EVERYONE INTO THE (RISK) POOL

FACING FRAUD
Where to Turn When Money Turns Up Missing

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2019 EVENT CALENDAR

July 11: Casino Night

August 19: Golf Tournament and Bean Bag Toss Tournament

September 5: BP Forum and Securing Your Financial Future

October 3: Law Seminar

November 7: Winterizing Your Property

December 5: 2019 Gala and Vision Awards

Register for events online at www.cai-mn.com
MESSAGE FROM THE PRESIDENT
By Joe Crawford, President of Crawford Management

EVERYONE INTO THE (RISK) POOL
By Chuck Krumrie, Owner of Urbanwood, Inc.

FACING FRAUD
By Matt Drewes, Shareholder of DeWitt Mackall Crounse & Moore S.C. | Attorneys

WHEN ALL HAIL BREAKS LOOSE
By Carin Garaghty of Cedar Management, Inc.

DO NOT START BY PLANTING PANSIES
By Patricia McGinnis and Madge S. Thorsen, Esq.

CONFLICT CORNER
By Patricia McGinnis and Madge S. Thorsen, Esq.

ALL ABOUT INSURANCE APPRAISALS
By J. Robert Keena, Esq. of Hellmuth Johnson

HOW TO SEARCH FOR AN HO-6 PROVIDER
By Cody Gorsuch of Omega Property Management

DO YOU UNDERSTAND YOUR ASSOCIATION’S WIND/HAIL DEDUCTIBLE?
By Grant Herschberger of Marsh & McLennan Agency

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In mid-May, I had the pleasure of attending the CAI Annual Conference along with President-Elect Chris Jones and Executive Director Tim Broms. The conference provided an amazing platform to interact with industry professionals and homeowner leaders from around the world to discuss critical issues and learn about the latest trends in the community association industry.

As I talked with leadership representatives from other Chapters, I couldn’t help but take stock of the Minnesota Chapter.

Everywhere I look, I see positive momentum:

- Our membership continues to experience steady growth – thanks in part to the efforts of the Membership Committee, which is making great strides in terms of recruiting new members and membership engagement.
- The 2019 Golf Tournament sold out in record time. In fact, interest was so great that the Golf Committee is already pursuing larger venues for the 2020 tournament!
- Thanks to an extremely ambitious Education Committee, we’ve added another education program to the Chapter’s 2019 calendar. Entitled “Winterizing Your Property”, this seasonally-relevant program will be held on November 7th at the Bloomington DoubleTree.
- Taking the lead in making our professional organization more welcoming, the Social Committee is also busy planning a new event for early 2020.

I hope that you will consider attending these events and actively engaging as a member of CAI-MN. Together, we can help bring about change in our respective fields and enhance the community association living experience.

JOSEPH CRAWFORD, CMCA, AMS, PCAM, President
Crawford Management
An insurance representative once described the practice and industry of insurance as “fun”. You know how you’re not used to associating certain words — like “dentist” and “relaxing”?

Those who labor in the insurance industry do a great job and I hope they enjoy their work. And we need them because this is a vexingly complicated concept. Let’s face it, most of us lay folk know just enough about insurance to confuse us. In many instances, we see it as a necessary evil: an expense no one wants to incur for protection against something no one wants to have happen.

I am not an insurance expert. But as a licensed real estate broker, I stand somewhere between expert and complete ignoramus as regards to insurance – especially regarding Common Interest Communities (industry parlance for condo and townhouse communities).

First, the briefest of histories. The concept of insurance, of pooled risk management (which is only one way to look at the concept), is about as old as human-kind. Chinese and Babylonian merchants employed practices meant to mitigate loss of cargo when traversing treacherous waterways back in the second and third millennia B.C.

The notion of a premium is about as old. One would pay a little extra on a loan for cargo so that if the shipment was lost, the loan was dissolved. You can see that the fundamentals have long been understood and used. So let’s come into the modern age as I am not intending a history lesson but more of a primer on the insurance you actually come into contact with.

To increase a policy-holder’s stake in any claim, the deductible came into being. What is a deductible anyway? It is what you are surprised to find you owe when you file a claim. Or more correctly, it is subtracted from your payout. In a typical HO-6 policy, the deductible typically can be as low as $250 or as much as $1,000 per year.

