



Movies in Clubhouse Could Expose Association to Fines

Public performance controlled by copyright

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Q: Until recently, our association had “Movie Fridays”, where the association members and their guests could enjoy movies that were recently released on DVD. Many of the residents enjoyed these Friday movies. A new board was recently elected, and that board immediately stopped showing movies in our clubhouse, as one of the board members said this was illegal. If the association purchased the DVD, what is the problem? **S.I. (via e-mail)**

A: The owners of a copyright in a movie have the exclusive right to determine whether the movie may be shown publicly. This is known as the right of public performance. The question then arises whether the performance of the movie at the association’s clubhouse is a “public performance”. The Copyright Act roughly defines “public performance” as a performance where a substantial number of people outside a “normal circle of a family” is gathered. At least one Florida court has determined that the playing of a copyrighted work in an association’s clubhouse constituted infringement of the copyright. When a copyright has been infringed, the person or entity responsible for the infringement is exposed to significant fines. In this case, the responsible entity would likely include the association.

Accordingly, unless the movie has entered the public domain (the time when the movie may be publicly performed without violating the Copyright Act), the Association must obtain a license, or the permission of the copyright owner, in order to publicly perform the work at an event such as your “Movie Fridays”. Licenses authorizing the public performance of motion pictures may be obtained from one of several licensing agencies, or in some cases, the film’s distributor. Many of these agencies also issue “blanket licenses” that permit the association to play any of the movies contained in the agency’s catalogue. However, having a blanket license from one licensing agency will not permit you to show movies that are not in that agency’s catalogue. Also, the fact that the association purchased the DVD from a retail store does not grant the association the right to publicly show the movie.

Q: I live in a gated community of single-family homes in Naples. We have a couple of tennis courts and a nice, but small, fitness room. We have a great group of neighbors who are outgoing and active. But that is our problem. The community has too many people competing to use the tennis courts and fitness room. You are lucky to ever get to use these areas when you want. Do you have any practical suggestions for dealing with this issue? **T. D. (via e-mail)**

A: There are several suggestions that come to mind. I presume from your description of your community that it is a homeowners' association and not a condominium association. One suggestion is to expand the facilities by adding on to the fitness center or adding more tennis courts. Unlike in a condominium association setting, there is no statute in the Homeowners' Associations Act limiting a board's general authority to make such alterations and improvements. You should, however, carefully review the governing documents of your community to make sure there are no provisions contained in them requiring member approval for such a project. You should also review the documents to be sure the board has the authority to levy a special assessment or to borrow money to complete such a project. Even if member approval is required, it sounds as if your community might support the project. Of course, you will need space to put these new or expanded facilities, and that is not always available.

Another suggestion may be for the board to adopt some usage rules that give everyone a fair chance

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to use the equipment and facilities. In order to make such rules, the board must have rulemaking authority in the documents. Perhaps a sign-up sheet for one or two hour periods could be required for tennis court use, or other rules for using the tennis courts and fitness room. There are no set or required rules for such circumstances, and such rules are generally tailored to fit the specific needs of a community. If the usage problem can be demonstrated, and better yet documented, I believe these types of rules are reasonable.

One other suggestion may be for the association to enter into a use or membership agreement with a neighboring community or local club that has adequate facilities. If the governing documents of the community include the association's authority to enter into such agreements and to have the cost of the agreement be a proper common expense of the association, then this might be a viable solution to your problem. If the documents do not contain such authority, they might be amended to add it.