of maintenance fees for anyone who serves on the board. Says Ramsey: "That solved the problem in the short term." But

although the board members receive a benefit worth only about \$300, Ramsey says there was discussion in the community that the offer would somehow taint the volunteer pool. "There was a lot of concern [that] if that's the reason they're running, maybe it's for the wrong reason."

As Imfeld's and Ramsey's examples suggest, perks can be as varied and creative as the associations that use them. Some communities offer board members free Internet service, so they can conduct association business online, while others compensate them for lost wages incurred while they're on the board.



HELP FOR finding HELP

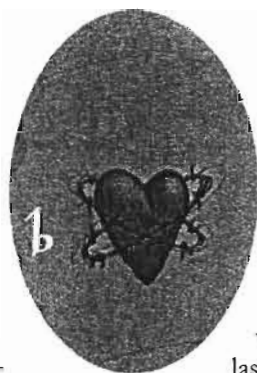
HELP



- 1 **LOOK TO YOUR COMMITTEES.** A little praise goes a long way in encouraging someone to make the jump from committee to board member.
- 2 **TALK TO THE RIGHT PEOPLE.** Particularly in communities with elderly residents, homes could already have been legally turned over to adult children who may have the time and willingness to serve.
- 3 **SIZE MATTERS.** Having trouble filling a five-member board? Change the governing documents to reduce that number to three—that's two fewer arms to twist.
- 4 **APPEAL TO THEIR POCKETBOOKS.** Residents should understand that by serving on the board and helping to maintain the community, they are protecting what could be their most valuable investment.
- 5 **MANAGE THE JOB.** A management company can help reduce the workload that comes with a position on the association's board, making the job seem a little less like work.
- 6 **USE SOME CREATIVE ADVERTISING.** So, no one will show up to elect new board members? Bet they'll turn out if you tell them you're voting on a tripling of next year's membership fees. "Oh, did we forget to tell you we deleted that agenda item? Well, now that we've got you all here...." —J.Z.

Sometimes it works, sometimes it doesn't. When perks alone don't do the trick, it might be time to call in a little muscle—someone who can help people understand the consequences of apathy. Someone like your association's attorney. Says P. Michael Nagle, ESQ., a partner with Nagle & Zaller, in Columbia, Maryland: "Educating the community is probably the single biggest issue." Likewise, Nodiff has made personal pleas with residents in an attempt to convince someone—anyone—to run for office. "You don't know how serious the problem is," Nodiff says, "until you stand before a roomful of people at one of these condominiums." In such situations, Nodiff tries to paint residents a picture of life without a full board. Without anyone to vote on anything, he asks them, "How are you going to govern? How are you going to write checks?"

Indeed, sometimes you can scare residents into running for office by making them see the alternative: Without a board, the association might cease to exist. In that case, a judge would appoint a receiver, who would act as a manager and keep the day-to-day business of the association operating. But Nagle cautions against the receivership gambit, because it can be



members from getting paid—although the Uniform Condominium Act, which about 40 percent of the states have adopted for associations to use to modernize their documents, does require that a majority (read: not all) of the board be owners in the community. So, "if you start making a list of what a community can do [in the absence of volunteers], that is one option," Nodiff says. "It's a last resort, but it could be a good solution because it can be sustainable."

And while paying board members is extremely rare—used mostly in the aftermath of a natural disaster such as an earthquake or a hurricane, when a board's duties would require time and effort the members might not have bargained for when they signed on for the job—it's not like the concept hasn't been tested. Atlantic Shores, for example, is an age-restricted condominium cooperative in Virginia Beach that offers residents—many of them retired military officers— independent- and assisted-living situations as well as a skilled-nursing facility, should they need it. With parts of the community still under development, the five-member board consists of two resident-elected representatives, two developer

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costly. Plus, without a board, residents have no recourse. And, Nagle says, "The court is probably going to take a portion of the association funds to pay for the receiver."

At Clayton Crossing, Nodiff's bracing honesty has met with mild success, but he fears the results aren't sustainable. Already the community has tapped some residents' children, who actually own the units their elderly parents live in. "One couple's daughter stepped up," Stover says, a distinct sigh in her voice. "[She] and I are just trying to hang on until November." Stover fears Nodiff's end-of-days scenario: "[Nodiff] said, 'You have to have a board, or you could lose your property.' ...I was so floored in my quiet moment."

The loss would really be a loss of value—Clayton Crossing residents wouldn't physically lose their homes—but "I think it starts to crumble incrementally," Nodiff says. "With no board, there's no one to collect money and there's no one to spend it. Who's going to pay for insurance? Imagine that scenario."

THE PAYMENT MODEL

And that's where the idea of paying someone to sit on the board comes in. Nodiff and Stover know they face an uphill battle. Most governing documents specifically prevent board

appointees, and one independent representative who lives outside the community and is paid by residents.

