



THE PRACTICAL GUIDE TO HOMEOWNER ASSOCIATION MANAGEMENT

How Intrusive Can You Be with HOA Owners?

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A HOAleader.com reader reports that his HOA is requiring that owners allow coolers to be searched for glass when they enter the pool because of the "no glass container" rule. He contends this is an invasion of his privacy.

Is it? And just what can HOAs search when it comes to owners' person, things, and property? Here's some guidance.

Owners Give Up Some Rights

The first rule when you're determining how far you can go in "searching" owners is that you have more leeway than a government entity would have in the same situation.

"Generally speaking, you give up a lot of constitutional rights when you purchase a home or unit in these communities," says [Elizabeth White](#), a shareholder and head of the community associations practice at the law firm of LeClairRyan in Williamsburg, Va. "Usually, boards aren't looking at constitutional rights unless they're affecting a protected class, like a race- or religion-based class."

The fundamental issue when boards act is reasonableness. "By statute, HOAs are entitled to adopt reasonable rules and regulations that pertain to the use of common areas and recreational facilities," says Andrew Lewis of Eisinger, Brown, Lewis, Frankel & Chalet PA in Hollywood, Fla., who specializes in representing community associations.

"Boards also have to look at their [governing documents](#) to see what authority they have with adopting rules and regulations for common areas," adds White. "Owners have an expectation of privacy in their purse and beach bag. So you have to balance those factors when you're adopting rules. Are the rules reasonable, and are you balancing whatever your need is against the level of intrusion into owners' personal belongings?"

Is It Cool to Inspect Coolers?

Our experts universally agree that inspecting owners' coolers probably goes too far. "I don't think searching coolers is something I'd recommend," says White. "An association could have a problem that would necessitate doing that, but I have a feeling the board is going to get a lot of pushback."

"It's very intrusive," agrees [Robert Galvin](#), a partner at Davis, Malm & D'Agostine PC in Boston who specializes in representing condos and co-ops. "There's nothing statutorily on this in Massachusetts, but I think it would be a very big mistake to be too intrusive. Searching coolers goes too far unless you have a constant problem of broken glass. I wouldn't search coolers as a routine thing."

Chris Yergensen, senior vice president and corporate counsel of RMI Management, a Las Vegas-based company that manages about 300 condo association and HOAs, also has concerns about cooler searches. "I did a quick search of Nevada law, and I'm not sure Nevada law would regulate this particular issue," he says. "However, we at RMI don't get that intrusive with our owners. Many of our communities have community pools, and the majority have 'no glass container' rules. We have a general business policy that if we see a problem, we'll alert the people violating the rule. But we don't

have anybody taking that one step further and searching coolers. We don't go that intrusively to search owners."

Lewis is concerned about his clients opening themselves up to claims of assault or selective enforcement. "A rule prohibiting owners from using or bringing in glass containers is reasonable," he says. "Is it equally reasonable to search people's possessions to ensure they're complying? That may be taking it a bit too far. In my opinion, it's not a very reasonable rule. There isn't any reason to suspect people are breaking the rules until you see them breaking them."

"Also, when you're searching a person, you have to be careful about putting your hands on them without their permission," adds Lewis. "That could amount to an assault. You also have to be careful in terms of selective enforcement. It doesn't seem practical to have a security guard there all the time. But even if you do, is the security guard going to search everybody's cooler, or is it within the guard's judgment as to whose cooler to search?"

What About Other Searches?

Cavity searches are out. Roger. But there are other cases in which you might want to intrude on owners' privacy. Again, reasonableness governs.

"You may have a rule prohibiting barbecuing on balconies for fire or life safety," explains Lewis. "Does that mean you can go into everybody's unit to ensure no one has a barbecue? No. You have to wait for a complaint or violation. You have to follow an objective, reasonable standard. "

Emergency situations are harder to call. Even then, policies and notice go a long way. "There could be issues when you do want to be able to search," says Galvin. "For example, if there's smoke or a continuing very bad smell coming from an apartment, I think the [board] should exercise its right to go into that unit. But you'd only do that if it was an emergency and you notified the owner and asked the owner to cooperate."

Yergensen agrees. "More problematic for us on the intrusive nature of things than coolers by the pool is that we have water leaks occasionally in condos," he explains. "How do you handle that? Usually water leaks into more than one unit. We have mold issues and a lot of absentee owners in Nevada. The question that always arises is whether we intrude into a unit to abate that water leak. We get into a lot of issues regarding intrusiveness."

The best approach is to have a policy. "We've found it works tremendously to create a policy around the issue, to communicate that policy to home owners, and then to go through the formalities of the policy," adds Yergensen. "There are nuances among HOAs when it comes to the policy. Some say they'll give 24 hours notice, others say something else. But if the board takes time to give notice of the policy so that at least it's communicated to home owners and then we follow the policy, it's better. If we don't do that and go into an owners' unit, owners will say, 'Why'd you do this?' It's a lot harder to say, 'We did it because...' than 'Here's the policy. You had a chance as a home owner to come and talk about it...'"