

October 2, 2020

Geico's HOA Cynthia Ad: What Your Board Can Learn from It

October 2020

Have you seen it? Geico is ribbing you and your colleagues in a new ad it calls [HOA Cynthia](#).

It's funny, in part because there's some truth to it. Some board members take their jobs too seriously. But while we chuckle, let's also ask a serious question: What can we learn from a national ad that pokes fun at association board members?

It's Good to Laugh at Yourself

"I think it's hilarious," admits Andrea L. O'Toole, a Walnut Creek-based principal at Berding Weil, a law firm that does only community association law throughout the state. "The whole point with it is to be entertaining.

"Are there overzealous board members?" she asks. "Absolutely. Are there members who break the rules who have to be enforced against? Absolutely. The creators of this ad took a stereotype of a board member and made it entertaining because there are board members who are like that.

"But the vast majority of the board members I've worked with are very good at what they do," says O'Toole. "They're not Cynthia. It's fun to poke at stereotypes, but that's why we do things by committee and have a board of three, five, or seven members. Together, they'll usually make the right decision, and they can keep the overzealous board member in check.

"Lawyers can help with that, too," she states. "They can give board members that reality check by saying: 'You're not being reasonable. You're being a Cynthia.' I'm dealing with this issue this week. A rogue board member has gone off the rails, exposing the association to extreme liability by issuing press releases to the media. I'm sending him a letter saying, 'You need to stop.' I'm here to protect the corporation and I'll tell him that."

Would O'Toole actually tell board members they're being Cynthias? She might. "It comes with experience in how direct you can be," she says. "I'm always

professional. But these people aren't professional HOA directors. They have day jobs, and sometimes we have to educate them."

Not a Fair Shot

The ad brought an initial laugh from Joe Wloszek, a member at Hirzel Law in Farmington, Mich., which represents more than 100 community associations; he lived in a condo for seven years and now lives in an HOA. And it's similar to a tactic he uses to lighten the tone at association meetings he attends as counsel.

"When I do an annual meeting at a contentious condo association, I sometimes start with a joke," he explains. "I say, 'I'm here to keep peace here today. I know you might have a co-owner who's difficult. I can speak from experience because I had one of those in the condo I lived in for seven years. I'm well aware of the difficult owner because it was my wife.'

"I then remind the owners that I don't represent the board or any individual," adds Wloszek. "And I state that my fiduciary duty is to the organization itself. That helps ward off the attack that I'm just there as a puppet for the board. So I did get a chuckle out of the Cynthia ad in that sense."

However, the ad doesn't sit well with Wloszek the more he thinks about it. "I do think it's a little misleading," he says. "In my experience, that character typically isn't on the board at all. Normally it's just a member of the community who notifies the board on a routine basis of purported violations of others. Typically, it's someone with too much time on their hands. And while they come forward asserting that they're enforcing the governing documents, often it's only against neighbors they don't like."

The Lessons in the Laughter

So what can you learn from the spotlight on Cynthia?

"Anyone who sits on the board, especially the president, has to understand that they have to really conduct themselves as officials of the association," advises Bruce Masia, LCAM, the Broward/Palm Beach County, Fla.-based vice president of the southeast region for KW Property Management. "That's number one. They were given the trust of the residents of the association to govern properly."

"To do that, you really have to abide by your declaration and rules and regulations," he adds. "Anyone who goes outside of that isn't governing correctly. If the bushes need to be no more than a certain height, which a lot of HOAs have in their documents, owners need to keep the bushes or hedges no greater than that. But that president alone can't say, 'You have to lower your hedges to this height.'

"That kind of direction should be sent first through a polite letter," explains Masia. "I always believe in starting out very nicely. You say, 'You're in violation of the declarations, and you need to lower the height of your bushes.' Then you

follow up. If the problem persists, then what people call the fining committee, but I call the covenants committee, should step in.

"Any president or board member who takes this responsibility on themselves is violating their fiduciary duty by taking those actions individually," he insists.

Wloszek says the ad can be a reminder that perhaps your governing documents are a source of friction because they don't represent community sentiment. "I think you can address the issues this ad raises by amending your governing documents to remove or modify restrictions that don't make sense for your community," he says.

"I recently dealt with an association that restricted the number of potted plants on the front porch to three," he says. "It was a higher-end community, and there was a little old lady who liked to have five or six potted plants. Personally, I think her porch looks beautiful, and this owner absolutely maintained them. But according to the documents, that wasn't permitted. I suggested the board amend the documents to allow greater flexibility for the board to handle that situation or to remove that restriction altogether."

If a board member is being a Cynthia and raising the temperature in your neighborhood, Wloszek has another solution. "The next time she comes up for election, vote her out," he advises. "Or most documents in Michigan have a provision that allows owners to call a special meeting; often it requires one-third of the membership. The owners might have ability to force a meeting to remove the director or to take other action depending on what you want to do."

Whatever you think of the Cynthia ad, Wloszek suggests remembering the good in community association board service. "The ad got me with a cheap laugh," he admits. "I'm not unmindful that can happen in associations. But putting it in context, I believe there are something like 73 million Americans living in a condo, HOA, or co-op, and something like 2.5 million of them are volunteer directors. I don't think the ad is representative overall of the people who are volunteer directors or the people who live in community associations."