An HO-6 policy (HO for Homeowner’s) is the kind that covers a homeowner’s property in a CIC. It differs from the standard homeowner policy in that it covers only what the homeowner actually owns. With single family living, you own the building, the lot and any other structures on the lot.

In CIC living, it is possible that you could own the building but more likely a defined space within the building. That space is defined by the association’s governing documents. And your HO-6 coverage needs to match that definition. For instance, do wall, ceiling and floor finished surfaces belong to the unit or to the association? How about cabinetry? And don’t worry about too fine a line being drawn. Oftentimes people get drawn off target by discussion of “which pipes belong to my unit and which to the association?” or “how about the outside side of my front door?”

A bit of overlap between the HO-6 and association’s coverage is okay. The important thing is that these things are covered.

My firm manages a townhouse association which altered its coverage earlier this year. In other words, it changed the definition of what the individual homeowner is responsible for insuring. Let me tell you, it was an arduous and rigorous process, involving the talents of legal counsel and the association’s insurance agent. The association took pains to apprise its members of the change. But really, at the end of the day, the association wanted to give the homeowners a letter and say: “Here, hand this to your insurance agent”. The agent, Ben Bina, has graciously allowed me to quote generously from his letter, which is specific to this association and thus available for illustrative purposes only.
Bottom line:

1) Always consult the professionals
2) It is good to be informed but,
3) A little knowledge can be a dangerous thing thus,
4) Always consult the professionals

Chuck Krumrie, CMCA, is Broker and Owner of Urbanwood, Inc. in Minneapolis. Since 2005, Urbanwood has serviced smaller CICs in the Twin Cities metro area.

BUILDING COVERAGES
The Master Association Policy for XYZ Association provides blanket building coverage with a deductible of $10,000 per occurrence for all covered perils outside of wind and hail; the deductible for wind/hail losses is 2% of the structure coverage for each damaged building. In accordance with XYZ Association By-Laws, this master policy coverage includes all exterior portions of the buildings and the interior common area structure. **Unit owners responsibility includes: all interior doors; walls; appliances; heating and air conditioning systems; hot water heaters; plumbing, ducting and wiring within such Owner’s Unit; parquet, tile, carpeting, finish flooring and other floor coverings; light fixtures; plumbing fixtures; decorating; and all other portions of the Unit except the portions of each to be maintained by the Association.**

Because the Association has a $10,000 deductible, each homeowner should have the “Structure Coverage” to cover the Association's deductible of $10,000 and all interior structure portions of an owned unit (in all cases, the $10,000 deductible is the most a single-unit owner could be assessed for a covered cause of loss). It is also paramount each unit owner have “Loss Assessment” coverage of at least $10,000 included in their HO-6 coverage.

**IMPORTANT: OWNERS INSURANCE.** The policy does not provide insurance for the personal furnishings, contents, or belongings of the unit. Nor does it cover the personal liability of the unit owners. This is provided by the Unit Owner's Policy (HO-6). It is suggested each owner purchase enough coverage to cover his or her personal property, all interior structure portions of the owned unit, the association deductible, increased loss assessment, and additional Sewer Backup and Sump Pump over flow coverages for their unit through their HO-6.

**LIABILITY COVERAGES**
The policy contains a $1,000,000 single limit of liability applying on a “per occurrence” basis for bodily injury and property damage. This limit of liability protects the association and each individual unit owner in the event that a claim arises because of an occurrence on the premises of the Association. The aggregate limit is $2,000,000.

The policy does not cover the individual unit owner for an occurrence on that portion of the premises occupied or used exclusively by him or her, nor does it provide protection off the premises. This should be insured under the Unit Owner’s HO-6 policy.

Ben Bina, Association Insurance Agent
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SAVE THE DATE

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Cocktail Hour | Dinner | Annual Meeting | Door Prizes
Facing Fraud:
Where to Turn When Money Turns Up Missing

Discovering fraud has been committed on (or within) any organization can be disorienting. In a community association, that feeling is even more extreme. The association may be a non-profit corporation, but it’s supposed to represent your community, running on your own hard-earned money. You may feel betrayed by a service provider or even a neighbor, or discouraged by the thought that someone has targeted you and facelessly taken your money. It doesn’t help that the people left to deal with the problem are mostly volunteers who usually don’t have the experience or knowledge to perform a detailed financial analysis. But handling the finances is one of the critical components of running an association, so it’s not a job that can be taken lightly.

