

WE HAVE MET THE ENEMY... AND THEY LIVE HERE!

STRATEGIES FOR DEALING WITH PROBLEM PEOPLE, CONDO COMMANDOS, TROUBLEMAKERS,
FLAGWAVERS AND PATRIOTS, AND THOSE WITH IDLE HANDS

By Gregory J. Cava¹

Few communities lack at least one of those special individuals one is tempted, for want of a better term, to refer to as “problem people”. You know them; they are your neighbors. These are the people who just don’t seem to belong in the structured environment of a common interest community with governing documents, rules, regulations, conditions, and various and sundry limitations designed to protect the sensibilities of the other unit owners from the assault of their fellow residents’, shall we say, underdeveloped sense of taste and style. Why a certain percentage of iconoclastic, rugged individuals who passionately resent any intrusion on their personal prerogatives insist on living in communities which employ systematic regimentation as a means to insure plain vanilla blandness is a madness that will no doubt occupy academics in the field of psychology for the foreseeable future.

Once you’ve got one of these unhappy individuals in your community, however, life will never be the same unless and until one of you figures out a way to deal with the other. The human condition being what it is, there are many distinct individuals making up the known universe of “problem people”. However, if one can overlook some degree of generalization, it is possible to group these people into several categories and to suggest a strategy for dealing with them. No, it doesn’t always work. This is at best, an inexact science. However, the basic principles can make for a start in dealing with and heading off a number of problems.

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NAME YOUR DEVIANT

I have found over the years, that there are a number of basic groups of problem people, and they tend to fall into six (6) major categories. See if you recognize some of these.

- A. Exalters (of Form over Substance). Every community has one or two of these. You know the type. No matter how trivial the relative importance of a given matter, they are ready, willing, able and inclined to cause a battle royal over the most microscopic deviation of practice from the governing rules. These people will bring suit to invalidate the budget because the meeting called to approve it was noticed to commence at 7:30 P.M. and the President called it to order at 7:24 P.M. – even though every unit owner was present.
- B. Rules Relativists (i.e., “The Rules Apply to Everyone But Me”).

Principal variants:

1. Doctor Doolittle. These people will domesticate any creature not specifically prohibited by the governing documents, and if all else fails, will feed and care for all manner of feral animals, attracting every imaginable species of vermin to the common interest community.
2. My Pets Don't Stink. Another species of pet lover, this one insists on ignoring the leash law because “my pet is always under my vocal control” – as it runs wild on the common grounds while the pet owner watches clips of outrageous misbehavior by his fellow man on television and shakes his or her head knowingly. There is another variant of this endearing rogue whose pet (usually a dog) is ill behaved, untrained, unrestrainable, and attacks or at least intimidates other unit owners, their children, pets, or all of the above. When confronted, this owner will insist that their pet is sweet and misunderstood.
3. My Kids Don't Stink. See “C” above, but simply substitute for pets, children who set fires, destroy common property, drive drunk on the common grounds, vandalize the pool and recreational amenities, violate drug laws, you name it. The problem is when children are allowed to go through life thinking they can do no wrong, well, that explains where the next generation of egocentric, miscreants come from.
4. Atlas Shrugged. You know the type, the true iconoclast. Yet for this brand of the species, no rule or regulation designed to facilitate the peaceful accommodation of community living has yet been written or conceived of that this person has not thought of a way to interpret in a manner designed to facilitate his or her individuality while entirely defeating the purpose of the

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rule. “No, the rule saying you cannot transit the roadways with boats, nor park them in the driveways or on the roadways was not intended to prohibit my parking my 12 meter sailboat on my deck.”

