

# HOA COMMUNICATOR

## Technology And Associations An Ongoing Series Part I Meetings in Cyberspace

Technology is constantly affecting our lives at the office and home. Likewise, technology is affecting Homeowner Associations.



While you may not be an early iPhone enthusiast or you may not even own a cell phone, odds are that you do have an e-mail address. The evolution of technology in the home has caught up to Associations. From satellite dishes to solar panels, our homes reflect the technological advances of our times. Technology can be fun and make our lives better, but it also must be used responsibly. In upcoming HOA Newsletters, we will be addressing the issues of technology surrounding

Associations and how Associations can responsibly deal with these issues.

Your Association has no choice but to address the new issues that technology raises, whether it is adopting new methods of operating or restricting technology Associations must deal with the issues of emerging technology. Current proposed legislation (HB 08-1270) has passed the Colorado House provides new rules regarding energy efficient technology and Homeowner Associations. The bill has been assigned to the Senate Local Government Committee where it is scheduled for its first committee hearing on March 20th. This proposed legislation will be the subject of a future article, as the bill in its current form may look very different from the final law.

Associations must integrate technology in a manner that maintains the integrity of the governance of the Association and affords all homeowners access to the governance.

As a starting point for our advice on technology, we would like to discuss whether electronic meetings are a good idea for Associations. Grasping the points of this article will provide board members and managing agents with an understanding of the benefits and drawbacks of conducting electronic meetings.



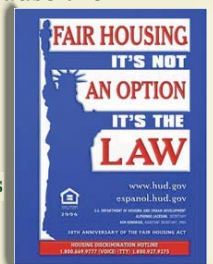
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## GET INTERESTED IN FAIR HOUSING

*What you don't know can hurt you  
What you do know can empower you*

The civil rights movement of the 50s and 60s resulted in the creation of some important laws that are an integral part of preventing discrimination in our society. The Fair Housing Act (FHA) is one of those laws. Many readers have heard of the FHA but may not know a lot about it. For those who do know about the FHA, it is an evolving law and there is always more to learn. A lack of knowledge about the FHA is dangerous because the FHA applies to nearly all types of housing in this country. Many people involved in their Homeowner Associations are not even aware that the FHA applies to them. Understanding Fair Housing is invaluable. This discussion of the FHA is designed to provide our readers with an overview of how the FHA applies to Associations and to create an ongoing interest for education on this important topic.



Hopkins Tschetter Sulzer, P.C. regularly teaches and writes about Fair Housing law. Our Firm is passionate about sparking  
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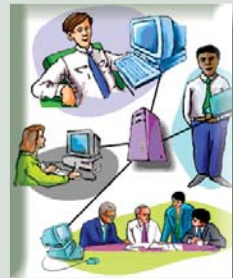
## Technology And Associations An Ongoing Series Part I

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The homeowner who has every new gadget before everyone else wants to begin having HOA meetings online. From that homeowner's perspective, everyone is too busy to meet, so why not get things done by e-mail. Given our fast-paced lives, that concept seems to make sense. Because we live in a society where multi-tasking and hypertasking are common, adopting an electronic format for meetings may seem like an easy answer to cutting down on lengthy meetings and getting things done quickly. So, Associations are asking can and should HOA meetings be done online? The answer is that meetings can be done online and that an electronic format can work, especially for committees, but there must be guidelines. In establishing those guidelines, it is helpful to look at the pros and cons of conducting electronic meetings. In some instances, depending on the type of meeting and the community, it may not be a good idea to conduct a meeting electronically.

Electronic meetings do not allow easy access for all individuals. Electronic meetings can lead to possible misunderstandings that would not occur in a face-to-face setting. It is often difficult to capture tone over e-mail, while in a live meeting environment it is easier to interpret. Those with a dry sense of humor have to take care that their wit does not get them burned through misinterpretation. While Internet access is common, it is not in every home, and many Internet service providers are unreliable. Because of this some members may be restricted from accessing the meeting.

