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THE PRACTICAL GUIDE TO HOMEOWNER ASSOCIATION MANAGEMENT

When a Subassociation Wants to Secede from Your Master Condo or HOA

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An HOAleader.com reader asks: “Our HOA master community is a planned unit development in Florida and is made up of five subassociations with mixed HOA and condominium associations. One of the associations has decided that they wish to succeed from our community.

They're unhappy that we previously imposed a special assessment on everyone for hurricane damage and had to increase the monthly HOA dues by $5 to rectify the reserve balance. They also didn't like how the master association landscaped the main roadway through the community.

I believe the subassociation can't succeed from the master association. The master association governing documents show that the five associations were bound to the master when the developer established the original documents and handed them down, as stated when the associations took over. There's nothing in the master association documents that even touches on the subject of succession. I'm not sure if the Florida statutes state anything regarding this subject.

The subassociation stated that they'll no longer pay their dues beginning in January, and they'll use those funds to hire an attorney to sue to secede from the master. The master has a small budget, and losing 25 percent of our revenue will cripple us.

We have a special board meeting planned with them on this topic. However, they also state that the meeting should be only between the master and them and that the other associations shouldn't be allowed to discuss the situation. Again, I believe they can't make these demands.

What's your opinion on how to proceed with this issue without it getting to the point of hiring an attorney? I want to have the proper information to present at the upcoming meeting that they can't move forward in the manner that they plan.”

Here, our experts answer a number of questions: If the documents are silent on secession, can it happen? Can a sub decide not to keep paying? And what about that sub making demands about who can weigh in on the issue? Plus, we address that attorney issue—is going it without legal advice penny wise and pound foolish?

Question 1: Can a Sub Secede from a Master Association?

This depends on the state and the governing documents. Let's run through a few examples:

Florida—”I've never seen or heard of a subassociation seceding from a master association,” 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.

“We've done the opposite of that,” she adds. “I've been a part of several instances, potentially even one now for a third time, where we conduct a corporate merger. You're not effectively dissolving the corporations but you're merging the operations so that you have one board versus several.

“The governing documents are a contract, and it's legal and binding and runs with the land,” adds Maribona. “Under those documents, that subassociation is forever bound to the master association.”

Maribona raises another issue. “What's the root cause of this, and do all the residents of the subassociation agree with the sub's board, who say they're going to stop paying?” she wonders. “If it's just because the board of the subassociation wants to do this, they may not have the right to do this without the residents' vote. It may take a supermajority of the residents of that subassociation to approve it.

“How many thousands of dollars are they willing to put forward at the master and sub level to fight that?” asks Maribona. “This sounds like failure to communicate and effectively manage. Those problems in the reader's question sound pretty benign. We're not talking about a hundred-thousand-dollar special assessment. So what exactly are they fighting about? Whatever it is, the management company and legal counsel would typically intervene and help mediate a solution to this.”

Georgia—”The answer is based on the governing documents and what they say about whether there's any flexibility to remove a sub from the master,” reports Julie McGhee Howard, co-founder and managing partner of NowackHoward LLC in Atlanta, who at any given time represents hundreds of condos and HOAs throughout Georgia. “The answer is that this probably can't be done without the master's consent. It's unlikely the documents would allow this. By their nature, they'd be written to run with the land in perpetuity.”

Texas—”I've had a sub want to secede because they felt like they weren't getting the benefit from the master or there was complicated language about paying double assessments—to the sub and to the master,” states Noelle Hicks, CCAL, a Houston-based shareholder at Roberts Markel Weinberg Butler Hailey PC, who represents condos and HOAs throughout Texas and has been named to the National Black Lawyers Top 100.

“But it's very difficult to secede from a master for a couple of reasons,” she explains. “Generally secession isn't even permitted unless the governing documents say it is. If it's permitted, it might take a pretty high threshold or a supermajority for them to agree to that.

"But also it's weird because when it comes to insurance, you have to have proper ownership of community property for it to be insured, and there could be questions of who owns what and who maintains those spaces if a sub secedes," says Hicks. "It becomes very complicated."

Washington, D.C.—"I've seen a sub secede and a sub look to secede," says Cary Devorsetz, a partner at Alderman, Devorsetz & Hora PLLC in Washington, D.C., who for 20 years has been representing condos, HOAs, and co-ops in the district. "Probably there's something like termination in the governing code or documents that permits it—if not secession then termination. If you vote to terminate, you don't exist anymore, so you've seceded. That's one way around a lack of guidance on how to secede.

"Specifically, I've seen it with a very well-known, huge D.C. condo association with probably 1,000 units within a master and 9 subassociations," he recalls. "It was about five or six years ago. One or two subs were being chased by the master for not paying. Since they hadn't paid into the master's coffers for years, a D.C. judge decided the master had sat on its hands too long.

"Even though the bylaws said the subs must pay the master, the law says you have to act within a few years if that's not happening," explains Devorsetz. "In this case, it was sort of the passage of time where they were deemed no longer part of the master association.

"Short of that, I believe the answers would be in some sort of termination provision," he states. "Perhaps there would need to be unanimity on some level, but I don't know who'd need to be unanimous. Is it the master association?

"But everything's negotiable," adds Devorsetz. "The parties can sit down. The sub might say, 'I know you don't want to let this happen. But we don't enjoy the benefit anymore. Let's talk about a way out that's win-win. Otherwise, we're going to be struggling and fighting over this, and who wants that?'"

Question 2: Can a Sub Simply Decide Not to Keep Paying the Master?

Sure, if they want to risk every homeowner in their subassociation being foreclosed on.

"I don't know that the sub can stop paying," says Maribona. "The master could put a lien on owners' homes in the sub. And then could they move forward with foreclosure?"

Hicks believe so. "This sometimes happens, but you can't just not pay," she explains. "The responsibility to pay assessments falls on the lot owners, and owners are typically required to pay an assessment to the sub and to the master. It depends on how the documents are set up. If owners band together and decide not to pay, the master kicks in to foreclose on those owners.

"That's where we come in to enforce things and potentially get to the stage of foreclosure," says Hicks. "It does happen. But I'd never recommend that that actually take place. The situation becomes so complicated, and the legal fees that come with that could really deplete the reserves for the community. It's better to figure out what the issues are and try to resolve them."

Question 3: Can a Sub Demand that Only it Can Be Present with the Master for Discussions?

“I don't think a meeting with the master and sub only is a thing,” says Hicks. “Texas associations are subject to the open meetings act,” she explains. “If this is a board meeting, those are required to be properly noticed and open to all the members. If this is an informal meeting, those requirements don't apply, but I don't think that's what we're talking about here.”

Question 4: Is Not Seeking an Attorney's Advice Penny Wise and Pound Foolish?

“I thought this part was funny,” says Howard. “The reader is essentially saying: ‘We have a special board meeting, and I want to have all the answers, but I don't want to have to hire an attorney.' This is absolutely a legal question based on the governing documents, so this reader should consult with a community association attorney.”