



By Michael L. Zupan, ESQ.

Mike is counsel with MercerTrigiani and a member of the Quorum Editorial Committee. He previously served on the Education Committee for Washington Metro Chapter Community Associations Institute.

BARRING NOTICE WHAT IS IT?

How can it help a Common Interest Community Association?

Common interest community associations can be called upon to address concerns about the conduct of visitors in the community. In the current atmosphere, unusual or suspect conduct may necessitate action by the association and management. Personal conduct matters are never easy - circumstances vary broadly and the association must carefully consider alternatives.

When conduct creates concerns about personal safety, the first and always best approach is to contact law enforcement. But associations or individual owners may find it necessary to take additional action to address conduct that creates concern from the community.

The Barring Notice

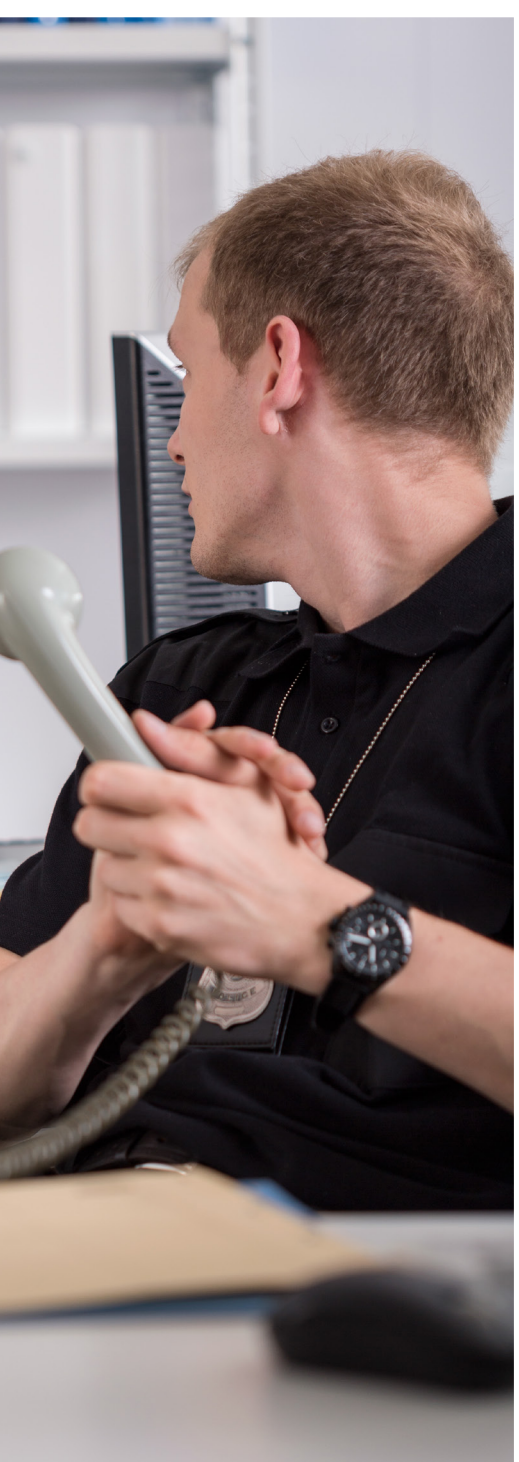
Owners of private, real property are entitled to decide who is permitted to enter onto the property they own, or over which they have control - like a community association. If a person comes onto private property and acts in a manner contrary to the wishes of the owner, the owner may prohibit or bar that

individual from returning. A *Barring Notice*, also known as a Banning Notice or a Trespass Notice, is a document that informs the recipient that he or she is prohibited from entering onto the owner's property and that the recipient may be arrested if he or she ignores the notice and returns to the property. The Barring Notice is issued by the property owner (or the person having control over the property - an association) and enforced by the police.

Barring Notices (Notice) are recognized in Maryland, Virginia, and in the District of Columbia. Most local jurisdictions have a standard form that may be used by the property owner to start the process. Accordingly, the local police should be consulted if a Notice is being considered. The process may vary slightly from jurisdiction to jurisdiction, but is essentially as follows:

- Contact the local police and obtain a copy of the preferred Notice form.
- Complete the Notice and deliver it to the offending individual (in some jurisdictions, a witness is required to verify delivery).





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- Submit a copy of the Notice to the police with evidence that the Notice was delivered to the offender. (Be sure that the information regarding the Notice and the individual barred from the premises is submitted to the police in accordance with local procedures.)
- If the offender returns to the property after receiving a copy of the Notice, the police may be called.
- If found on the property, the offender may be arrested and prosecuted for trespass.

Use by a Common Interest Community Association

Common interest community associations are frequently called upon to address offensive behavior that occurs on the common property, whether it be the common area in a homeowners association or common elements in a condominium. This common property is private property. The association, as the title holder to the common area in a homeowners association or under a power

of attorney in a condominium, has the authority and obligation in some instances to address misconduct that occurs on the common property.

A Notice gives the association a useful tool to help address safety, security, and enjoyment of the common area and common elements. Simply issuing a Notice, with the possibility of arrest, and delivering it to the offender may be sufficient to convince the offender to stay away from the property. If not, the it provides the basis for the police to act quickly to remove the individual from the common property or common elements. (Having a copy of the Notice readily available when the police are called may assist the police in making the arrest.)


Because a Notice is enforced by the police, and involves recourse to the criminal justice system, it should not be issued casually. Conduct leading to a Notice should be significant, i.e., conduct that violates association rules or covenants, or local, state, or federal law. Vagrancy, panhandling, assault,

battery, destruction of property, or other conduct constituting, or likely to result in, a breach of the peace may justify a Barring Notice. Although issuance of a Notice frequently follows repeated offensive behavior, if the behavior is sufficiently egregious, the association may ban the individual from returning to the community after only one incident. Once the arrest is made, the association must be prepared to assist local authorities as the case works through the legal process, including testifying in court. Otherwise, the case may be dismissed and the benefit of the Barring Notice lost.

This Notice is not a cure-all for the association; it will only apply to guests and invitees. Owners and authorized tenants have a right to be on community property. A Notice cannot take away their rights. The association must look to the governing documents, condominium instruments, or criminal laws to address offensive behavior of owners and tenants. Guests and invitees have no such rights. They may be barred from the common area or common elements if behavior warrants.

There are also practical considerations. Delivering a Notice to the offending individual may be difficult or even dangerous. The association may prefer that someone outside of the association undertake this obligation. (The police, although willing to enforce a Barring Notice once delivered to the offender, generally do not serve legal papers and may not be willing to deliver the Barring Notice to the offender initially.) A private process server may be an alternative.

Also, if the offender is not on association property when the police arrive, immediate arrest is unlikely, and getting the police to the site before the offender leaves can prove challenging, especially in nonemergency situations. Participation in the legal process after the arrest can be time consuming.

However, when confronted with offensive behavior by an individual who has no right to be on association property, a Notice may provide the viable option to restore peace and security to the association and its residents. 



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