These problems all stem from a lack of personal interaction. This lack of personal interaction can create misinterpretations, arguments, and generally, many people forget their manners when communicating through an impersonal faceless interchange. It is easy for electronic conversations to become informal. When communications are informal, yet published, this becomes a dangerous combination. For example, suppose your Association has a resident who is always a problem, Troublesome Terry.



A discussion about Troublesome Terry comes up at a meeting that may have been light-hearted in intent. The discussion may be shown to other Homeowners including Troublesome Terry. The discussion could then be twisted by Troublesome Terry and that writing then provides him/her with some ammunition for a lawsuit against the Association for retaliation or discrimination.

### GUIDELINES

Meetings are an opportunity for interaction. Meetings are a forum for homeowners to participate actively and observe passively. If an Association is going to move to conducting some committee meetings via electronic communications, we highly recommend the following guidelines:

- 1) There must be a procedure for conducting the meeting that tracks with the procedures used in a standard meeting. Often Robert's Rules of Order is the most efficient way to run a meeting.
- 2) If the meeting being held is required to allow participation from all homeowners, this requirement cannot be ignored. There needs to be access to the meeting electronically and there needs to be access to the web, through either a community computer or a homeowner sharing the computer with other owners.
- 3) There are a variety of programs that allow "web meetings" These programs would be much more preferable to conducting a meeting via e-mail.
- 4) A record of the meeting should be kept and then reported back to the Association.

### CONCLUSION

E-mail sounds like an easy solution, but improper execution can create more issues for the Association. If your Association is contemplating implementing an electronic meeting policy, be sure to consult with Hopkins Tschetter Sulzer.

Let us know if you have an interest in a specific topic regarding technology and Associations and we will try to address your area of interest. Our HOA Department welcomes input and questions from Association Managers and Boards. Currently planned future articles will address: solar panels, e-voting for elections, privacy concerns, and Association blogs. In the upcoming articles, we will strive to help Associations understand how to approach unique technological issues legally with common sense and responsibility.

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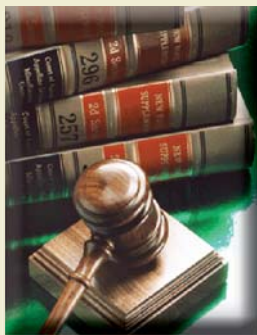
## GET INTERESTED IN FAIR HOUSING

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interest and providing education in this area because it is such an important area of the law that affects so many of our clients and organizations that we deal with. We strive to provide education to housing providers of all types. The HOA Communicator seeks to further this goal with respect to Colorado Homeowner Associations. We look forward in upcoming issues to providing ongoing insight and guidance on a variety of Fair Housing issues relevant to Associations. As we embark on this commitment, it is important to explain how the federal and state Fair Housing laws apply to Colorado Associations.

### WHAT TYPE OF HOUSING IS COVERED BY THE FHA

The FHA is a federal law that Congress created in 1968 and amended 20 years later. It prohibits discrimina-



tion and retaliation for members of certain protected classes. Colorado passed a companion state Fair Housing act that parallels the FHA. With the 1968 and subsequent amendments, the FHA created various protected classes: race, color, creed, national origin, religion, familial status (families with children under 18), ancestry, gender and disability.

The Colorado law adds marital status as a protected class. Various Colorado municipalities such as Boulder, Telluride and Aspen have their own Fair Housing ordinances which give additional protection to sexual orientation, age, military status, gender variance and even political affiliation.

The FHA covers most housing except housing which is owner occupied and has less than four units, single family housing sold or rented without a broker and a private club or organization that has housing for members only. The FHA also has accessibility requirements that apply to most buildings with 4 units in a building built since March 3, 1991, except multi-story town homes in a non-elevator building. The FHA does not require owners of buildings built before March 13, 1991 to make or pay for renovations to meet accessibility standards, but does require them to allow a resident/homeowner to make handicap modifications, at that person's own expense.

