

FMG Successfully Utilizing Anti-SLAPP Laws to Obtain Dismissals in HOA Cases Nationwide

By: Martin S. Schexnayder and Anne Carrie Swoope

FMG attorneys across the country have successfully utilized Anti-SLAPP statutes in their respective states to obtain dismissals of lawsuits against Homeowners Associations and their individual board members. Anti-SLAPP (Strategic Lawsuit Against Public Participation) statutes are designed to protect individuals and entities from lawsuits that aim to silence free speech or discourage public participation in community matters. These laws are particularly relevant for Homeowners Associations (HOAs), where residents often engage in discussions about community standards, governance, and policies.

The Applicability of Anti-SLAPP Statutes to Suits Against HOA Board Members

Homeowners Associations (HOAs) are established to manage and regulate community living, but their board members often find themselves in contentious situations with residents. As community leaders, HOA board members make decisions that can be met with disagreement or even hostility. When these disputes escalate into lawsuits, the legal landscape can become complex, particularly when it comes to the application of anti-SLAPP (Strategic Lawsuit Against Public Participation) statutes.

Understanding Anti-SLAPP Statutes

Anti-SLAPP statutes are designed to protect individuals from lawsuits that are intended to silence or intimidate them for exercising their rights to free speech and participation in public discourse. These laws vary by state but generally provide a mechanism for defendants to quickly dismiss cases that are deemed to infringe upon their First Amendment rights.

Applicability to HOA Board Members

- 1. Engagement in Free Speech:** HOA board members often engage in discussions and decision-making processes that are inherently related to the governance of the community. This includes public meetings, newsletters, and other forms of communication. If a disgruntled homeowner files a lawsuit against a board member for statements made during these activities, anti-SLAPP statutes may provide a defense against such claims.
- 2. Protecting Community Governance:** The application of anti-SLAPP laws to HOA board members serves to protect the broader principle of community governance. Board members need the freedom to make decisions without fear of litigation that could stifle their ability to serve the community effectively.



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3. **Legal Precedents:** There have been instances where courts have recognized the applicability of anti-SLAPP statutes in HOA-related disputes. These cases often revolve around the interpretation of what constitutes protected speech and whether the actions taken by board members fall within the scope of public participation.
4. **Litigation Costs:** The financial burden of litigation can be significant for board members. By utilizing anti-SLAPP statutes, board members can potentially recover attorney fees if they successfully demonstrate that the lawsuit is an attempt to suppress their free speech rights.

Some examples of cases in which FMG attorneys have utilized anti-SLAPP statutes to obtain dismissals of cases against HOAs include the following:

California

FMG attorneys [Christopher Weber](#) and [Sydney Preston](#) obtained judgment on behalf of an HOA and its property manager under California's Anti-SLAPP statute.

Plaintiffs, owners within the association, brought claims for breach of contract, defamation, slander, punitive damages, and attorneys' fees, arising from restraining order proceedings undertaken by the HOA in a related matter. The trial court granted judgment under the anti-SLAPP statute. The court found that the HOA's actions went to the heart of the right to petition the government to redress grievances and was a protected activity. The court found that plaintiffs failed to establish an exception to the litigation privilege and granted judgment in favor of the HOA. In addition, the court awarded of attorney's fees in favor of the HOA and against plaintiffs.

Texas

FMG attorneys [Martin Schexnayder](#) and [Anne Carrie Swoope](#) obtained a partial judgment on behalf of an HOA and its individual Board members under the Texas's Anti-SLAPP statute.

Plaintiff, an owner within the association and active Board member, brought five claims for declaratory relief against the HOA and every individual Board member. All five claims related to the Board's management of dredging the subdivision's lake. A necessary function for most lakes in Texas. FMG challenged all five claims under the Texas's Anti-SLAPP statute as protected conduct under the right of association.

The court granted in favor of the HOA and individual Board members for three of the five claims.



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When It Counts

In addition, the court awarded attorney's fees in favor the HOA and individual Board members.

Further, FMG attorneys Martin Schexnayder and Anne Carrie Swoope obtained a judgment on behalf of an HOA's property manager under the Texas's Anti-SLAPP statute.

The HOA's former management company, a defendant in a matter brought by the HOA, filed a Third-Party Petition against the HOA's current property manager. The former management company filed a single claim against the current property manager, alleging a violation of the Texas Uniform Trade Secret Act. The allegation stemmed from a single electronic correspondence sent by the new property manager during a major hurricane. The electronic correspondence contained information regarding hurricane preparedness and had been previously sent to the HOA members by the Third-Party Plaintiff.

FMG challenged the single claim under the Texas's Anti-SLAPP statute; arguing the electronic correspondence was protected speech. The court granted judgment in favor of the HOA's current property manager. FMG is currently in the process of obtaining favorable attorney's fees.

Georgia

FMG attorneys [Nicolas Bohorquez](#) and [Ali Sabzevari](#) prevailed on an appeal of a Fulton County State Court decision denying a motion to strike a lawsuit against a HOA under Georgia's Anti-SLAPP statute.

A nightclub and its owner brought a suit against an HOA for its public opposition to the nightclub's application to construct an outdoor deck alongside a new segment of the Atlanta BeltLine. The suit also named a former board member of the association who reported noise complaints against the nightclub to the police.

The nightclub filed suit for breach of contract, tortious interference, unjust enrichment, intentional infliction of emotional distress, punitive damages, and attorneys' fees. The trial court denied the motion to strike the complaint under the anti-SLAPP statute; however, on appeal, the Georgia Court of Appeals reversed finding that the nightclub's complaint constituted an impermissible SLAPP against the First Amendment rights of the association. On remand, FMG was successful in obtaining an award of attorney's fees on behalf of the association under Georgia's Anti-SLAPP statute.



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Conclusion

As the relationship between homeowners and their associations becomes increasingly litigious, understanding the role of anti-SLAPP statutes is crucial for HOA board members. These laws not only help protect their rights but also ensure that community governance remains robust and responsive to the needs of all residents. By safeguarding the ability of board members to engage in free speech, anti-SLAPP statutes play a vital role in maintaining the integrity of homeowner associations.

Authors



Martin S. Schexnayder

Partner

Houston, TX

346.236.1050

marty.schexnayder@fmglaw.com



Anne Carrie Swoope

Associate

Houston, TX

346.440.0452

anne.swoope@fmglaw.com

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