There is no one-size fits all approach that will always work when you suspect fraud has occurred, but what I hope to help you do is become more aware of the possibility that it can happen to you, and to equip you with some tools to address the issue if it indeed does happen to you. To do that, I’ll answer the five “W” questions you may ask yourself: Who, What, Where, When and Why.

Who(m) should you tell?

The answer depends upon what led you to consider that fraud may have occurred. Fraud committed by an outsider might not be identified immediately, but usually the evidence becomes clear not long after the bad guys have made off with the money. The greater challenge arises when you suspect an insider (a board member or manager) of fraud.

If you suspect internal fraud, you must be discreet. Include only a small number of people until you can determine whether there is evidence to support your suspicions (or even identify an accomplice). If a fraudster believes he’s not under suspicion, he’s more likely to become bolder and less careful. Keeping the investigation small will help avoid revealing that anyone is on to the scheme. Besides, if there’s a reasonable chance your suspicions are mistaken, you won’t want to have shouted them from the rooftops.

Consult with the proper professionals. If you need a pretext for the discussion (remember, your suspect may review and/or pay the bills), have an alternate motive ready. Explore with these advisors whether there is a “smoking gun,” a need to gather more information, or if there are simply some inconsistencies and innocent mistakes. If you start with a lawyer, the lawyer can engage an appropriate financial professional and maintain confidentiality with that person (as well as the members of your “team”). The lawyer should also have insights into time limits that apply (there are always time limits) and the various options for seeking to recover lost funds. Your financial advice would pref-
erably come from a licensed CPA, experienced in audits and/or forensic investigations. It’s beneficial if that person also has knowledge of community associations, since associations have unique features that may not be obvious to those who don’t regularly work in the industry.

Assuming you and/or your consultants believe you have identified fraud, either by an external scam or by someone internal (in which case it’s preferable that you’ve discretely gathered sound information as described below), you should report the matter to the police or other appropriate authorities (sometimes the FBI). Even if the authorities don’t pursue the matter, your insurer will seek proof that the matter has been reported as part of the claim investigation, so this becomes important if you’re confident money has been taken.

Fraud should also be reported to your insurance company. If your suspected fraudster was someone on the Board or who volunteers or works with the association (such as the property manager), you will hopefully have in place coverage against crime and fraud, sometimes called fidelity coverage.

You will have to disclose the fact that the loss occurred to the members, but the timing becomes important to consider. Early on, you won’t be in a position to disclose it, and investigating a possible dispute involving a member and/or criminal activity involving the association is subject to closed-session Board meetings and confidential handling. After reaching a firmer conclusion that fraud or financial misdeeds are involved and taking steps to address the matter, however, the association may need to explain the expenses incurred in investigating and pursuing the matter, or disclose the existence of a lawsuit, not to mention the loss itself. Details may still have to be kept confidential (to protect the investigation or strategy), but the owners must be advised of the issue in at least general terms. Your consultants can help with when and how to do this. Ideally, when you make this disclosure you will have begun to act on the issue and have a plan for the investigation and potential recovery, as well as steps that have been (or will be) taken to prevent such problems in the future.

**What should you do?**

Returning to the early stages of the process, the determination of what to do depends on where you stand in the evidence-gathering process. Start by collecting as much of the financial picture as you can while the suspected fraudster is still unaware that he or she is under suspicion. Get access to bank records and the list of checks going in and out (the ledger or journal) to see if there are unusual parties receiving payments, payments being made for amounts that don’t match prior rates, or payments that don’t line up with the contracts or invoices on which payment was being made. Obtain a copy of any electronic records used in the bookkeeping or accounting process.

If possible, review any records available from the time and talk to those who may be able to corroborate or refute the story being given for a suspicious payment. Fraud investigations require diligence and attention to such details, but the more pieces of the puzzle you can assemble, the more likely a picture can be painted that will lead to a recovery.

As noted, you should report the suspected crime to the authorities and you should submit an insurance claim. Even if you believe the loss amount is small and/or your insurance won’t cover the issue, if the loss was created by the actions of someone within your organization (innocent or otherwise), most crime/theft policies require you to do this; if you don’t, you risk jeopardizing your coverage if you later discover the problem is worse, or if you should have another problem.

