

# Common Interest

The Official Publication of CAI-Connecticut

Vol. IX: Issue 6 • 2014

*Inside:*

**The New & Improved  
CAICT.ORG**

**BANKRUPTCY  
BASICS**

**WINDOW  
PAINS**

**RESERVE  
STUDIES**  
Pros & Cons

**...and more!**



**6th Annual Night of Fall Fun**



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We are happy to welcome Kim Kurdziel  
to our condominium department!

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|---|--|

**Who Is CAI?**

The Connecticut Chapter is one of 59 Community Associations Institute chapters in the nation. CAI-CT serves the educational, business, and networking needs of community associations throughout Connecticut. Our members include community association volunteer leaders, professional managers, community management firms, and other professionals and companies that provide products and services to associations. The Connecticut Chapter has over 800 members including nearly 150 businesses, and over 450 community associations representing 50,000 homeowners.



The materials contained in this publication are designed to provide accurate, timely and authoritative information with regard to the subject matter covered. The opinions reflected herein are the opinion of the author and not necessarily that of CAI. Acceptance of an advertisement in *Common Interest* does not constitute approval or endorsement of the product or service by CAI. CAI-Connecticut reserves the right to reject or edit any advertisements, articles, or items appearing in this publication.



To submit an article for publication in *Common Interest* contact Kim McClain at (860) 633-5692 or e-mail: caictkmcclain@sbcglobal.net

**President's** *Message*



**Richard Bouvier**

*"I look forward to seeing many of you at our upcoming events."*

As the days get shorter and the nights get colder, a new season is upon us. This colder weather should serve as a polite reminder to associations that winter is right around the corner. It is now time to prepare and do your best to prevent cold weather damage to your communities.

CAI-CT is ready to guide our membership into the winter with our schedule of events in the upcoming months. From education based ABCs sessions to property manager training and social events, CAI-CT offers its members many options to become involved and trade stories with other condominium oriented volunteer leaders and professionals. Be certain to review the "upcoming events" section of *Common Interest* to see events scheduled in the near future.

I would also like to urge our members to spread the word with other associations and industry professionals. We always need help to grow our chapter and to inform the Connecticut condominium community of the ever changing legal details of the Common Interest Ownership Act (CIOA).

Back on August 7th, CAI-CT hosted the "Summer Sizzler" social event in East Haven overlooking the water at Amaranthee's Sea Cliff. This was a very well-attended event. There were many familiar faces present, but there were many new faces too. It was nice to see the CAI "Veterans" taking the time to introduce themselves to the first-timers while sharing association stories.

Thursday October 23rd is a busy day for CAI-CT. We have the Legal Symposium the first part of the day and later that evening will be the Sixth Annual Night of Fall Fun. From education to a magic act, October 23rd will be a great time had by all who attend.

I look forward to seeing many of you at our upcoming events. Also, please let us know if you would like to volunteer and help out. Without our dedicated team of volunteers, CAI-CT would be hard pressed to bring you such high quality programs.

**Richard Bouvier**  
*Bouvier Insurance*  
 2014 CAI-Connecticut President

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## From the Chapter Executive Director

**"By failing to prepare, you are preparing to fail."**

– Benjamin Franklin



Kim McClain

Courtesy CAI-CT.

Once again, Ben Franklin provides wise words which we can ponder. As most community associations are incorporated, it is imperative that they look ahead to be ready for inevitable challenges which include major capital improvements, especially in many of our associations which are 20 years or older. Businesses must always have a plan for handling both predictable as well as unpredictable events. How well has your association planned for the future?

Many articles in this issue are focused on the issue of reserves and capital improvement planning and why it is necessary for the long term health and well being of associations. You will find lots of great information and ideas about handling this very important task.

Our dedicated volunteers and staff have created an abundance of programs for you this Fall. Be sure to check out our upcoming events page in this issue. You can always find more information and registration on our website: [www.caict.org](http://www.caict.org). ■

## SAVE THE DATE...



## March 14, 2015

The Aqua Turf  
Plantsville, CT



The strength of CAI-CT rests in the people who make up its membership. New members are always welcome.

CAI-CT believes that the primary benefit to being a member lies in the knowledge that your membership helps CAI-CT to continue its long history of effective education and advocacy.

Visit [www.caict.org](http://www.caict.org) to learn more about membership.



## UPCOMING CAI-CT EVENTS 2014

### OCTOBER

#### M-206 - Financial Management

October 16-17, 2014

Norwich, CT

Members \$445, Non-Members \$545

Learn how to best manage your association's money. This course gives you the tools to understand and apply the principles of financial management to your community association. You'll learn the entire budget process, from identifying line items to reconciling accounts to gaining board approval. You'll also learn how to analyze and report on association finances.

#### Legal & Legislative Symposium

Thursday, October 23, 2014

1:30 - 5:30 pm

Oronoque Village, 600 North Trail, Stratford, CT

Members \$50, Non-Members \$75

Our panel of legal experts will cover topics such as: New Legislation, Contracts, Smoking, Capital Loans, Records Inspection, Casualty Damage and so much more.

*(All proceeds to benefit legislative advocacy for Connecticut Community Associations).*



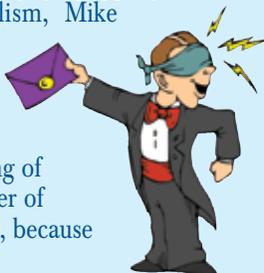
#### Sixth Annual Fall Fun

Thursday, October 23, 2014

Oronoque Country Club, 385 Oronoque Lane, Stratford, CT

New Mind-blowing Entertainer! Combining eye-popping magic and mind-blowing mentalism, Mike

Kirshner is always a huge hit at affairs, whether performing for the rich and famous like clients Kid Rock, Whoopi Goldberg, Mayor Bloomberg...or good Old Uncle Bob. You are in for an evening of suspense, wonder, and fun with this master of strolling entertainment...look out for him, because you'll never forget him!



### 2015

#### Managers' Council Lunch - Insurance

February 5, 2015

11:30 am - 1:30 pm

JP Maguire Associates, Inc., 266 Brookside Road, Waterbury, CT

Members \$20, Non-Members \$40

Approved for 2 points for CMCA continuing education

Speaker: Rob Bouvier, Bouvier Insurance

Understanding different policies and what they offer.



#### Conference & Expo

March 14, 2015

The Aqua Turf, Plantsville, CT

Booths Available: Members \$825, Non-Members \$950

#### CAI-CT 16th Annual Golf Tournament

June 8, 2015

Oronoque Country Club

10:00am-6:00pm



For updated event information and registration visit

[www.caict.org](http://www.caict.org)

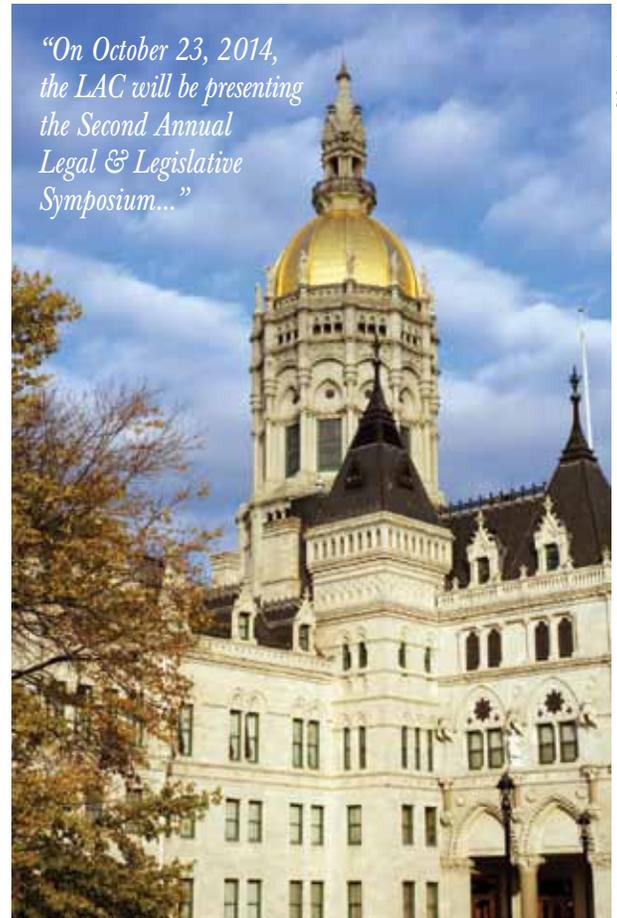
## Legislative Update

The LAC has been working on issues that we hope to address during the 2015 Legislative session. They include: aligning the special assessment/loan process to be like the budget ratification process now in place; advancing the special masters program; and a proposal for allowing for board approvals in between meetings when unanimous consent is not possible due to extenuating circumstances. At this point, we do not foresee any other major issues on the horizon, but that could change quickly once the session begins.

