

Play Nice in the Sandbox

By Robert N. Roop, P.E.,
Lockatong Engineering, Inc.



"Play nice" is not just for preschoolers. It is an instruction that adults are well advised to follow too. The consequences of failing to do so are emotional and financial pain, disruption of lifestyle and confrontation with neighbors and friends. The following case study reveals the origin of disputes, escalation, consequences and resolution.

Imagine a shore property, moderate size ownership, beautiful building, all modern amenities, luxury finishes and appliances. What could be better — seasonal relaxation and recreation, a getaway from the stress of work and

career? At least for half of the owners that was the purpose of condo living. Other owners had an additional motivation. They were investors. Enjoy the beach, sure, but equally important was securing a return on their investment through high season rental income.

Explore the objectives of each group. One wanted care-free vacation living, appreciation of the value of their investment over time and retention of the quality and appearance of the building. The investors had shorter term objectives. While they certainly appreciated the benefits of a vacation home, they wanted that rental income.

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The dispute arose out of the need to fund increasingly higher costs for building upkeep. While the building was only eight years old, it had been constructed during the mid-2000's building boom. Skilled tradesmen were in short supply, supervision was inexperienced, construction schedules were rushed, and new materials of construction hadn't established successful track records. Many buildings were constructed to show lots of sizzle. The steak was chuck.

This building had issues: windows and doors leaked, water entered light fixtures, metal roofs leaked, water ponded on balconies, siding was stained and algae covered from poor water management and exterior stucco surfaces were dented. The dispute arose when the question became, "How do we fix the building?" One side wanted a comprehensive repair: "fix it so we don't have to worry about this again." The others said,

"Oh no, we can take care of this with a few repairs and maintenance of what we have. No need for a professional assessment of how to correct this." Of course, it came down to money.

The dispute simmered for several years. Control of the board changed frequently from one side to the other. Whoever was in charge was the target of constant sniping from the other side. Both sides engaged consultants to conclude their



approach for the building was the correct one. Nothing was resolved and the building continued to deteriorate. To make matters worse, during a particularly cold winter, an improperly installed sprinkler pipe over a residential unit froze and flooded that unit and several below it. The damage was extensive and costs for repair, even after insurance, were high. Everyone was upset and then the simmer boiled over.

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Lawsuits started flying at the board for mismanagement and back at owners for harassment.

When the plaintiffs and defendants appeared before a judge in New

Jersey court, the judge effectively told them "you haven't played nice so now you're going to a time out chair, all of you." He appointed a receiver to take control of the association's finances, and overall management. The board was disbanded. The receiver appointed a property manager to take care

of day-to-day issues at the property and an engineer to determine what needed to be done to maintain the building and correct the deficiencies in construction.

The engineer discovered there were widespread construction defects in the building. Most significantly, the synthetic stucco cladding on the entire building had been installed as a barrier system and not a drainage plane system as the building code requires. Defects in the cladding were allowing water entry throughout the building. Installation of windows and doors had been improperly performed, flashing was missing or incomplete, metal parapet caps at balcony walls were leaking, balcony railing posts were allowing water entry, roof scuppers were improperly constructed, non sloped balconies allowed water ponding. In other words, the building was a mess. A full specification with set of plans was prepared for competitive bidding by several contractors.

At the direction of the receiver, an assessment to the owners was prepared so construction could be scheduled to begin. The project proceeded in two stages. The east and north sides with the most complex repairs were begun in the fall and completed by December when cold weather prevented further construction. The project resumed in the spring and was completed just prior to the vacation season. Damage to stucco was so extensive the entire building was stripped down to the metal studs. Structural damage from corrosion occurred in framing and needed to be repaired. Though construction

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proceeded through the off-season, there was still disruption. Owners who chose to celebrate holidays in the building had to navigate through a construction site. Parking under the building was not available — it was filled with construction material.

In addition to the cost of the construction project, owners were burdened by the cost of the receiver, property manager and engineer. The receiver periodically reported to the judge on progress of the project.

Finally, construction was successfully completed and owners could return to enjoy their vacation oasis. The sobering experience of a six figure assessment was fresh in their minds. The receiver successfully completed repairs that had been the original source of the conflict. New elections were held and a board ready for compromise was elected.

What can we learn from this case?

- Different owners have different motivations for owning a condominium and those differences need to be recognized.
- A professional property manager, skilled in dispute resolution can often guide an association through a contentious issue.
- Consequences of not resolving disputes within the community are extremely costly and time consuming.
- In the case of the building upkeep issues, delay in fixing the problem will result in additional deterioration and increased cost of repair.

Play nice. ■