

Disruptive Owners: Can the Board expel a disruptive owner from a meeting?

Under the HOA Act¹, Association meetings and Board meetings must be open to all members.² Similarly, although the Old Act³ and New Act⁴ are silent on the issue, the Governing Documents of many condo Associations contain provisions requiring all Association meetings to be open to all members. Despite these requirements, however, Boards do not have to tolerate an unruly member's disruptive conduct at a meeting.

No Washington court has ruled on whether a disruptive Association member can be expelled from an Association meeting, but the Washington Supreme Court has given some guidance in a case arising under Washington's Open Public Meetings Act (OPMA) (Ch. 42.30 RCW), which has an open meetings requirement similar to that in the HOA Act and many condo Association governing documents.⁵

The case, *In re Recall of Kast*, arose from a public bidding process on a Pierce County fire system project.⁶ A citizen, Luke Osterhouse, attended an open public meeting on the project and the bidding process. At some point during the meeting, Osterhouse interrupted proceedings to ask "whether the fire system would protect the fire district from the real thieves who had already stolen documents from the fire district." Kast, the fire commissioner running the meeting, ordered that Osterhouse be removed from the meeting.

Osterhouse sued the commissioner, arguing, among other things, a violation of the OPMA, but the Court rejected Osterhouse's claim that his removal violated the OPMA, noting that the members of the convening body had discretion to order

Osterhouse's removal because he had been disruptive in the meeting. The court explained further:

It is also significant that Osterhouse had interrupted the fire district Board's discussion of the security system; his comment was out of order and should have been held until after their discussion. The Open Public Meetings Act does not purport to grant citizens the right to interrupt meetings as they see fit; rather, citizens are granted a privilege to be present during public meetings so that they can remain informed of an agency's actions.

In addition to expulsion from meetings, Board members have several options for dealing with an unruly member⁷ who is disruptive, shouts, uses excessive profanity, or otherwise interferes with the conduct of the meeting:

- 1) First and foremost, the Board should reassess the manner in which it runs meetings. Sometimes the best fix is to reform the way meetings are conducted to better control owner conduct.⁸
- 2) The Board may impose fines after appropriate due process,⁹ provided it has adopted rules of conduct for meetings and informed members of the rules.
- 3) The Board may use the "Rules of Order"¹⁰ to its own advantage. For example, rather than eject someone from a particularly contentious meeting, the Board could call for a vote to close discussion or to move the comment portion of the meeting to the very beginning or end of the meeting.
- 4) The Board may choose to bring in a visible security presence.¹¹
- 5) If the meeting is not one in which a vote of the membership or opportunity to comment is required, it could be broadcast to the membership in lieu of allowing attendance in person.
- 6) The meeting can be moved to an individual member's home. If the homeowner asks the disruptive member to

leave, failing to do so would be trespassing. The homeowner could seek police assistance and, in extreme cases, a restraining order against the disruptive member.

¹ RCW 64.38 (Homeowners' Association Act).

² RCW 64.38.035(4).

³ RCW 64.32 (Horizontal Property Regimes Act).

⁴ RCW 64.34 (Condominium Act).

⁵ The OPMA provides: "All meetings of the governing body of a public agency shall be open and public and all persons shall be permitted to attend any meeting of the governing body of a public agency, except as otherwise provided in this chapter." RCW 42.030.

⁶ 144 Wn.2d 807, 816-19 (2001).

⁷ Washington law does not require that non-members be allowed to attend meetings. Thus, disruptive non-members may be excluded from meetings altogether. RCW 64.34.332 (Meetings); RCW 64.38.035(4) (Association meetings-Notice-Board of directors)

Disruptive Board members may be censured as set forth in the Association's Governing Documents and, in severe cases, recalled by a vote of the members.

⁸ For example, the Board could require owners wishing to speak to sign in, be recognized in order, and be limited to a specific time, i.e. two to three minutes. The Board could also limit owner comments to a short period of time, such as 15 minutes, at the very beginning or end of the meeting.

⁹ See chapter entitled: "Fines and Enforcement: What procedures must the Association follow when issuing sanctions to enforce covenants?"

¹⁰ Association meetings are generally run according to parliamentary procedures, such as Robert's Rules of Order, a discussion of which may be found at: <http://www.condolawgroup.com/2011/02/08/roberts-rules-of-order/>. The purpose of using Robert's Rules of Order or some other rules of parliamentary procedure is to allow a group to make decisions, allow all members of the group an opportunity to speak, and to do so in an orderly and controlled fashion.

¹¹ We have had clients hire off-duty police officers to attend meetings to provide a “calming presence” and resolve any hostility that might arise.