The Government & Public Affairs (G&PA) department of National CAI has been holding conference calls which include LAC volunteers and staff from throughout the country. These calls provide an opportunity for the exchange of ideas and information about issues around the country. We also discuss strategies for how to reach legislators. G&PA has recently developed some excellent tools which can be found at [www.caionline.org](http://www.caionline.org).

On October 23, 2014, the LAC will be presenting the Second Annual Legal & Legislative Symposium which will include the Annual Legislative Award. The symposium will offer a variety of topics which will include: D&O insurance, implementing smoke free policies, being sued by owners, the importance of contract review, records inspections policy and practice, dealing with difficult residents and financing capital projects. We will also have an overview of current legislative issues and trends.

In addition to gaining more information and insights about key legal issues facing community associations there will be opportunities to connect with your peers and professionals in our organization. And, you will also be helping to support our legislative efforts throughout the year. Please be sure to register as soon as possible. We were sold out two weeks before the event last year! Plan to join us on October 23, 2014. ■



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### SAVE THE DATE

## CAI-CT'S 2ND ANNUAL LEGAL & LEGISLATIVE SYMPOSIUM

Proceeds to benefit legislative advocacy.



**Date:** Thursday, October 23, 2014

**Time:** 1:00 - 5:30 pm

**Place:** Oronoque Village Clubhouse, Stratford, CT

**\$50 CAI-CT members; \$75 Non-members**

Our panel of legal experts will cover topics such as: Insurance, Dealing with Problem Residents, Contracts – What You Should Know, Implementing Smoke-Free Policies, and more!

### BRING YOUR QUESTIONS!

This will be a great opportunity to ask our legal professionals your pressing questions about association operations.



CONNECTICUT CHAPTER  
**community**  
ASSOCIATIONS INSTITUTE

**Seating will be limited.  
Register today at  
[www.caict.org](http://www.caict.org)**

## NEW & RENEWING MEMBERS

### Welcome — New Members

#### Associations

Cheshire Crossing II Homeowner's Assn., Inc.  
 Fairfield House  
 Laurel Glen Condominium  
 Laurel Ridge  
 Quail Run Village

#### Management Companies

DeShamp Property Management  
 Harborview Realty Services, LLC

### Thank you — Renewing Members

#### Associations

Cartright Condominium Association  
 Cold Spring Village  
 Crown Ridge Condominiums Association, Inc.  
 Crown Village Condominium Association  
 Elm Meadows Condominium  
 Essex Village Condominium Association  
 F.W. Owners Association, Inc.  
 Far Mill River Condominium Association  
 Fernwood Estates Association  
 Georgetown Woods Association  
 The Greens at Gillette Ridge  
 Hammock Point Assn., Inc.  
 Hathway Farms  
 Mountain Commons Condominium  
 North Farms Condominium Association, Inc.  
 Oxford Fells HOA  
 Pine Meadow at the Canal Condominium Association  
 Pinewood Estates Association, Inc.

Silver Ridge Owners Association  
 Spring Lake Condominium # 8 Association, Inc.  
 St. John's Common Condominium  
 Sterling Woods Master Association  
 Taft Pointe Association, Inc.  
 Turtle Bay  
 Westleigh of Litchfield Condo Association  
 Wyndemere Association, Inc.

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**NOT A MEMBER?**  
**Sign up here...**

or visit [www.caict.org](http://www.caict.org) for details!

## CAI MEMBERSHIP APPLICATION

CAI, P.O. Box 34793, Alexandria, VA 22334-0793  
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### MEMBERSHIP CONTACT:

(Where membership materials will be sent)

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Title: \_\_\_\_\_

Association/Co.: \_\_\_\_\_

Address: \_\_\_\_\_

City/State/Zip: \_\_\_\_\_

Phone (W): \_\_\_\_\_ (H): \_\_\_\_\_

Fax: \_\_\_\_\_

E-Mail: \_\_\_\_\_

Select your Chapter: CONNECTICUT

Recruiter Name/Co. Name: \_\_\_\_\_

### TOTAL MEMBERSHIP DUES\*

#### Community Association Leaders & Homeowners

- Individual Board Member or Homeowner \$114
- 2 Member Board \$200
- 3 Member Board \$275
- 4 Member Board \$345
- 5 Member Board \$395
- 6 Member Board \$445
- 7 Member Board \$500

For 2-3 Member Board application please indicate below who should also receive membership materials. Please contact customer care at (888) 224-4321 for Board memberships exceeding 3.

Name: \_\_\_\_\_

Address: \_\_\_\_\_

City/State/Zip: \_\_\_\_\_

Phone (W): \_\_\_\_\_ (H): \_\_\_\_\_

E-Mail: \_\_\_\_\_

Name: \_\_\_\_\_

Address: \_\_\_\_\_

City/State/Zip: \_\_\_\_\_

Phone (W): \_\_\_\_\_ (H): \_\_\_\_\_

E-Mail: \_\_\_\_\_

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**Management Companies \$400**

**Business Partners \$555**

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- Builder/Developer  Insurance Provider
- Lender  Real Estate Agent

Supplier (landscaping, etc.)  
 Please specify \_\_\_\_\_

Technology Partner  
 Please specify \_\_\_\_\_

Other - Please specify \_\_\_\_\_

Total Membership Dues above include \$15 Advocacy Support Fee

### PAYMENT METHOD

Check Enclosed  VISA  MasterCard  AMEX

Account #: \_\_\_\_\_ Exp. Date \_\_\_\_\_

Name on Card: \_\_\_\_\_

Signature: \_\_\_\_\_

Important Tax Information: Under the provisions of section 1070(a) of the Revenue Act passed by Congress in 12/87, please note the following. Contributions or gifts to CAI are not tax-deductible as charitable contributions for federal income tax purposes. However, they may be deductible as ordinary and necessary business expenses subject to restrictions imposed as a result of association lobbying activities. CAI estimates that the non-deductible portion of your dues is 2%. For specific guidelines concerning your particular tax situation, consult a tax professional. CAI's Federal ID number is 23-7392984. \$39 of annual membership dues is for your non-refundable subscription to *Common Ground*.

## The New and Improved [CAICT.ORG](http://caict.org)

What's NEW at <http://caict.org>, our local chapter website? In a word, EVERYTHING!



©iStockphoto.com. Screen shot courtesy CAICT.

We hope that you are a regular user of the local chapter website at <http://caict.org>. We've always worked hard to keep a wealth of useful information at your fingertips. Users have responded well to our content and have made a few suggestions as to how we can make the website even better. Many of our members have asked if we could do a better job making the website friendly to their mobile devices like tablets and smart phones. We've been listening and we've been hard at work preparing something truly special. Get ready for the new and improved CAI-CT website coming to your computer this fall!