- C. Flag Waivers & Patriots. The governing documents could clearly state in a bold, 16 point typeface that no flags or banners may be displayed anywhere in the common elements, you could require every purchaser to sign an acknowledgement of same, and you could remind them 11 times in person that this is the case, and you are guaranteed that at least one and possibly more residents will later insist to the local newspaper and the evening news that the only reason they bought in the community was so they could fly their house-sized flag in front of their door.
- D. Condo Commandos. The classic passive-aggressive personality, the *raison d'être* of this archetype is the conduct for the sake thereof of a personal, endless, guerilla campaign against the existing management and board of directors on every conceivable front. The condo commando is opposed to everything including positions or rules advocated for their express benefit. For them, it's the battle that is important, not the outcome.
- E. Those with Idle Hands. You've all heard the old chestnut, "*Idle hands do the devil's work*". Nowhere is the wisdom of this aphorism cum cliché more evident than in the context of a community association. All Condo Commandos also share this trait. If all the time, expense, effort and sweat that goes into perpetrating their mischief and in defending against it were constructively applied, most communities could double or triple the services or amenities provided.
- F. The Genuinely Loopy. These are the people who speak in non-sequiturs. They will call you at 8 AM to compliment you on the job the association did in fixing their problem, and at 3 PM to complain that you are neglecting to fix their problem. There is virtually nothing you can do about these people as their problem is most likely chemical and what they need is the medical assistance of a doctor. Occasionally they engage counsel to fight these hopeless battles, however, usually their counsel quickly figures out where the problem lies and these matters go away.
- G. Name Your Deviant. Have I left out your favorite problem person? Fill it in here.

UNDERSTANDING YOUR DEVIANT

The aforesaid list is merely a starting point, and I might add, a shameless over-generalization. Each person is unique and once having pigeon-holed someone, you run the risk of missing the key piece of the puzzle needed for a peaceful resolution of the situation. In each case, the starting point for dealing with problem people is to try to get into their head – who are they, what do they do, and why do they do it. Call it pop-psychology, but understanding how to motivate people is an age-old management tool and separates a successful leader from a failed one.

Oh, but you say, it's not as simple as Pavlov's dogs, or teaching a rat how to run a maze by rewarding success with a snack. Wrong. People have needs just as animals do, and identifying the basic need motivating the behavior in a given case, and trying to see how the community can meet this need is the key to determining what to do about these problem people. You will not succeed every time. Sometimes you cannot figure out what motivates people. Sometimes you can and you are horrified by it. Sometimes you can figure out the need, but do not want to address it because it is unrealistic. But I have found in the great majority of cases, most people simply want some degree of validation and how you respond is almost more important than what your response is.

STRATEGIES

Follow the Rules

Equally important, of course, is making sure you know what your governing documents and the applicable statute requires, and following procedures to the letter and spirit of the law. Your boards are composed of layman. They are not lawyers and will not always be held to the same standards as say a municipal zoning commission. However, the closer you come to strictly observing rules and procedures, the better your chances of fending off an attack. Moreover, if you are dealing with an "Exalter", you will diminish the scope of his or her objection, and quite possibly flip this person over to your side. Remember, they assume the worst and the last thing they expect you to do is follow the rules. No one wants to have to have lawyers fly-specking everything you do, but when dealing with these types of problem people, you have to play the game on their field. Deny them the opportunity to criticize your enforcement, and perhaps they will shift their energies to saying "see, I made them do it right." If you obtain compliance, and reduce the opportunities for conflict, what do you care?

Unfailing Courtesy

Difficult as it may be, you must remain unfailingly courteous and respectful to these l'enfants terrible. Since many of the problem people thrive on conflict, by remaining cool and courteous, you remove opportunities for conflict. But, because the battle is not joined, they are frustrated, but cannot do much about it.

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The Silent Treatment

If all else fails, and if they will not be deterred, stop speaking to them. Require all communications to be reduced to a writing in order to avoid misunderstandings. First, this requires them to organize their thoughts. Thus you avoid an hour-long harangue in which much is repeated. Second, it permits them an outlet for their grievances, a catharsis if you will, without subjecting you or a board member to a string of invective. Most importantly, you have an accurate record of the complaint, either to use in the event you need to seek a restraining order, or simply to respond constructively and meet legitimate needs and requests. Often times there is a kernel of legitimacy in these matters, if you can find it. Anything legitimate should be addressed immediately.