### WHY THE FHA APPLIES TO HOMEOWNER ASSOCIATIONS

#### *The FHA prohibits:*

- Refusal to rent, sell or negotiate for housing;
- Unequal terms, conditions, services, or use of facilities in housing;

- Falsely denying that housing is available for rent or sale;
- Any other way of making housing unavailable;
- Unequal terms or rates for mortgages and appraisals;
- Harassment, threats or coercion in housing

Associations are considered a covered housing provider under the FHA and other Fair Housing laws because many of the above issues pertain to Associations. Associations provide services, they govern many rules and policies for use of the facilities within a community, they control architectural guidelines, and take on many other roles that place them under the FHA's coverage. There are a number of federal and state court cases addressing Fair Housing violations that people asserted against Associations.

### WHY UNDERSTANDING AND COMPLYING WITH THE FHA IS CRUCIAL

Why are these laws so important to understand? Nearly all Associations' board members and managing agents are responsible for complying with all Fair Housing laws. Associations' governing documents (Declarations, By-laws, Policies, etc.) do not supersede these Fair Housing laws. There is even a current bill before our legislature that passed the Colorado House of Representatives (HB 08-1135) which seeks to reference the FHA in the Colorado Common Ownership Interest Act. Associations are required to comply with the FHA in the same way as other organizations and individuals involved in housing.

The United States Department of Housing and Urban Development (HUD) enforces the FHA. Colorado also has a local agency that enforces the FHA and the state Fair Housing laws, known as the Colorado Civil Rights Division. (CCRD). Both HUD and CCDR are empowered to bring and investigate civil rights claims against various housing providers for violations of the Fair Housing laws. HUD has the luxury in Colorado of having the CCDR. The CCDR typically handles the bulk of Fair Housing complaints in Colorado. In the last two years, 40% of all Fair Housing cases that CCDR has investigated have been against Colorado Associations! Quite simply, this is a frightening trend. Often, CCDR names the Association's management company in the civil rights complaint.



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Contacts at CCRD tell us that the number of complaints against Associations may be on the rise. We believe this is due to a need for Associations to obtain Fair Housing education. HUD and CCRD have the power to issue fines if they determine a housing provider has violated a Fair Housing law. Both organizations also have the power to “charge the civil rights complaint,” which means they can represent the complaining party before a federal or state administrative



judge at an administrative hearing and seek damages pursuant to the Fair Housing laws. Thus, any housing provider that HUD or CCRD initiates a complaint against is at risk for fines and other types of damages.

Worse, anyone who brings

a Fair Housing claim also has the right to bring a lawsuit in federal or state court independent of the administrative action with HUD or CCRD. We have defended Fair Housing litigation where the complaining party brought an administrative action and a lawsuit at the same time. Many insurance policies do not provide coverage in defending these types of claims. Losing a Fair Housing case can be extremely costly and stressful. Clearly, it is as important for Associations and their managing agents to have the same Fair Housing knowledge as any other housing provider. Obtaining ongoing education and developing a good Fair Housing ethic is the best insurance policy.

***The types of discrimination allegations that are frequently made against Associations include:***

- Refusal to accommodate a person with a disability - including assistance animals;
- Providing different terms and conditions of ownership or tenancy;
- Discrimination against group homes;
- Refusal to allow a person with a disability reasonable modifications;
- Harassment or interference motivated by an owner's protected class.

### DISABILITIES AND ASSOCIATIONS

One protected class that is particularly troublesome for Associations is disability. Disabled owners and/or disabled tenants pose unique challenges to certain Associations. Disabled homeowners sometimes ask Associations for

approval to modify their home or property to better equip them to enjoy their home. A common example in a condominium complex is a homeowner who is wheelchair bound asks for ramps to better access certain areas. Associations who are not aware of the FHA sometimes mistakenly believe that a homeowner should not have moved into a particular community if the layout of the community is not suitable for her/his particular condition. However, the FHA does support such a mindset. The FHA allows disabled homeowners and residents to ask for structural changes to their units and the community that provide them an equal opportunity to use and enjoy their living environment. Imagine that you have become disabled (or maybe you are) and you need a wheelchair to maneuver. Is it a given that you will be able to get in and out of the places you need to? Are the places you want to go accessible? These are the issues disabled homeowners face in their communities.