### Something Special for Members!

Our current website is open to the public, meaning anyone who visits can see all that there is to offer. We wanted to create a website that rewarded members with special content that is available only to them. The new website offers a "Members Only" section that will unlock many new features to CAI members after they create a profile and log in. Here are a few highlights:

- You asked for a digital copy of our amazing chapter magazine, *Common Interest*;  
**Members get it! Non-Members don't...**
- You asked for a one-stop website to register and purchase admission at Member Only prices for exciting chapter events like our

Annual Condo & HOA Conference and Expo, ABC's training courses, networking events, and more;

**Members get it! Non-Members don't...**

- You asked for a 24 hour a day, 7 day per week website where you can get all of the latest information on state community association legislative issues and chapter advocacy so your voice can be heard;

**Members get it! Non-Members don't...**

There are just too many enhancements to get into here so please visit the CAI-CT website at <http://caict.org> often and get ready for the new and improved experience.

CAI-CT Website Committee Chair Bob Gourley adds "Program Director Ellen Felix has led the charge in revitalizing and revamping our local chapter website. The committee was charged with creating a modern website that modern mobile devices like tablets and smart phones could easily access. The new platform that the site was built upon will do just that. I couldn't be more proud of the outcome or Ellen's efforts."

CAI-CT Membership Committee Chair Brian Kelly concurs. "Membership in CAI has always had special privileges in the real world. Now CAI-CT's digital world can say the same thing. I hope that members will visit us at the new website soon and start taking advantage of all of the new Members Only benefits at <http://caict.org>." ■

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## Legally Speaking...



Jessica Grossarth

# Bankruptcy Basics: *What Every Homeowners Association Needs To Know*

By Jessica Grossarth

The sluggish, yet slightly improving economy has reversed the surge in bankruptcy filings. Consumer bankruptcy filings in Connecticut are down 31 percent from 2009. The main reason for the filing decline appears to be that the pickup in the economy, while not fast paced, has generated more jobs and income opportunities for consumers. In addition, low interest rates have made it possible for individuals and small-business owners to refinance their bank loans with rates that allow them to keep making payments while avoiding defaults. As a result, consumers are not being forced to file bankruptcy like they were in 2009. There are still consumers that have no choice but to file for bankruptcy protection to save a home or to discharge debt. Many of those consumers own condominium units in Connecticut, and when those filings occur, homeowners associations are left frustrated and scratching their heads as to what they can do to protect the association's interest in the amounts owed to them by the unit owners. This article provides guidance for associations facing the inevitable reality that condominium owners will file for bankruptcy.

Homeowners associations should be aware of the bankruptcy basics so they aren't blindsided when they receive a unit owner's notice of bankruptcy filing. It is important to first understand the distinction between the two most common chapters that condominium owners file – Chapter 7 and Chapter 13. Chapter 7 bankruptcy, otherwise known as a liquidation, requires the debtor to give up all non-exempt assets to creditors. In most Chapter 7 cases, there are no assets over and above what is exempt to distribute to creditors. The debtor in a Chapter 7 case then receives a discharge from all debts owing as of the date of the filing of the petition. The Chapter 7 process is fairly short in duration. The entire Chapter 7 case usually spans a three to four month period. A Chapter 13 bankruptcy involves a situation where the debtor proposes a plan to pay off all or a portion of her debt over a period of years, typically three to five years. To be eligible to file a Chapter 13, the debtor must have regular income. A payment plan must be approved by the court and creditors. After court approval and the plan payments are completed, the debtor is discharged from the balance of all debts owing as of the date of the filing.

### Collection

Upon any filing, an automatic stay immediately goes into effect which prohibits any creditor, including associations, from taking any action to collect the debt. The association can no longer send notices that payment is late or attempt to collect any delinquent assessments. The association can protect its claim by filing a "Proof of Claim" with the bankruptcy court. Only amounts that came due up to the



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*"The debtor, although in bankruptcy, has an obligation to remain current on any homeowners fees that come due after the bankruptcy filing."*

bankruptcy filing date are to be included in the Proof of Claim. The debtor, although in bankruptcy, has an obligation to remain current on any homeowners fees that come due after the bankruptcy filing. If the debtor does not remain current on assessments that come due post filing, the association may apply to the court for payment and/or seek relief from the automatic stay to pursue the homeowner to collect post-petition assessments. While the homeowners association may apply to the court to lift the automatic stay to try to collect the assessments that came due before the filing, that effort could be costly and ineffective if the bankruptcy judge denies the request. The association's better course is to wait out the Chapter 7 until the debtor receives her discharge and the case is closed, at which time the association may pursue its collection activities as if the bankruptcy never existed. In a Chapter 13 bankruptcy, the debtor must not only remain current on all post filing assessments, but the debtor must also propose a plan to include timely payments to the association for pre-petition obligations which were included in the Proof of Claim.

### Claim Status

Most claims of homeowners associations for homeowners fees owed by unit owners are classified as secured claims in a bankruptcy case. Typically, homeowners associations are secured creditors because they possess a lien for unpaid assessments against the debtor's real

property as provided by law. Having secured creditor status is advantageous because, under the Bankruptcy Code, the lien “rides through” the bankruptcy unaffected while the debtor is discharged from his personal liability for the debt. Once the bankruptcy is over, that lien survives and the association can still sue to foreclose that lien.

**Dischargeability**

When a debt is discharged, the debtor is relieved from her personal liability on the debt. However, not all debts are dischargeable in bankruptcy. There are certain debts owed to homeowners associations that can be found to be non-dischargeable. Debts owed to homeowners associations for fees or assessments that became due after the bankruptcy filing are not discharged in most cases. It is important to note, however, that there is no similar advantage to homeowners associations for assessments that arose and were due prior to the bankruptcy filing. The debtor will be discharged from personal liability for assessments that came due before the bankruptcy filing. This fact should matter very little to the association if it has properly perfected its lien on the debtor’s real property because, as noted above, the association will be able to sue and foreclose its lien despite any bankruptcy filing.

Bankruptcy laws are complex. For this reason, it is wise to consult a bankruptcy attorney when your association is confronted with a unit owner that has filed for bankruptcy protection. ■

*Jessica Grossarth is a partner in the Bankruptcy and Creditors’ Rights Practice at the Law Firm of Pullman & Comley, LLC headquartered in Bridgeport, Connecticut. She serves as Vice Chair of the Commercial Law & Bankruptcy Section of the Connecticut Bar Association.*

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(left) Wonderful food!

(right) Sabine Liedel,  
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and Michael Laskowski,  
American Safe Wash



(below) Richard Bouvier,  
Bouvier Insurance, Claudia  
Lewis, Northeast Commons  
Condo Assoc., Inc. and  
Ashley Quido, Esq., Zeldes,  
Needle & Cooper, P.C.





## You Ask Mister Condo, Now Mister Condo Asks You!

Every issue of *Common Interest* features an “Ask Mister Condo” Question submitted by a reader of the Ask Mister Condo website at <http://askmistercondo.com>. There are often many reasonable suggestions and solutions to condo questions. Mister Condo is asking you to participate and share your wisdom with the world. Review the question below and submit your answer in an email to [askmistercondo@askmistercondo.com](mailto:askmistercondo@askmistercondo.com). Look for your answers in future issues of *Common Interest*. Here is this issue’s Ask Mister Condo question:

### **P.B. from New Haven County writes:**

Dear Mister Condo,  
Can a condo association identify 1 handicapped parking spot for 1 particular unit and not make any other spots available for handicapped parking? Also, 1 handicapped spot for that individual but there are 23 stairs leading to his condo unit, no ramp no elevator.

In a previous Ask Mister Condo column, you were asked to help a reader with the following question:

### **B.S. from New Haven County writes:**

Dear Mister Condo,  
If my condo has an assessment for roofs and we have a fire and the roof is rebuilt in the fire, do we still have to pay the assessment?

