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## Did This HOA Board Ask Too Many Invasive Questions?

An HOAleader.com reader asks, "Is there a legal problem in a board requesting a homeowner to fill out a form showing legal owner, names of occupants, emergency contacts, special needs, vehicles and pets? I have been told this is an invasion of privacy by a couple of homeowners."

Here we find out what's OK to ask owners to provide and what's probably too intrusive.

### Generally, Those Requests Are OK

Our experts agree that for the most part, those requests for information are acceptable, with one minor exception and one big exception.

"Generally, all of that is really reasonable to ask," asserts Alessandra Stivelman, an associate attorney who specializes in community association law at Eisinger Brown Lewis Frankel & Chaiet in Hollywood, Fla. "It's one thing when an association is asking for this type of information to screen an occupant or a tenant. But this is info the association has a right to know, especially in the event of an emergency, like when a pet gets loose or if there's a vehicle parked in front of a fire hydrant illegally. When you decide to live in a condo or HOA, you give up certain rights and become part of a community."

That said, there are nuances and, as we said, two exceptions. Here's the skinny:

**Legal owner**—"The management company has to know who the legal owner is," contends Andrew Schlegel, CCAM®, executive vice president of community management for Orange County and Los Angeles at Merit Property Management in Aliso Viejo, Calif. "That goes without saying—you have to know that. If it's a self-managed community, whoever's doing their accounting also better have access to a title search system so they know who the legal owner is."

Nancy T. Polomis, a partner at Hellmuth & Johnson PLLC who advises homeowners associations, agrees. "The association clearly has a right to know the legal owner because that's who's responsible for paying."

**Names of occupants**—This request raises minor flags for our experts. "I think the association has a right to know the legal occupants, particularly if it's a rental unit," says Polomis. "Some say associations should limit that request to adult residents. They're of the mind that when you start asking about minors, that's a little too intrusive."

David W. Kaman, a Columbus-based partner at Kaman & Cusimano LLC, which represents associations throughout Ohio, is generally on the same page. "Originally, you couldn't discriminate based on race, color, or creed, and now that's been expanded to include categories like handicap and familial relationship. So asking for the names of occupants is fine, but asking for their relationships isn't. I'm also happy to see they're not asking ages of occupants, which could also lead to discrimination claims on the basis of familial relationship."

Schlegel also says this request is OK if asked properly and for the right reasons. "In terms of who's living in the home, that can be a bit of a reach," he says. "But if it's a community that has something like a gym that's overcrowded and people are asking for four security fobs, it's important to know who's actually living in that unit and entitled to a fob. That doesn't feel too far out of bounds, but it's mostly relevant if there are a lot of amenities that might be overcrowded."

**Emergency contacts**—"Again particularly if it's a rental, you want to know how to get ahold of a landlord," says Polomis. "Some also want to be neighborly and say, 'If your pipe bursts, we want to know who to call if there's a problem.'"

**Special needs**—This is the request that gave serious pause to our experts. "I don't think you can ask someone their special needs," says Kaman. "You can't discriminate based on handicap, and I don't believe there's any question out there you can ask that relates to a handicapped individual that's going to pass muster and that some board won't use for discriminatory purposes. Boards can couch this request any way they want—like saying it's so it can provide the information to first responders in an emergency. But it's not something the association needs to know. In an emergency, the owners can notify the fire department directly. In our area, we have decals you can put in the window providing specific information on residents for first responders. I'd stay 100 percent away from special needs questions."

"Asking about 'special needs' is pretty broad," agrees Polomis. "If by asking that, the board is trying to ferret out if people need a **reasonable accommodation**, I think the request should come from the home owner, not be initiated by the board."

**Vehicles**—"There are often parking issues, and many associations provide reserved spaces or require vehicles to be registered," says Polomis. "So associations would want to know the make and model of the owners' vehicles and their license plates. That way, if someone's parking where they're not supposed to, the association can deal with it so those who have the right to park there can."

**Pets**—"If the association has pet rules that require registration, this is fair to ask," says Polomis. "Some associations actually require that you submit a photo of your pet. Let's say a resident complains about a dog tearing up a yard and says it's a big, honking German shepherd, and 'I'm positive it lives on the other cul-de-sac.' Is that photo determinative that it was that German shepherd? Not necessarily, but all those things help the association deal with the problem."