The Rules Do Apply to You

Rules Relativists are another matter entirely. Naturally you try to enforce rules in an even-handed, uniform manner. However, sometimes the unique facts and circumstances of each case require you to exercise discretion in enforcement. This should be the exception and not the rule. However, Rules Relativists usually have reached the point where they have considered the rule and have rationalized to themselves why it does not apply to them. Clearly you should listen for that kernel of truth, but then enforce, enforce, enforce. Giving these people a break will only embolden them. I like to sit them down and explain the rule and why it applies. When they try to rationalize why it doesn't, bring them back to reality by asking them to identify where in the rule the exception they are claiming is set forth. Try to explain that the better route is to follow the rule and to try to persuade their fellow unit owners to change the rule. If you can re-direct their energies into that enterprise, you may at least temporarily obtain compliance.

Animal Lovers

Animal people are most difficult. No matter how much you try to be rational, it is difficult to get them to look at their furry pets (and children for that matter) objectively. Here again, it is important that you enforce pet rules evenhandedly. If you routinely ignore complaints about Board Members' pets, you will have difficulty in getting anyone else to follow the rules. Even if you have failed to enforce the rules in the past, however, you may embark on a more rigorous enforcement regimen – but you should announce the Board's intentions in advance so people know the pattern of lax enforcement has ended and they will be expected to comply. Follow this notice with a no-fine period of citations so people get used to enforcement and then enforce, enforce, enforce.

When faced with a difficult animal person, it is usually a good idea to talk with the person and try to discover why the blind spot for their pet exists. In some cases, it is fear. In others, it is a deeply held, if misguided personal conviction. Sometimes, it is plain laziness: it's just easier to open the door and put the dog or cat out than it is to walk them on a leash. With this type, you must usually resort to imposing fines, so that at some point, the size of the fine begins to become less comfortable than the bother of walking the dog. Another option may be to seek a court order for the removal of the animal. This frequently, but not always, results in a greater degree of cooperation. However, sometimes you are simply pressed into this course of action because the unit owner leaves you no choice.

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Another possibility in dealing with unleashed pets is the use of the “roaming dog” statute. This statute permits you file a complaint with the dog warden. It can be tricky to enforce however, as the dog warden must find the dog roaming on property not owned by the dog owner. In a condominium, the unit owners own the common elements in common, so it will be impossible to find the dog on property in which the unit owner does not have some ownership, albeit a small, interest. In a planned community, however, it may be a different matter because the common elements are generally owned by the association.

Leash the Children?

Dealing with children can be more difficult. First, you will not be successful in enforcing a child leash law. Second, you will find the “authorities” less than helpful unless criminal conduct is involved. If the children are those of a tenant, you can use Connecticut General Statute §47-244(d)(3) to give the unit owner notice and an opportunity to cure the offending behavior, and if it is not remedied, to commence eviction proceedings against the tenant. This of course works with all rule violators, not just misbehaving children. You are rarely this lucky, however.

Tilting at Windmills: Knocking the Iconoclast Off His Pedestal

Iconoclasts are another challenge. They want their way and there is no dissuading them. Here you want to pick your battles carefully. These people will fight as a matter of principle. There is no more dangerous adversary than one fighting on principle, because the only limit on their litigious tendencies is the size of their bank account and this is sometimes overcome. Here you need to give their demands careful attention. Work with association legal counsel to make sure their position is truly frivolous. Here counsel must be open-minded. If the first tendency of the lawyer is to support their client’s position without critical review, you are in trouble. This is where a good lawyer can earn their fee by carefully assessing the position of the iconoclast to make sure their point is not well taken despite their aggressive posture. There is no point in waiting until a court dismisses your enforcement action because you failed to give notice and a hearing before you made the decision. With these people, you must follow the spirit and the letter of the law. When all else fails, change the rules by re-writing them in a manner that gets you the result you require, but be prepared to live with the iconoclast’s non-conformity which may now be “grand-fathered”.