### **Mister Condo replies:**

B.S., I am sorry your condo experienced a fire. I hope all got out safely. An assessment is levied when the community finds itself significantly short of cash for immediate expenses or needed capital improvements. Provided the association followed the proper protocol, the assessment is levied and due by all unit owners as called for in the assessment. If the association then found itself in possession of unexpected money, in this case from insurance proceeds after the fire, the association could decide to repeal the assessment although this is quite unusual. As it stands, once the assessment is levied it is due so “yes,” you still have to pay the assessment. If the Board finds that the assessment is not necessary, it could take actions to vote to repeal the assessment or return the funds to unit owners. All the best and stay safe!

Several Facebook, LinkedIn, and Twitter followers liked or agreed with Mister Condo’s answer. Thanks for the support, fans! Visit us at <http://caict.org/askmistercondo/>. Follow us on Facebook and Twitter and join in the conversation!

★★★Did you know that questions that appear daily on the “Ask Mister Condo” column are also submitted to the CAI group page on LinkedIn? With more than 11,000 members participating, the CAI LinkedIn page is one of the most active condominium and HOA discussion groups on the internet. The “Ask Mister Condo” questions are among the most popular and most commented upon threads. If you are a LinkedIn member, you can check it out for yourself at <https://www.linkedin.com/groups?gid=39092>. Be sure to join the CAI group if you haven’t already. ■



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Eric Churchill

## WINDOW PAINS

*Do you have a “window issue” with your siding replacement project?*

By Eric Churchill

**Planning a siding replacement project? Now is the time to think about how your Board will address one of the greatest challenges to your project’s success: How to deal with the windows.**

### Responsibility and Reality

Windows are a notorious flashpoint for conflict between homeowners and the association because this part of the building envelope is the literal intersection of homeowner responsibility and common property.

In most associations, the windows are defined as personal property and the homeowner is responsible for maintenance and replacement. All exterior structures (framing, sheathing, siding, trim, etc.) surrounding the window are common property and the association’s responsibility.

This division of ownership looks good on paper. But in the real world, the question of responsibility is more complex. This is especially true when an engineer determines (as is often the case) that water penetration from homeowner windows has damaged the adjacent common property.

Community “discussions” about window replacement can get downright ugly. No one likes the unexpected cost, especially owners who have already replaced their windows and do not want to be told they may have to do it again. The Board counters that they have a responsibility to act in the best interest of the entire association. And when both sides dig in, it’s all too easy for associations to become divided by misguided arguments over personal vs. common property.

That’s unfortunate. Because when it comes to windows and siding, the truth is that the homeowner’s personal property and the association’s common property are inextricably linked. Let me explain...



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### Blame the Frame

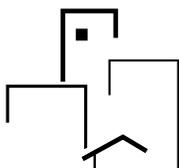
The window is one of the most critical elements of your building envelope – the integrated system of materials that make up the exterior shell of a building. Some of these components, such as siding and roofing, are visible. Other less prominent barriers, such as house wrap and flashing, perform their weatherproofing functions beneath the exterior.

Owners tend to think of windows as part of their home’s interior because most owners relate to their windows from the inside looking out. From this perspective, a window’s primary function is to “open up” interior space, provide natural light, and fresh air.

But contractors who focus on building envelope work have a different perspective. We see windows as a transparent barrier over a hole in the building envelope. And from experience, we know that aging windows are a leading source of water penetration which can lead to paint failure and premature rotting of the trim, siding, sheathing and framing.

We also know that the vast majority of these leaks do not involve the visible glass part of the window, more properly known as the sash. The real culprit is almost always a failure where the window frame attaches to the rough opening (the hole in the wall that the window fits into). In some cases, improper installation is to blame. Typically, the flashing details which seal the transition between the window frame and the rough opening have failed.

The resulting water damage is not always obvious water staining to interior walls and ceilings. Damage from water penetration into



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the building envelope often remains hidden for years while it rots the window's frame along with adjacent framing and sheathing.

**Rethinking Replacement Windows**

As we've discussed, every window has two major parts: a sash which opens and closes; and the frame which holds the sash and attaches the entire window unit to the exterior wall. A traditional replacement window is a window unit which is designed to fit into an existing window frame.

The replacement window is the window that most homeowners think of when they think of replacing their windows. One reason is that window companies constantly promote replacement windows as a less expensive way to get all the benefits of new windows.

Traditional replacement windows do look great. They are energy efficient and low-maintenance. But there is a catch, and it's a big one: Replacement windows only replace the old sashes – not the old frames. If you do not replace a failing frame and install new flashings, you will not fix the site of the underlying water penetration problem.

The way to solve that problem is to use "new construction" windows, which come complete with full frames and a nailing flange that attaches the entire window unit directly to the rough opening.

Don't be misled by the fact that these windows are used for new construction. The frame and nailing flange also make new construction windows ideal for condominium siding replacement projects. First, because it is much more cost-effective to install framed windows when crews have already removed the old siding. More importantly, installing the fully-framed window unit allows the contractor to prop-

*[Continues on page 33.]*



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# Understanding the Benefit of an FHA Condo Project Approval

By Sara Cornwall

Condominium ownership and management has faced unique challenges as compared to single family homes, especially as it relates to mortgage financing restrictions, and therefore the ability to easily buy and sell.

The complication increased in the fall of 2009 when HUD removed the spot approval process for FHA insured condo loans and implemented full complex approval requirements (FHA is an agency of HUD). Prior to November 2009, a lender for a condo buyer could obtain a completed condominium project questionnaire and, if some basic requirements regarding investor concentration, litigation, commercial use, etc., were met, FHA would insure that loan for the respective unit being financed.

That changed considerably when HUD required that the entire complex be approved, even if only one unit was being considered for FHA financing. In addition to the questionnaire answers, multi-year financials are now needed, reserve and insurance requirements must be met, as well as fidelity insurance for 20+ unit complexes, just to name a few. The exception to this “full approval” requirement is when the condos are stand-alone or detached, which FHA refers to as “site condos.”

## So why is it a disadvantage if a condo complex is not FHA approved?

The simple answer is that a complex loses its competitive edge and marketability advantage when there are other complexes in the marketplace that are FHA approved and they are not. Those approved complexes have an additional financing source that creates flexibility and increases the pool of eligible buyers. In addition, an FHA approval on a complex should be an indication that the project has met a standard through FHA due diligence ensuring at least a modicum of strength and stability. If a complex is NOT FHA approved, it could imply to a buyer that the complex was not able to meet the standard. Most Realtors are fully aware of this.

There are some Associations and Management companies that assume that an FHA approval on their complex will create a low income housing environment. While FHA has more flexible credit score requirements than conventional lending, its income underwriting requirements are strict and never included a no-income verification process like conventional financing. In addition, mortgage applicants have the extra layer of condo fees that are incorporated into the housing payment analysis to determine if their debt-to-income ratios qualify. Finally, FHA financing is only for owner-occupant properties.

Some of the most prestigious condo complexes in Connecticut are FHA approved and enable buyers and existing residents to participate in special programs like reverse mortgages, to either purchase or refinance a condo unit. Since a reverse mortgage requires the borrower to be at least 62 years old, the majority of condo buyers who want to use the program were previously homeowners who are entering the “down-sizing” phase of their lives and therefore are the ideal homeowners for a condo complex. Ironically, many of those baby boomers “down-size” into condos that cost more than the house they just sold!



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*“Some of the most prestigious condo complexes in Connecticut are FHA approved and enable buyers and existing residents to participate in special programs like reverse mortgages...”*

## So how does a condo complex obtain FHA Approval?

While the process does have a fairly substantial documents checklist, the process is manageable. There are law firms and condo management firms that have staff and departments that specialize in the process, who will gather the necessary information and submit it to a regional HUD office. There are also lenders who specialize in FHA financing that can assist. Those lenders oftentimes are willing to facilitate an Association’s condo approval application at no cost and do so because they have been approached by a potential customer who is seeking FHA financing and those lenders anticipate being able to secure FHA financing customers from the complex. Alternatively, some lenders will facilitate the process at little to no cost in order to obtain exclusive initial marketing rights.