Eden Jones, Atlantic Shores' general manager and chief financial officer, says the situation works well, although it's not without its bumps. "The motives of the developer and the residents differ," she says. "That inherently sets up a struggle." For example, when residents complain about the food in the community dining rooms and want to fire the chef, developers instead are thinking about making sure the food looks appealing to potential buyers on a tour of the facility and may refuse the residents' wishes. Says Jones: "The individual [paid board member] helps to find a common motive."

Likewise, the Arlington, Virginia-based IDI Group, which develops condominium communities in the Washington, D.C., area, appoints an independent, paid director to each of its condo boards to help train newly elected members about the ins and outs of running an association. "The main reason is there's somebody who's independent and can gain the trust of the residents," says IDI's attorney, Robert M. Diamond, ESQ., of Reed Smith, in Falls Church, Virginia. "The [builder] doesn't really have the time they need to pay attention to the governance of the community."



But some industry experts say you should never even consider paying board members, especially as a way of solving the problem of apathetic residents. "There are many reasons [not to pay board members], in my opinion," Kass says. "No. 1, if they're apathetic now, are they going to be less so because they're getting a few dollars? The pay is a Band-Aid. It's not a solution. . . . The second reason: I don't want this to become a political arena in which the candidate with the most money wins. I don't really think money is going to change the apathy. They're only going to run because they're greedy. So does that mean that the poorer person is going to run, not the qualified person?"

Another potential drawback is the effect on board member liability. The Hawaii Real Estate Commission recently considered allowing retirement communities to hire non-owners to serve on the board if an association provided for it and owners themselves couldn't serve, but ultimately dismissed the idea before making its recommendations to the state legislature. Critics pointed out that the legal immunity that shields volunteer board members wouldn't extend to paid members, possibly opening them up to costly liabilities. What's more, residents may be unlikely to sign off on paying board members if it will mean spending money on something that has otherwise been free.

And, a word to those thinking about a career in professional community governance: You're not going to get rich off it. But, depending on the size of the community, it could be a significant line item in the budget. Jones won't give the exact salary that Atlantic Shores' paid board member receives, but ballparks the cost between \$30,000 and \$50,000 a year. "It's a job, and it's a big job," Jones says, "and they need to be compensated."

Nodiff says he usually gives a "pretty modest" estimate of between \$6,000 and \$8,000 a year to associations that might be thinking about hiring a board member—although none of his clients has done so yet. He tells them: "If you want to avoid Option A, which is going defunct, you're going to have to pay for that."

Which in fact is the strongest argument for paying board members: They perform real services for their communities. Depending on how much—if any—help they have from a management staff, they handle everything from complaints about the flowers out front to the five-year financial forecast. "The board wears several hats," Nodiff says. "They wear a representative hat, so yeah, living in the community is important. We want easy contact. But they also wear business hats, and to do that you don't have to live in the community. What's that got to do with it?"

Plus, the job takes a heck of a lot of

time—CAI estimates that the more than 1.7 million Americans who serve on community boards spend in excess of 110 million hours on association business every year. At some point, Jones says, you need to pay for that. And it might even help boost your talent pool. When it comes to the skills that volunteers bring to the table, you generally get what you get. One benefit of paying an independent representative, proponents say, is that you can hire someone to serve a specific purpose on the board.

So how would a classified ad for a board-member-for-hire read? The Atlantic Shores board and staff are thinking about that very question. The retired U.S. Navy admiral the association hired is expected to resign soon. And while his fellow board members—who must unanimously agree to the independent representative—have appreciated his ability to command authority and speak the language of other military retirees in the community, the next time around they may look for someone with different qualifications. "They'd like some senior housing experience," Jones says. "You also need someone who can see all aspects of the continuum." Some marketing experience would also be helpful to the continually expanding community. "It's all about vision and leadership," Jones says. "It's not about details. Much of the time is in research and conference calls."

The situation is a little different in the much smaller Clayton Crossing, where any potential paid board member would need to have direct contact with all the residents and deal with more mundane issues. And Stover is more than ready to stop shouldering the burden by herself. At press time, she expected a vote on her proposed bylaws amendment in late October. "Our primary responsibility as a board, as I see it, is making sure the building is maintained," she says. "But I'm only one person." But with the right price—and the approval of her neighbors—one soon could become two. **cg**

AT-A-GLANCE

One possible solution for the age-old problem of finding residents willing to run for the board is to pay them for their service.

THE ROOTS OF APATHY. Association governance is a notoriously thankless job and difficult to recruit for, especially in communities with very young or very old homeowners.

BABY STEPS. In lieu of paying board members, some communities make board service more enticing by offering perks such as free meals, waived or reduced assessments, or free Internet service.

THE PAYMENT MODEL. There are strong arguments for and against paying the board—the former including the demanding nature of the job, the latter including a potential increase in board member liability.

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»» YOUR TURN: Is paying homeowners to serve on the board—or importing professional board members from outside the association—a good idea? Are there other ways to confront apathy in a community? Send a letter to *Common Ground*, 225 Reinekers Lane, Suite 300, Alexandria, VA 22314. Fax: (703) 684-1581. E-mail: com monground@caionline.org.