Disabled individuals are also entitled to ask for accommodations to rules, policies, procedures, practices, and services of a community. A common example is for a disabled homeowner who drives a car to ask for a close-up reserved parking space. This is an accommodation request when the Association does not offer such close-up reserved spaces. Depending on the circumstances, a homeowner may be entitled to such an accommodation. Where the homeowner can demonstrate that he or she needs the close up reserved spot based on the disability and it is reasonable for the Association to grant the request, the homeowner is entitled to the reserved spot as an accommodation. This is a common scenario but often very tricky. We will discuss this issue and variations of this issue in great detail in future articles.



Unlike the 1980's political slogan for the war on drugs, “JUST SAY NO”, you never want to just say no in responding to a disabled homeowner's request for a modification or accommodation. According to HUD's head of enforcement, Bryan Greene, just saying “no” to a modification or accommodation request is risky business. In the last two years, 40% of all the Fair Housing cases HUD has initiated have involved disability related modification and accommodation issues. Responding to modification and accommodation requests involves a case-by-case analysis focusing on whether the person making the request meets the FHA's

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definition of a disability, whether the person needs the accommodation, and whether the request is reasonable. Answering each of these three questions can be complicated. Upcoming Fair Housing articles will discuss how to analyze and answer these three critical questions. An Association does not always have to grant an accommodation or a modification but a certain analysis has to take place before a decision is made.

### FUTURE TOPICS

Disability can be a very complicated aspect of Fair Housing and we will be addressing a wide variety of topics concerning accommodations and modifications in the future. Such articles will focus on the differences between modifications and accommodations, who has to bear the cost, how to properly respond to such requests, parking requests including requests that involve caregivers, restoration agreements for modifications, accessibility requirements, assistance animal requests and many, many more disability related subjects.

Retaliation is another growing area of Fair Housing law. Retaliation under the FHA involves a housing provider harassing, coercing or taking some type of adverse housing

action against a person because that person exercised his or her rights under the FHA. Adverse housing actions in the world of Associations can be a variety of things from denying an architectural request to imposing fines for viola-

tions of restrictive covenants. We look forward to providing detailed analysis of how Fair Housing retaliation works and how to avoid it or the appearance of it.

Another growing area of Fair Housing law that affects Associations is what is called hostile living environment. Believe it or not, Associations even have some responsibility to act on a situation where homeowners may be discriminating against other homeowners on the basis of some protected status. Discrimination still exists today and it is crucial for Associations to recognize it when it is visibly happening in the community. We will discuss this complicated issue and provide guidance on how Associations should react to this type of difficult situation.

We have only touched on the subjects addressed in this article in hopes of sparking some serious curiosity about the FHA. We are very excited about providing future articles on a wide range of Fair Housing topics. We desire to help

Associations not only avoid Fair Housing violations but embrace Fair Housing as a foundation for building a strong and balanced community.

If any Association or management company is

discuss the possibility of conducting such a class. In many cases, we provide our classes and materials free of charge. Our Firm knows that preventive law is king. We recognize that better educated clients are less likely to get into legal trouble. And, if they do run into a problem, they can be more successfully

in compliance with the law. Hopkins Tschetter Sulzer's HOA Department believes education is vital to keeping Colorado Homeowner Associations thriving.



## Come Visit Us In Booth Number 02 at the



### Date

Tuesday, April 22nd  
7:00 a.m. – 5:00 p.m.