It is important to vet the firm or lender before an Association agrees to proceed. One way to do so is to ask for references from other condo associations so that it can be confirmed that the lender or firm was indeed successful at obtaining the approval, and also that they truly did facilitate the process at little to no cost. It is only reasonable to assume that there could be some minimal copying costs.

The advantages of having an FHA condo approval far outweigh any perceived disadvantages. Management companies and Associations that, at the very least, have not evaluated the option, may be doing a disservice to themselves, and the member/owners they are charged to serve. ■

*This article was co-authored by Sara Cornwall, a Connecticut Reverse Mortgage Advisor with Security 1 Lending and by Joseph Ferraro, an Area Sales Manager with Security 1 Lending.*

*Sara has not only assisted customers with refinancing and purchasing their single family homes and condos with the reverse mortgage program, but she has also been a condo resident for 30 years and a homeowner’s association Board member for 15 years.*

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## Financially *Speaking*...

### Know your Association: *Records and Documentation*

By Marsha Elliott and Sam Tomasetti, CPA



Marsha Elliott



Sam Tomasetti, CPA

**D**o you know what your condo bylaws say? Do you know if you are soliciting bids for vendors? Do you know what is going on with the insurance claims in your association? Do you know what your financial reports look like? When you are a part of a condominium association whether a unit owner, board member or managing agent, it is important to understand all aspects of your association and specifically, the financial piece. A good starting point is to understand and identify the financial information that is the most relevant and essential to the governance of your association. The following is a list of some of the more relevant financial information which could help you to Know Your Association:

#### Financial Information:

- 1. Budgets and Budget information:** During the year the budget is the association's primary tool. It is the financial blueprint for the coming year. Keeping a copy of the budget along with a narrative or a description for each line item presented in the budget is very helpful in understanding the board's intentions for the year. The budget, when integrated into the accounting system, will help you stay on task, allow you to compare actual cash receipts and disbursements, and allow you to see how you may have to modify your original plans to deal with changing circumstances.
- 2. Reserve Information:** In order to help maintain the market value of every association as well as to meet certain guidelines for third parties, reserves must be addressed and tracked. A reserve study, performed by a qualified professional establishes the major expense items that will need to be incurred over the next several years and the estimated funds which will be needed at some future point in order to cover them. The reserve fund investment reports will provide information on the reserve income that has been accumulating and how these funds are being invested.
- 3. Insurance claim information:** If there is an insurance claim, keep track of income and expenses related to the claim. This would include all the paperwork received by/submitted to the insurance carrier, review/approval documentation by the board and all relevant insurance claim information to ensure the Association is adequately reimbursed by the insurance company and all expenditures have been properly accounted for. You can also create report which you would track and note when funds come in and when services are performed, copies of insurance checks, copies of loss reports and contact information for all parties involved. If a unit owner pays out of pocket for repairs, make sure proper documentation is provided from the unit owner prior to reimbursement and included in the insurance claim file.
- 4. Assessments:** Monthly and special assessment information should be retained so that if the board and unit owners vote to change member assessments or to conduct a special assessment then it is documented in the records for future reference. The details of the assessments are very important because it provides information as to how the assessments were calculated and also the use of the funds.
- 5. Internally prepared monthly, quarterly and annual financial data:** It is important to have the most current financial data available which can be easily accessed when anyone in the association has a question. Included in the financial reports could be the bank reconciliations with bank detail, general ledger, check register, balance sheet, income statement as support for understanding what has transpired during the period of time in question.
- 6. Independently-prepared financial statements:** If the association has had a compilation, review or audit service performed by a certified public accountant, the availability of these financial statements are very informative for various users such as board members, potential buyers, creditors and bankers. In many cases when an association wants a loan or FHA approval, they must provide financial statements prepared by an independent accounting firm so that the bank can have a certain level of reliability on the financial information presented to them.
- 7. Bank Information:** Do you know who can sign the checks at your association; do you know who the bank statements



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are sent to or how many bank accounts the association has? Keeping track of all this information can become difficult if an association changes to a new property manager or property management company often. It is imperative to have a record of the signers on bank accounts as well as data on who the bank statements are being sent to, if it is not the property management company. For example, bank statements may be going to the treasurer instead of the property management company. It is also important that cancelled checks, deposit slips and any other banking information which supports bank transactions are retained and stored away properly.

8. **Loan Documents:** If the association takes out a loan, be sure to keep copies of loan documents, understand the terms of the loan and identify the association's obligations to the bank. These are integral pieces of information which can help your association remain in compliance with the lender.
9. **Tax returns and tax data:** Keeping the association tax returns on file is vital to the recordkeeping process so that you are in compliance with the federal and state requirements regarding submission and retainage of records. In addition, to having the tax returns on file, it is also important to include the federal and state tax identification numbers in the records.

10. **Payroll records:** Payroll records such as rate of pay, employee authorized withholding, benefit packages, time cards and payroll tax returns are just as important to keep on file for the same reason as your tax returns.

#### Other financial information:

1. **Insurance coverage information:** Knowing and understanding the association's coverage needs, knowing what the deductible is and whether filing a claim is in the association's best interest is imperative especially when something unfortunate like water damage or a fire occurs. Therefore, it is important to keep a file of the association's coverage and also perhaps a summary sheet for all of the different types of coverage in a language that is easily understood by everyone.
2. **Copies of Board minutes:** Keeping board minutes on file provides a strong reference point to allow the association to maintain continuity in its decision making process. You can keep a record of board approvals and follow up on these approvals to ensure that the board's intentions are carried out. It is a great way to keep up-to-date on all of the association board meetings that you attend. You can also reference prior topics discussed in board meetings such as reserve appropriations, major expenditures and contract

*[Continues on page 32.]*

# M-206

# financial management

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Joel Meskin, Esq.

# The Checklist *The “Checklist” provides you with handy tips and ideas for handling common issues.*

## What is it all About in the Community Association’s Directors and Officers Policy

By Joel W. Meskin, Esq., CIRMS

The directors & officers policy is a critical piece of the community association insurance puzzle. The community association world included condos, homeowner associations, time-shares and other entities. These entities have two items in common.

- Membership is based on real property ownership – a condo unit, a single family home, a timeshare interval or a similar “individual property interest.”
- The second element in the equation is that these individual members have a “common interest” with the other members of the association – the common areas, pools, other amenities and the common conditions, covenants and restrictions on the individual and common property.

Due to the nature of these associations and the shared common interest, they require a method to manage the common interests. In the normal course, this management is done by a group of volunteers. This group of volunteers is normally a board of directors elected or appointed pursuant to the association’s by-laws to manage the association. The board is authorized pursuant to the association governing documents to do what is necessary to manage the common interests. These board members are required to use their “business judgment” to manage. As shocking as it may be, the boards are often challenged for their decisions. In order to encourage individuals to volunteer for these positions, the association needs to obtain directors and officers insurance to protect them when their decisions are challenged.

As with any insurance policy, the directors and officers policies have certain exclusions. One of the key exclusions found in a directors’ and officers’ policy is what is referred to as “Insured v. Insured” exclusion. Contrary to most perceptions of insurance consumers, exclusions are not randomly inserted in a policy. Rather, exclusions are inserted so as to eliminate risks that may otherwise make a policy unaffordable to consumers and to avoid risks that were not intended to be included in a policy for public policy reasons. In the direc-

tors and officers policy, a historical issue that led to the inclusion of the “insured v. insured” exclusion was “collusion.”

This exclusion originated in the for-profit directors and officers policies and was carried over into the community association context as the policy was created.

