

# DAVID HARTWELL

## Resolving, Rather Than Prolonging, Community Association Disputes

by Dan Rafter

When Eileen Andersen calls David C. Hartwell, founding partner of Chicago law firm Penland & Hartwell, she knows Hartwell will pick up the phone, despite his busy schedule.

As Andersen says, “When you call David, you get David.”

For Andersen, property manager with the Park Newberry Condominium Association in Chicago, this is important. It shows just how dedicated Hartwell is to his client, even though he is one of the busiest community association law attorneys in the Chicago area.

“We all know how busy David is,” Andersen says. “We all know what caller ID is. David doesn’t have to pick up the phone. But he does. To me, that speaks volumes about how much he cares about his clients.”

Such praise isn’t unusual for Hartwell’s clients. Hartwell has worked as an attorney for more than 18 years. And during this time, he has earned a reputation for not only his legal skills—which his clients agree are vast and deep—but for the way he treats his clients and fellow attorneys.

Hartwell serves condominium associations, homeowner associations, and cooperatives across Chicago and its surrounding suburbs. Knowing he can help board members and residents run their associations smoothly ranks as a top reward, he says.

“I certainly enjoy helping clients resolve their problems in the most efficient way,” Hartwell says. “Efficiency could mean time. It could mean money. It could mean getting the preferred outcome.”

For Hartwell, brokering solutions for his clients is his priority, as it should be for all attorneys. Finding those solutions, though, takes plenty of skill. As Hartwell says, it’s about assessing which party has the control, influence or capability to do something the other party cannot.

Once attorneys determine this, it becomes easier for them to craft the solution that works best for their clients. And if their clients are the ones who are on the wrong end of the power dynamic? Then it’s time for attorneys to become creative to offer their clients the best possible solution and protection.



### ASSOCIATION LAW POWER DYNAMICS

“In every dispute, one party has a greater power dynamic than the other,” Hartwell says. “Assessing that is the key to determining how to ultimately resolve an issue. Sometimes, you are lucky enough that your client has the power. Sometimes, your client doesn’t. Without properly assessing that you can’t come up with a reasonable and efficient game plan to get the best resolution.”

How do power dynamics work in community association law? The governing documents of the association and the Illinois Condominium Property Act usually spell out the respective rights and responsibilities, Hartwell says, and thus provide the roadmap for resolution. But this isn’t always the case.

“When something comes up, either the

lawyer knows or should know whether those governances support the board’s position or ultimately do not support it,” Hartwell says.

“Sometimes, it is not a clear line. Over the years, opposing counsel have come up with very creative, very appealing arguments, even if I might disagree with whether they are consistent with what the governing law says.”

Hartwell’s approach—assessing where the power lies and then working the case accordingly—has won him a steady stream of association clients. It’s also allowed him to build what today is a thriving business in which he represents clients on everything from corporate governance issues to covenant violations, collection issues, discrimination claims and construction defect disputes.

“In association law, you deal with

everything,” Hartwell says. “It’s a very wide array of issues and matters, requiring an expansive knowledge of numerous laws and principles. That is stimulating as a lawyer. You are not just retracing the same issues and area of law over and over again. It never ceases to amaze me the new issues that pop up each week. Situations and circumstances I never would have thought of have now become an issue for a condo association. That is what has made this field so interesting for me.”

A good example? Hartwell once worked on a religious discrimination case in which he represented the board of directors of an association in Rogers Park. The owners of a unit in the condominium building wanted to affix a Mezuzah (a casing that holds two prayers from the Biblical book of Deuteronomy) to their outside door jamb.

The condo rules stated that owners could not hang, store or attach anything in the common-area hallways, a rule that included even children’s artwork, shoes, decorations or other personal items. The Jewish family living in the unit, though, argued that the prayer display was a key element of their faith and that their faith required them to display it.

The association, represented by Hartwell, initially won the case at the trial court level and in front of the Seventh Circuit Court of Appeals. The plaintiffs, though, sought further review from the court of appeals and were granted it. In the second go-round, after six years of an ongoing dispute, the plaintiffs eventually prevailed in their case, with an *en banc* panel of the Seventh Circuit Court overturning the previous rulings.

#### EVEN-KEELED REPRESENTATION

Even though the ultimate result didn’t favor the association board, Hartwell knows he and his legal team provided the best representation possible, as evidenced by the initial trial court and appeals court victories.