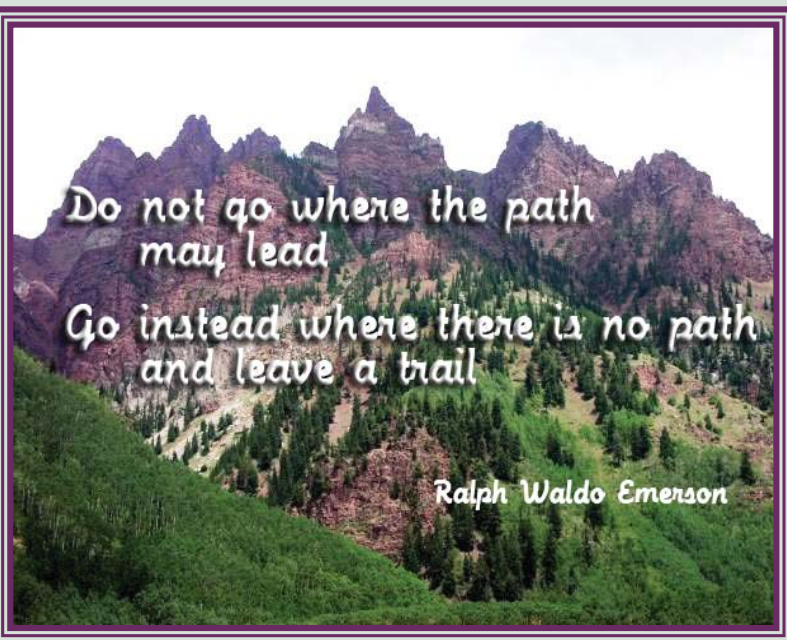
### Location

Holiday Inn (soon to be Crowne Plaza)  
Denver International Airport &  
John Q. Hammons Convention Center  
15500 East 40th Ave. (I-70 & Chambe  
Denver, CO 80239

# HOA COMMUNICATOR

## WES AND PETE TAKE TO THE AIR

On Sunday, March 30th, the Firm HOA Department Attorneys will be guests on a radio show dealing with HOA issues and questions. *"The HOA Connection"* is broadcast between 9 a.m. and 10 a.m. Tune in to 760 AM on the last Sunday of March to hear Wes and Pete address issues of importance to Homeowner Associations.



## CAI FAIR HOUSING WORKSHOP SCHEDULED FOR MARCH

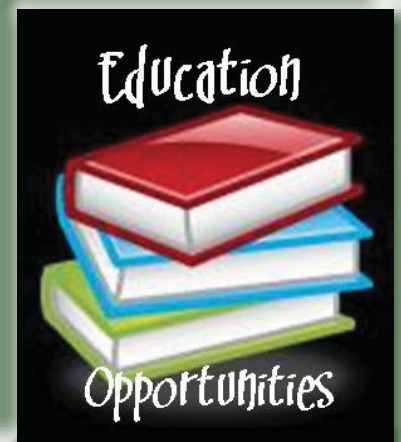
HTS attorney Wes Wollenweber will be the Instructor for the CAI "Fair Housing Workshop" scheduled for March 27th, 2008. The workshop is a "Lunch and Learn" event presented by the CAI. Wes regularly instructs housing providers, various groups and trade associations throughout the state on Fair Housing.

The workshop will provide Board Members and Community Managers with the reasons why federal and state Fair Housing Acts apply to Homeowner Associations and the essentials of complying with these Fair Housing Laws.

Topics included in the workshop include:

- Why and how federal and state Fair Housing Laws apply to Homeowner Associations
- Why Fair Housing Civil Rights Complaints are on the rise against Homeowner Associations
- How just "saying no" on disability related requests is a significant problem for Associations
- An overview of protected classes and Fair Housing issues unique to Associations

The class will be very interactive and will involve discussion of interesting real scenarios. Participants will come away from the class understanding how critical it is for Associations to know and understand Fair Housing Laws and to comply with the requirements of the Fair Housing Act and the consequences to an Association of not complying. Participants will receive 1.5 hours of Continuing Education Credit for this class.



**For more information  
contact the CAI 303-951-4973  
or to register online  
[www.hoa-colorado.org](http://www.hoa-colorado.org)**