The typical situation that motivated this exclusion was where a board of directors made a decision that the board itself realized was in hindsight a bad decision and as a result there was some form of loss to the association. Consequently, the board itself decided to sue it or one another to trigger the directors and officers insurance policy to pay

Insured Versus Insured Examples Claim Scenario	Insured v. Insured	Entity v. Insured
One current board member sues a second current board member to require that the second board member agree not to vote on a bid repair contract being bid by the second board member’s brother-in-law.	No coverage.	Coverage.
The association brings an action against a board member who without authorization has sent out a notice of assessment for a project that the board member wants, but the entire board did not authorize.	No coverage.	No coverage (entity versus the insured).
The association brings a breach of contract action against the Management company for breach of the management agreement.	No coverage.	No coverage for the manager as the claim is brought against an insured by the entity.
The management company brings a claim against the association for breach of management agreement.	No coverage.	Coverage (as long as the association has defense of breach of third party contracts).
Association brings a claim against a former board member to recover all the association’s books and documents.	No coverage.	No coverage for the former board member since the action is by the entity.
One board member brings a claim by another board member claiming that they were defamed in an e-mail sent out to the entire association.	No coverage.	Coverage (assuming there is coverage for personal injury offenses).
Current board president brings action against the immediately prior board president regarding his decision to assign himself prime parking spots before he exited the board.	No coverage.	Coverage.
Immediate past board president sues the new board president challenging the election.	No coverage.	Coverage.

for this mistake (otherwise defined in the policy as a “wrongful” act). The intent of the policy was to defend or indemnify the board when the board’s decision was challenged by others and not to protect the board from its own identified wrongful acts. In the insurance world, this would lead to what is otherwise known as a “moral hazard.” Similarly, the policy does not contemplate actions by the entity itself against the directors and officers for imprudent decisions or unexpected consequences of everyday decisions.



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In the community association context, these concerns do exist, but generally the decisions being made are not of the same financial consequences as with for profit or public corporations. Challenges to the community associations are not generally of the collusive type, but rather genuine challenges by association members or third parties. There are two general types of “insured b. insured” exclusions found in the community association context. One is what we characterize as pure “insured v. insured” exclusion and the second is a hybrid exclusion often referred to as “entity v. entity” exclusion.

The first example below is an insured v. insured exclusion where, for all intents and purpose, any action between two “insureds” as defined in the policy would not be covered.

*The Company shall not be liable to make payment for Loss or Defense Costs (except where otherwise noted) in connection with any Claim made against the Insured arising out of, directly or indirectly resulting from or in consequence of, or in any way involving any Claim by, at the behest of, or on behalf of the Organization and/or any Individual Insured; provided that this Exclusion shall not apply to:*

*(1) Any derivative action on behalf of, or in the name or right of the Organization, if such action is brought and maintained totally independent of, and without solicitation, assistance, participation or intervention or any of the Insureds; or (2) A Claim that is brought and maintained by or on behalf of any Individual Insured for contribution or indemnity which is part of, or results directly from a Claim which is otherwise covered by the terms of this Policy.*

The second example is more of a hybrid exclusion where it is more limited to actions by the “Organization” or “Entity” against other insureds, but does not limit actions between “Individual Insureds.”

*The Insurer shall not be liable to make any payment for Loss in connection with a Claim made against any of the Insureds brought or maintained by or on behalf of the Insured Organization, except a Claim that is brought and maintained totally and independently of, and totally without the solicitation, assistance, participation, or intervention of any officer, director or trustee of the Insured Organization.*

The second example of exclusion is truly focused on addressing the historical intent of the “insured v. insured” exclusion by preventing the concerns of collusion and the concern or moral hazards where

[Continues on page 28.]



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## Communication Corner...

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Bob Gourley

# Telling the Story of Reserve Studies

By Bob Gourley

Some things just get better with age. Wine or cheese, for example, may actually improve as they get older. The same cannot be said for the common elements of a condominium or community association. From the moment the first unit is built, the battle to maintain, protect, and enhance the building components begins. A well thought out Reserve Study is the proper guide to win this war. It can be the difference between success and failure in the struggle to keep the community's common elements in great shape as it battles the process of maturation of the building components. Explaining the need and importance of the Reserve Study to your association members is just as important to the success or failure of the program.

One way to assure that your community association is properly prepared is to hire a Reserve Specialist to review or prepare your community's Reserve Study. Reserve Specialists have a unique set of skills that combine engineering (typically construction management, architecture, or civil) with financial planning. This allows them to not only summarize a community association's current state of affairs but to also offer advice on how best to plan and save for future projects. While no Reserve Specialist can guarantee your community's success by following the Reserve Study guidelines, it is far more likely that your community will thrive under its guidance.

Speak with a qualified Reserve Engineer. The Community Associations Institute (CAI) offers the Reserve Specialist (RS) designation to qualified professionals who have prepared at least 30 Reserve Studies within the past 3 years. They require the RS candidate to hold a bachelor's degree in construction management, architecture, or engineering (or equivalent experience and education). Finally, designated Reserve Specialists must adhere to the Professional Reserve Specialist Code of Ethics.

There is an online guide to hiring a CAI certified Reserve Specialist at <http://www.nbccam.org/hiring/search.cfm>. Simply select "RS" in the Designation selection box and select "Connecticut" from the state selection drop down menu to begin your search. Although Connecticut is not one, some states actually require common interest communities to conduct proper Reserve Studies and to adhere to their guidance in developing common fee schedules and contributions to the Reserve Fund. Needless to say, law or not, it is a best practice and great advice for community associations.

Reserve Studies cannot completely predict when building components will fail but they can provide solid financial advice on how



*"Although Connecticut is not one, some states actually require common interest communities to conduct proper Reserve Studies and to adhere to their guidance..."*

those components can be paid for once they fail within a specified timeframe. Just as insurance is there in case Mother Nature deals your community a blow, a Reserve Study will help you prepare for Father Time's visit. It is not a question as to "if" but rather "when" with regards to repair and replacement of building components in your community association. Without a Reserve Study, your community is relying on luck and gut feel of the Board to make financial decisions that will have a major impact on all members of the association. If your community association doesn't have a proper Reserve Study, there is no better time to start one than now. ■

*Bob Gourley is one of the founders of MyEZCondo, a communications firm that specializes in newsletter production and other communication solutions for condominium associations. He also serves as Board President of Captain's Walk in West Haven, CT. Bob serves on the LAC, Publication, Conference, Fall Fun Night, Membership and Website Committees and is Past President of the Board of Directors for CAI-CT.*

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## Manager's Column...

### BEING PRACTICAL, PART XVIII Reserve Studies – Pros and Cons

By Reg Babcock, Rich Wechter, and Sabrina Wentworth

In this column we tackle various topics of interest to Association Boards of Directors with the intent of imparting practical advice. This issue's column addresses the topics of reserve studies or reserve analyses.

A reserve study is an analysis of the future capital requirements for any given Association. It identifies all of the physical components of a property and estimates the remaining life of each one. So for example, the study will project there to exist ten years remaining useful life for a shingled roof. With that information, the study will then project the cost of replacement ten years hence. Finally, the study will suggest the amount of money that the Association must set aside in each of those ten years to ensure that the necessary amount is available when it is needed. This exercise is repeated for every significant component of the property: siding, decks, stoops, sidewalks, paving, elevators, swimming pools, etc.

Reserve studies are performed by qualified engineers, and there are many well-qualified engineers in Connecticut who offer this service. The cost is usually \$2,500 and higher. The management company's role is secondary. It must supply the engineer with a considerable amount of historical information regarding the property and the work that previously has been performed. The engineer is well advised to confirm his or her findings and conclusions with the property manager prior to finalizing them.

The result of the study is a combination of science and judgment. It is the funding recommendations that probably offer the largest opportunity for creativity. The recommendations can include an approach for level funding (equal amounts in each of the years (using our ten-year roof example), or gradually increasing the amount set aside each year as the year for replacement approaches.