The classic problem here is the pet rule. What do you do when you have a no pets rule and half the unit owners have pets? It is hard to make the case that you can just wake up and start enforcing the rules, but you can run off the pets by attrition. However, you should impose a registration process so pets can be photographed and measured. One wag suggested to me the collection of DNA samples to overcome the claim of one owner to have discovered Ponce d’Leon’s fountain of youth for their 30-year-old poodle.

Flag Waivers & Patriots

The United States Congress enshrined the right to fly the American Flag over a residential community in the Freedom to Fly the Flag Act of 2005 which became law July 24, 2006. The act provides in pertinent part that a “condominium association, cooperative association, or residential real estate management association may not adopt or enforce any policy ... that would restrict or prevent a member of the

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association from displaying the flag of the United States on residential property within the association with respect to which such member has a separate ownership interest or a right to exclusive possession or use.” There are two exceptions to this rule. The first is for observation of federal flag protection statutes and customs on the proper display of the flag, and the second is for “*any reasonable restriction pertaining to the time, place, or manner of displaying the flag of the United States necessary to protect a substantial interest of the condominium association, cooperative association, or residential real estate management association.*”

This would appear to limit the right to fly Old Glory to the unit or limited common elements and then, not if the display or the condition of the flag violates the flag protection statutes or if the restrictions on the display of the flag there are necessary to protect a substantial interest of the association. Except in the community where the unit is the lot, or where real property outside the unit constitutes part of the unit or limited common elements restricted solely to the use of the flag waiver, the Board should be able to regulate flags to some degree. This said, the real question is: *should the Board do so?* People who want to hang seasonal banners are easy. Unless you want to look at each person’s idea of what is attractive, ban them. Old Glory is another issue all together. If Social Security is the “third rail” of American politics, the American Flag is the “third rail” of condominium politics.

While there may be no *absolute* right to fly Old Glory, and no right at all to fly her within the common elements, particularly where the unit owner voluntarily took title subject to the restrictive covenants banning the flying of a flag or pennant, we live in a time of flag waivers and patriots. The terrorist attack on America on September 11, 2001, changed this country in many ways. People are fearful and apprehensive. That is not the natural American posture and so we hold our fear at bay by flying the flag. Whether the reason is patriotism, love of country, relief from anxiety, or just a desire to show solidarity with and support for our armed forces, there is a powerful urge to fly and display the flag. Nothing an association does to “explain” its position will likely be very availing, even if it is consistent with the law.

Against the background, what is an association to do? The first flag protection statutes were enacted in the 19th Century in response to the use of oversized flags for advertising purposes. Accordingly, our laws require that Old Glory be raised at sunrise and struck at sunset. Only if illuminated can one legally fly a flag after dark. In addition, the flag of the United States is not to be flown in the rain unless it is a nylon all weather flag. The flag should not be flown if it is damaged or in tatters. In that case, the flag should be disposed of in a dignified manner, preferably by burning. If individuals are flying a tattered flag, one could adopt a series of regulations that require retirement of tattered flags, and if the owner does not comply, have the association take the flag down. This largely disposes of the problem of tattered flags being flown since the association would only be following the federal flag protection statutes.

There could be a better solution. Why not take this approach which has worked elsewhere. When one or more unit owners want to fly the flag, why not purchase a flag pole or poles, place the flag poles in a prominent and attractive location. Then purchase high-quality all weather American flags and task the flag wavers with raising and lowering Old Glory for the entire community? This way, you channel these patriotic energies in a way that brings the community together. If the patriot

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refuses to accept this solution? Then perhaps waiving the flag is less about love of country than love of self.