“That was a phenomenally interesting case,” Hartwell says. “I had never been in such an emotionally charged case. It was as close as I have been to the steps of the U.S. Supreme Court.”

Despite his success in community association law, Hartwell didn’t start in this field. After earning his bachelor’s degree from Lake Forest College, Hartwell went into the world of business, working for Prudential. As part of this job, Hartwell dealt with the funding of trust agreements, working both in the Chicago area and in London. He worked with a lawyer while doing so. That attorney impressed Hartwell.

“She eventually became a good friend of mine, and I was very impressed with how much

knowledge she had, how people gravitated to that,” Hartwell says. “I liked the work I was doing. But I wasn’t all that satisfied with it.”

Hartwell decided to make a change, so he enrolled in law school. It’s a decision he has never regretted. As he explains it, law fits him well.

And association law has turned out to be the best fit of all, Hartwell says.

“You have to be even-keeled to succeed in law,” Hartwell says. “You have to be willing to work with a lot of different parties.

“If you are representing an association, you have to work within the dynamic of a multi-person board. The members might not all be in agreement with each other. You have to work and liaise with everyone. You have to be able to work as an intermediary with the unit owners in a building. You need to do all of this to succeed in this field.”

To succeed, association lawyers must also keep up with the many changes in this field. Association law is constantly evolving, Hartwell says. Those attorneys who don’t keep up with these changes will be left behind, he says.

“He is very good at helping us deal with not only the letter of the law but also creative ways to deal with any issues that are being raised.”

“Association law is dynamic, and it is ever-changing,” he says. “We have many more appellate court rulings than we once had. There is a lot of new pending legislation that we didn’t necessarily have in the past.

“The property management firms that managed associations were typically small, local firms. That is not true today. Now, they are being bought out by larger, national firms. That is changing how business happens. You have to be willing to change with the times.”

Charlie Calcaterra, board president of a co-op in Chicago’s Gold Coast neighborhood, has worked with Hartwell for more than six years. He appreciates Hartwell’s efforts to keep his co-op out of legal trouble. He also values his attorney’s ability to understand just how important the decisions made by a board can be to the residents of a condo or co-op.

#### AVOIDING EXTENDED FIGHTS

“I generally don’t like lawyers,” Calcaterra says. “But I don’t consider David to be a lawyer when I think about him. My perception of lawyers is that they always want to get into fights, and they always want to extend those fights.

“That’s where David is different. He

understands that his relationship with a condo or co-op board is directly impacting people’s lives. The advice he gives, the counsel he provides, impacts their lives. He holds that in great regard and respects that.”

Andersen gives a good example. Her condo association was planning to amend a parking declaration. Andersen discovered that the board could make this amendment on its own, without consulting the owners. That, she says, would have been the easy route.

But Hartwell gave Andersen different advice. He recommended that the board put the amendment up for a vote among the unit owners, even though they weren’t required to.

“He told me that if we wanted credibility we should put it to ownership,” Andersen says. “Let them vote on it.”

The condo building had an 80 percent turnout and approved the amendment. Just as importantly, the board members earned the trust of the condo building’s residents.

Marian Wexler, board president of the Mayfair Condominium Association in Chicago’s Gold Coast neighborhood, knows attorneys. She’s a retired lawyer herself. So, when she says Hartwell’s legal and people skills set him apart, she knows of what she speaks.

And Wexler says this: Hartwell represents her condo’s association and has done so with great skill.

“In an association, you are dealing with your neighbors. So, you want to avoid litigation at all costs. David works toward that goal,” Wexler says.

“He comes up with creative solutions. He is very good at helping us deal with not only the letter of the law but also creative ways to deal with any issues that are being raised. He’s very knowledgeable, and he’s very creative. He’s been a great help to our board.”

Hartwell says he appreciates the responsibility that comes with representing boards. His goal is to make sure the associations he represents are acting lawfully. His job, then, is to work to resolve problems as quickly, fairly and efficiently as possible.

This often requires explaining to a unit owner or opposing party exactly why a condo or co-op board is taking certain steps.

“As a lawyer, you want to maintain harmony,” Hartwell says. “Once you properly explain to a unit owner or an opposing party why the dynamic is the way it is, they might not like it, but at least they should no longer be objecting to the analysis.

“A lot of lawyers don’t do that. Continuing a dispute is sort of a self-fulfilling prophecy for some. The really good ones out there, the ones I have respect for, don’t want to perpetuate the acrimony of the matter. A true counselor seeks a resolution.” ■