These studies can be extremely helpful in several respects. For a Board that lacks the skill set to evaluate long term capital projects, the reserve study fills a need. For a Board that is comprised of new members without any real significant historical information, the study can be extremely helpful. We also have noticed that a reserve study, produced as it is by an independent professional, can assist the Board in making its case to skeptical owners that an assessment or a common fee increase is warranted in order to anticipate future needs.

That said, a reserve study is expensive in the context of the budgets of many mid-size and small Associations. "Why should we spend \$3,000 on a study; I'd rather apply that \$3,000 to actually replacing or repairing the roofs." Simply, many Associations cannot afford a reserve study.

In many instances, the long term capital needs of any given property are readily apparent, both to the Board to and its manager. At



the risk of oversimplifying, most of the people involved in the property can agree that a roof does not have an unlimited life, and likely will need to be replaced. The same commonsense judgment can be applied to the property's paving needs, and siding requirements and to every other element of the property. Whether it is an engineer or simply lay persons applying good judgment, the precise date for replacement is never known with absolute certainty in advance. The estimates always are guesses.

There is an inherent disadvantage in reserve studies, in that they impart recommendations that leave much less flexibility for the Board, both in terms of how they set fees and how funds are expended. Having "endorsed" the conclusions of a reserve study, a Board is not easily able to deviate from its recommendations notwithstanding unforeseen changes in its financial condition. In those circumstances where the Association is seeking FHA certification but not setting aside moneys in accordance with the reserve study, HUD will likely deny certification, even if the annual reserve contributions and balances otherwise meet the requirements.

One final point. In this environment, most Associations are borrowing the funds needed to undertake capital projects. While some Boards prefer the approach of building sufficient funds prior to making an improvement or replacement, the low cost and simplicity of borrowing makes paying for improvements after the fact almost irresistible. ■

*The authors work for Westford Real Estate Management, LLC. Reg Babcock is Chief Operating Officer & General Counsel, Rich Wechter is Vice President, and Sabrina Wentworth is a Community Manager.*



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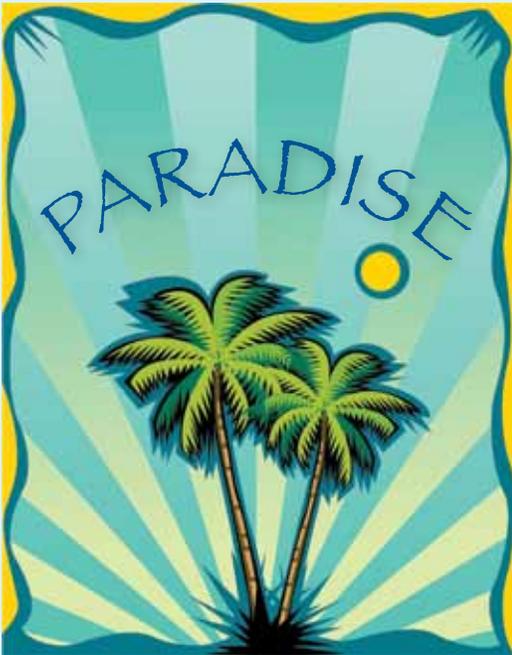
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Timothy Wentzell, P.E.

## TECHNICAL EXPLANATIONS

*This column appears in each edition and is intended to touch on technical topics of general interest to common interest associations. Topics will be of a general nature, but I will also accept and respond to questions from readers. On occasion, it will be guest authored when topics can best be addressed by experts in other fields.*

### (HOW IS A RESERVE STUDY REALLY USED?)

By Timothy Wentzell, P.E.

This title implies some sinister motives. That really is not the case, but we have found through our many years of preparing reserve studies that people's perception of a reserve study and its benefit to the association can vary significantly. The obvious answer to this question is to accumulate funds so they will be available when large capital projects are needed. However, it should become a good planning tool for an association, although there are some shortfalls that need to be understood and considered. A reserve study can have great value, but the limitations of what a reserve study can do, or more importantly, can't do, need to be understood.

When preparing a reserve study, for example, an item that often is included in a reserve analysis is when will the need for a roof replacement occur? This is usually one of the two or three largest expenditures facing a common interest community. The reserve study, for example, may speculate that in year twelve a roof replacement will need to be done and may have a cost of \$400,000. Likewise, the same association's reserve analysis may state that in year fifteen the pavement needs to be done and this might have a cost of say \$500,000.

These dates and costs obviously have a range, and often this range can be very significant resulting in a reserve balance which may or may not be sufficient. The timing may vary as well. For example, roofs may have significant ventilation issues, suffer future ice damage, or have unnoticed manufacturing defects, which may not be apparent at the time of the reserve study preparation. These can result in a wide range of variance regarding when this expenditure may be needed. Also, relatively new pavement may have a wet sandy base, which would not be known to the reserve study preparer and which can cause accelerated deterioration, or numerous other defects such as thin pavement, or other problems which would not be readily obvious until the pavement ages much more significantly. Correspondingly, the cost for these replacements could vary significantly from the period of time when the reserve analysis is prepared. Pavement is an excellent example. The raw material used to make pavement, in addition to sand and aggregates, is crude oil based and we all know how this cost can vary. Shingles use a fair amount of asphalt as well. Another example of this could be siding. Siding can be affected by many environmental factors, but perhaps even more by perception of the association. What looks good to one association board may look



*“What looks good to one association board may look terrible to another...”*

terrible to another and can be an area of subjectivity on the part of the preparer of the reserve study as well.

I remember a recent meeting with an association to review bids for an upcoming paving program where we had done a reserve analysis for this association approximately seven years earlier. A complaint was received from one board member that the pricing that we had received for the paving was five percent higher than what our reserve analysis had speculated. I remember thinking during his statement something to the effect of “damn we're good,” until he went on and on asking how we could be so far off. I guess reinforcing the age

old adage; beauty is in the eye of the beholder? One would think that an estimate done seven years earlier that came within five percent of current costs would be considered good by most observers.

Does this mean to imply that a reserve plan is unnecessary? No, I would argue just the opposite. The greatest benefit of a reserve plan is properly projecting the funding required in order to meet likely capital improvement projects of the future. Thus, an association can have the ability and flexibility of making the judgment calls of when the time is appropriate for large capital projects. The reserve study gives them guidance about how to make those important decisions, with the understanding that things need to be adjusted over time. Just like I have often thought that the distinctive dividing line between folks that are well off or not, is whether they are a payer or receiver of interest. That is, do they pay someone else for the use of money or receive payment for the use of their money. An association is likewise able to conduct its business in a proactive basis if they have adequate funds set aside as opposed to being in the opposite position. The reserve study can put them in that position by guiding them what the reserve balance should be as they go along as well as estimating when and how many projects will result in the use of those reserve funds. A similar analogy might be if one was to strike off for vacation in Maine we wouldn't take any route labeled east in order to reach our destination, but instead would plan the most effective route understanding full well that there might be obstacles such as traffic jams or construction along the way. ■

*Please address any questions or areas of interest that you would like answered in future columns to Timothy Wentzell, P.E., Connecticut Property Engineering, 630 Governor's Highway, South Windsor, CT 06074 (860-289-8121) (e-mail: ConnPropEng@cox.net).*

**THE CHECKLIST...from page 21.**

the insured is attempting to create a warranty against its poor or imprudent business decisions. The coverage is to protect the board not “from itself” but from non-insureds. This is similar to the exclusions on a homeowner policy where the “family members” cannot recover under the homeowner’s policy by suing one of its other family members. Specifically, while a son can sue his parents when he injures himself by slipping on the front steps, the parents will not be covered for this loss under their homeowners policy. The logic should be clear here as it clearly avoids collusion (not that any insureds would ever consider insurance fraud).

*“On the other hand, insureds, including community associations, want and should want affordable coverage while obtaining broad coverage.”*

The issue that has to be addressed is whether these exclusions are good for community associations. At first glance, insureds do and should want as broad an insurance policy as possible. On the

other hand, insureds, including community associations, want and should want affordable coverage while obtaining broad coverage.