The Condo Commando

The commando requires a deft touch. As has been suggested, you need to be certain that there is not a good reason behind the guerilla campaign. Frequently these people started their private war because of some slight, real or perceived. Sometimes, they were unable to obtain a copy of the minutes, sometimes it relates back to having to pay a fine. In many cases there is little the association or the manager could have done, but in some cases, this problem could have been nipped in the bud if only the request had been courteously handled.

Under the Common Interest Ownership Act, each unit owner is entitled to obtain copies of virtually all records of the association. There is no point denying this information to a unit owner. If the problem is one of accommodating continuous requests, then simply require that all requests for records be in writing. That way you can respond when it is most convenient – but respond you must and in a timely manner. There is simply no excuse in this day and age for failing to scan condominium records into electronic media. Then the cost of providing same is negligible. If someone insists on paper, then it is not outrageous to charge for the cost of duplicating the material. Even better is to make certain materials, e.g., governing documents, minutes, agendas, announcements and notices, rules and regulations and the like, available on line to unit owners on a password-protected portion of the association's web site.

Sometimes the root of the problem is the denial of a special request. Perhaps the condo commando wishes some special privilege. The board does not want to accommodate him. Assuming of course the request is not one which the association is obligated as a matter of law to grant, e.g., the reasonable accommodation of a handicapped person under the Americans with Disabilities Act, then how the request is denied is critical. It should be done in a manner which shows the utmost deference to and respect for the unit owner. This will avoid, to the maximum extent possible, creating defensiveness and bad feelings. Frequently, the way you say it is more important than what you said.

Sometimes the problem stems from the fact that the condo commando is filled to the brim with ideas of how to govern the association and no one listens to him. Perhaps this is emblematic of all other facets of his life. Imagine the toll on you if no one ever listened to your ideas? So are you condemned to have to listen to a monthly harangue? Well, yes. Unit owners are entitled to petition their board and to speak with them. Just because you have to listen does not mean you have to act. You must ask whether or not there is a relatively harmless way to channel this energy in a more productive way. Can you appoint this person to a committee where his extra energy can be put to use? Can you create a committee to give this person something to do? Can you suggest, in a polite way, that more people would pay attention to his ideas if he could demonstrate that he can work cooperatively to achieve a common objective?

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Is it possible your condo commando is simply a bully? Well then, you know the answer from your days on the school playground. You don't accommodate bullies and you don't appease bullies. You treat them respectfully, you are unfailingly courteous, and you call in a higher authority – i.e. a bigger bully, in this case, the association counsel, to make sure the bully knows the association will turn to one who is not easily intimidated to deal with him or her. This may mean paying counsel to attend a meeting with the Board where the bully is offered the opportunity to air his or her grievances. You listen politely, and then you make it clear to the bully that you will accord him or her the same privileges and prerogatives as other unit owners and that is all. In short, you treat the bully as an adult and you make it clear you expect him to act that way.

No, there is no one-size-fits-all solution to deal with your problem people. But to the extent to which you can get into their head, see the world from their perspective, learn what motivates them, you can perhaps find the solution to the problem. This requires good, flexible legal counsel who is prepared to work outside the box to find the solution. It also requires the efforts of the Board and the manager to overlook the slights directed in their attention, act the adult, and work to bring the problem person along. Just like with your children, positive reinforcement is critical. Let the problem person see that there is an upside to conforming behavior.

Tempting as it may seem, a scorched earth policy will get you precisely that – scorched earth, and little positive to show for it. You will get more results giving the problem person the compassion they crave rather than the conflict they seek. All-out war is always an option, but not the first or best option. Addressing needs is what association managers and lawyers do for a living. Problem people have needs, but it is not always apparent what those needs are. To the extent to which you can look over the conflict of the moment to figure out what those real needs are, the sooner you can nourish and address them, the sooner your problem person will cease to be such a problem. You cannot solve this person's problems – that is precisely the wrong approach. But you can see how you can reduce the opportunities for conflict with the association, and redirect these energies toward productive ends.