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Condos/HOAs: Can You Require ACH Payments? Payments to Personal Accounts? (You Didn't Misread That)

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An [HOAleader.com reader asks](#): "The HOA board is mandating ACH payments that are processed by an HOA board member who hasn't provided any security policy for our data. If we refuse to provide them with permission to debit our bank accounts quarterly, we're required to pay one year in advance in full. This seems quite unfair and puts our information in a compromising position."

(You can read and respond to the [original post on the HOAleader.com Discussion Forum](#) here.)

Can a board mandate such a payment method?

On another note, there are all kinds of online payment systems today, including PayPal, Venmo, Zelle. Are our experts aware of any associations using them? What would be the challenges? Pros?

The Outlook Isn't Good for This Practice

At least in California, the demand for ACH payments—or else—might not be permissible. "I've never seen an association do this and don't believe it would comply with California law," says [Susan Hawks McClintic](#), managing shareholder and the chair of the community association transactional practice group at the law firm of Epstein APC in San Diego.

That may be true in Florida, too. "I don't think we can mandate ACH payments," says Zuly Maribona, LCAM, the Bonita Springs, Fla.-based senior vice president and partner at KW Property Management who oversees the company's southwest Florida, Jacksonville, Orlando, Tampa, and North Carolina operations. "It would be great for ease of payment, but we can't really force people to do that."

Would it be permissible outside those states? "I believe that would be driven by each association's state statute and [governing documents](#)," states Greg Smith, CMCA, AMS, PCAM, director of leadership development at Associa®, a

community association management company headquartered in Northern California.

But why chance it? "A homeowner has a right to be concerned about the level of security provided with ACH," asks Smith. "If someone has [concerns about security of their data](#), their bank account information, and their routing number, I'd understand that.

"This is one of those situations where the board is going to stand its ground, the homeowner will file a lawsuit, and a court will find the association to be acting improperly," he predicts. "I always encourage boards not to be originators of new case law in your state. Any time a homeowner has a concern, the board's answer shouldn't be, 'Sorry, that's our policy.' The answer should be a conversation over the concerns and ways to address them."

What About Trendy Apps?

There's PayPal, Venmo, Zelle, and more when it comes to money-transfer apps. Can you use those for association payments? You should first ask your association lawyer whether there are any provisions in your state law that would prohibit you from doing that.

"I could see an association setting up a PayPal account," says Smith. "But if the association is going to allow PayPal payments, there might be fees, and it won't get the full amount of the [assessment](#) if that's the case. Who's going to pay any surcharge? Is that allowable under state law and governing documents?"

"Also, is that board confident of PayPal security?" he asks. "You have to make sure homeowners understand they're providing their data to a third party, if that's what's involved in whatever payment method you use. You also want to be able to provide a receipt for payments."

And whatever method you use, it should be to an association account, and there should be multiple people on the board with administrative and access rights, such as the treasurer and president."

Never, Ever Use Personal Accounts

While we're addressing ACH payments, let's discuss a six-unit condo association in a major metro area we just learned about. The treasurer is weary of heading all the way to the bank to deposit six checks a month. So he insisted owners pay by ACH into the association's account.

Fair enough. The owners were receptive until a few found out they'd have to pay a fee for their bank to process a payment to a business account.

No problem, the treasurer said. We can avoid the fee if you send the payment to my personal Venmo account, and I'll make the transfer.

Totally true story.

Let's start with the idea of sending money to a treasurer's personal account. "I don't think you could do that," says Maribona. "I think that board could be [breaching their fiduciary duty](#) by allowing such an unsecure practice. You also can't commingle association funds with other funds; you have to have income related to the association going into association accounts."

McClintic sees so many more problems. "Oh, my gosh," she says. "I'm sure that treasurer is trying to be accommodating. And it's not even that I think he's going to steal the money. I'm more worried that that treasurer is going to forget to transfer the money to the association account. You lose track of whether you did the transfer or not, and then you have to go back to figure out who paid and who didn't. The treasurer would probably be on top of it because it's a small number of checks, but what if he's not?"

"And what happens if something happens to that treasurer?" asks McClintic? "What if he gets ill and ends up in the hospital while some association money is still in his personal account? None of these situations could be purposeful, but it's so easy to make mistakes doing that."

McClintic has personally seen associations struggle to access their own funds when they didn't follow accepted procedures with their accounts. "I'm remembering an association I represented some years ago that did have a separate association account with two signatories on it," she recalls. "One of those two people died two years before, but the association didn't replace that person with a new signatory."

"Then the second signatory was in an auto accident," says McClintic. "That association had to go through quite a bit to access its money and pay the bills—and that was an association account. You just don't want association money to go into a private account."

"Even in small associations, I really encourage boards to at least use a bookkeeper or someone like that to handle the finances," she advises. "There are so many issues and concerns. Yes, I've seen people [purposely take money](#). But more often, people make mistakes, and there's changeover on boards all the time. I really feel like a small association needs a [bookkeeping company](#), and it needs to vet that company and watch the accounts. You need to make sure you know what's going on."