The key is a basic cost benefit analysis. Let’s say that all insured v. insured exclusions are removed from the policy. The benefit seems at first glance to be a no-brainer – isn’t it always good to remove exclusions? Let’s look at some of the “costs” in the cost/benefit equation:

- Removing the exclusion will make the policy more susceptible to claims which will impact the coverage in general as additional claims are covered and premiums are increased.

- Does the association want to provide the renegade board member with coverage when the association determines it is necessary to bring an action against him or her to prevent him or her from doing something that the remainder of the board determines is not in the best interest of the association? This would include creating a litigation war chest for that board member of the community manager when the association sues either.
- Does the association want to cover in-fighting between board members? Are these disputes in the best interest of the community association to pay for board members from being able to handle their duties and obligations?

In the community association context, many carriers have gone with the second type of exclusion which precludes the actions that fall within “collusive” nature where the board is suing itself, but not limiting the actions between individual insureds, because these really have not be a chronic issue, but which protect board members when that renegade board member sues another board member who is doing what he or she believes is in the best interest of the community association.

In conclusion, the “Insured v. Insured” exclusion is not a random addition to the policy, but in the community association context, hybrid exclusion has been developed in many policies to protect the ultimate issues and concerns from an actuarial standpoint. ■

*Joel Meskin, Esq., CIRMS is vice-president of community association products with McGowan & Company, Inc.*



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## The Importance of a Professional Consultant – Pay Now or Pay More Later!

By Rick Filloramo

Maintenance and reserve projects are a substantial part of an association’s budget. They are also the most risky. Investing in property maintenance is essential to keep buildings, amenities and infrastructure safe and functional. There are many technical complexities, especially with the advancements in technology that require a professional consultant. While there is an initial investment, ultimately this can save the association thousands of dollars in future costs and assist in avoiding future problems and possible legal ramifications. The following is an example of the benefit of a small initial investment in a professional consultant.

The XY Association engaged a construction/masonry expert to investigate the masonry veneer on all the homeowner units on the property. An initial investment of about \$5,000 yielding a 240 page/pictured report, revealed a serious deficiency at the garage doors. Rusted steel lintels at the garage doors created “rust jacking” which caused the brick units to move up to 1” creating open joints for water to penetrate into the structure and it also created an unsafe condition. (See Figure 1.)

The consultant created professional details, and a plan for a more in-depth investigation along with a plan to repair two units as a sample. During the investigation it was discovered;

- There was no flashing or water resistive barrier
- The lintels were plain steel - not galvanized and had severely rusted
- The lintels were undersized and deflecting
- And most important, water damage had partially rotted the supporting wood beam over the garage door that supported the two unit floors and decks above.



Figure 1 – Rust Jacking

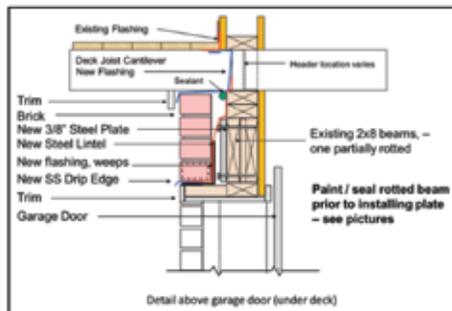


Figure 3 - Professional Repair Detail



Figure 5 - High-Grade Water Barrier, Flashing and Expansion Joints installed with brick

(See Figure 2.) A remedial plan was initiated and the two lintels at the sample doors were repaired. (See Figures 3-6. )

Without this investigation and professional repair plan, extensive structural damage or failure could have necessitated expensive



Figure 2 Water Damage – Rotted Support Beam



Figure 4 - Inspected Contractor Work



Figure 6 - Two repaired doors match existing perfectly

structural repairs and caused serious safety problems. ■

Richard Filloramo is an Architect /Construction Consultant with National Consulting Group, Inc. Rick is a new member of CAI-CT.

Photos and graph courtesy CAI-CT.

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## FINANCIALLY SPEAKING...from page 19.

approvals. Referencing minutes can allow for resolving old topics prior to discussing new ones and clarifying resolutions for the Board.

- 3. Association documents:** Bylaws, articles of incorporation, declarations, resolutions, rules & regulations and amendments are all important documents that need to be retained and kept on file. Perhaps creating a filing system based on the dates that the association documents changed so that you have access to this information whether an old issue or a present issue arises.
- 4. Signed contracts:** It is important to keep copies of contracts and read and understand the fine print so that there is no misunderstanding about price and the time frame for completion of the project. If an association is unhappy with a vendor, knowing the cost of cancelling a contract or even a possible lawsuit is important. Special projects such as new roofs, siding replacement, window replacement are usually quite expensive and sometimes require years to complete. In addition, making sure all required permits and licenses are up-to-date with the town and are properly filed and easily accessible.
- 5. Vendor bids.** Keeping copies of bids, even if the Board went with a different vendor, may come in handy if the Board is unhappy with the original choice and wants to select a different vendor. It is also a requirement within many associations that at least three vendor prices are obtained and compared before determining who will be contracted to do the work.

It is often assumed that because you live in an association that you know what is going on. This is not necessarily the case for many unit owners and so we hope that the information presented above will give you and/or an agent of your association a better understanding of the types of information that can provide the knowledge necessary to help you work together with your community to maintain and add value to the association. ■

*Sam Tomasetti, CPA is a principal in the accounting firm of Tomasetti, Kulas & Co., P.C. Sam served on the CAI-CT Board of Directors as its Treasurer from 1999-2003. He is currently Chairperson of the Publications and Marketing Committees. Sam is a frequent speaker at CAI-CT education programs. Marsha Elliott is staff supervisor and has worked with all the financial aspects of condominium associations in the past nine years at Tomasetti, Kulas & Company, PC.*

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**WINDOW PAINS...from page 15.**

erly flash the window frame into the rough opening as an integral part of the building envelope system.

**What Your Board Can Do Now**

Want to keep your siding replacement project on track? Anticipate the need to address the sensitive matter of window replacement instead of avoiding it. Consider the following tips, which proactive Boards have used to help their associations move forward:

1. Use an evaluation process to assess each window's condition and determine a window is causing damage (or likely to cause damage) to both homeowner and association property.
2. Old failing windows should be replaced during the siding replacement project. Performing the work at this time is much less expensive. It also allows the highest quality installation, which eliminates further damage to community property caused by failing windows.
3. Update your window replacement specifications to require (a) that homeowners who want to replace their windows use only new construction windows; and (b) that these windows must be properly flashed and integrated into the building envelope system.

Dealing with the window component of a siding replacement project can be a hornet's nest of trouble. But it doesn't have to be.

The key is preparation. Update your community's window specifications. Educate your homeowners on the necessity and significant cost-savings of replacing their windows. And stay focused on your ultimate goal: Guiding your association through a siding and window replacement project that will reduce maintenance costs, improve curb appeal, and increase property values for years to come. ■

*Eric Churchill is the president of Scherneck Property Services, a full-service contractor that specializes in "doing the job right" for New England community associations.*



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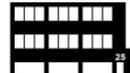
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- When you feel yourself starting to choke try to remain calm so that you can perform the Heimlich maneuver successfully.
- Check to see if you can see the object that is stuck in your throat. If you can dislodge it easily, do so, but if it is far back in your throat you may push it in even farther so leave it alone and proceed to the next step.
- Make a fist with one hand and place it in the middle of your abdomen just below your ribs and above your belly button.
- Cover your fist with your other hand and press your fist into your abdomen with a quick upwards thrust. Keep your elbows out for the best position. If this does not work proceed to the next step.
- Place your fist over your abdomen just below your ribs and above your navel and bend over a chair back or counter top. Forcefully press your fist against the hard surface in a thrusting motion. This should dislodge the object in your throat.

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