In addition to police reports and insurance claims, you could choose to sue the person committing the fraud. Even if insurance may cover the loss, sometimes a lawsuit is a prudent move in order to seize evidence before it can be destroyed, or to freeze assets of the suspect before they can be sold or converted into the kinds of property that can be harder to trace or recover. This may be an important early decision, particularly if you’re pursuing a person who committed an “inside job,” so it’s preferable that you get good advice on the options, procedures, and timing for this step near the start of your investigation.

**Where can you turn for recovery or for resolution?**

Recovery is the ultimate goal in these cases. If a criminal prosecution results, obtaining justice in the form of a criminal conviction and sentencing can be gratifying, but that won’t make you whole.

One route to recovery can actually involve the criminal prosecution
process. If the government finds sufficient evidence of a crime, you may be contacted to provide information on the amount of your loss, which the prosecutor may pursue as part of the sentence (in the form of “restitution,” i.e., the recovery of money to help restore victims’ finances through criminal prosecution). But obtaining a criminal conviction requires a higher burden of proof than a lawsuit against the person accused of committing the fraud (i.e., a civil action), so the government may not prosecute a case it’s not highly likely to win, and restitution might not be ordered for the full amount of your loss even if the prosecutor does move forward. If the authorities are investigating your issue, you should ask about this possibility.

An insurance claim should be one of your first thoughts for a possible recovery. Even if you can’t recover money from the insurance company, reporting the claim can be an important step in maintaining coverage. In addition, when you renew or apply to a new insurance company, failing to have reported a fraud or theft in your history can be used against you when a future insurer evaluates whether it must cover a scam or theft.

As noted above, you may want to bring a lawsuit to recover funds directly from the perpetrator. Not all circumstances justify this step, however. Consider the likelihood of a successful recovery, including whether there are additional parties that may be targets besides the person(s) who initially took the funds. Finding alternative sources for your recovery may be a critical component to determine whether the association can be made whole. However, a lawsuit is not a universal solution.

When do you have to address the problem?

The short answer is: right away. When to act may depend in part upon what you know. Attempting to determine the start of fraudulent activity by an officer or property manager can be challenging. Your association may not retain records beyond a certain period based upon the Minnesota Common Interest Ownership Act, stated at Chapter 515B (“MCIOA”) or IRS “lookback” periods. Those records on hand may not be consistent or complete. Witnesses to certain events may have forgotten them. Recognizing these challenges, you will want to do what you can to trace any current evidence of fraud back as far as you can.

For lawsuits, the period you have to start pursuing the matter is less important than quickly proceeding to give yourself the greatest chance of recovery, but generally fraud claims are subject to a six-year limitations period that starts when the “facts constituting the fraud” are known. Note: you may know “facts constituting...fraud” before you have recognized they are evidence of fraudulent activity. In other words, please don’t wait six years to start any lawsuits!

A key benefit of the lawsuit is also undermined by delay. If there is evidence or assets that you need to seize or freeze so the perpetrator can’t hide the truth or shield assets from recovery, prompt action can be critical. A solid team of advisors is key to this evaluation. Financial consultants can determine whether there is evidence for a claim and with tracing assets. Legal consultants can advise on and pursue the quickest route to achieving results.

Insurance claims also require timely action. This type of insurance usually covers fraud or theft that occurred while the coverage was in place (regardless whether it was with the same insurance company), as long as the loss or theft is also discovered during the policy period. “Discovery” has special meaning in cases like this, which again is reason to consult with knowledgeable professionals and to do some homework, but not linger too long in the process, before launching into full-scale recovery efforts.
Why did this happen and can it be prevented from happening again?

The why can be a difficult question to answer, and not always because the evidence is unclear. This question may simply lead to some rather uncomfortable truths about how things have been done and how they need to change. Abolitionist Wendell Phillips is credited with the most famous use of the phrase “Eternal vigilance is the price of freedom,” and with due respect to the more noble use of that phrase it is apt to consider in the context of maintaining a viable community association. The self-governance of your community association and freedom from worry requires constant attention on at least some level.

External fraud can happen with even a momentary loss of vigilance. Scammers have become highly resourceful. Within even the past three years, entities ranging from large institutions to small, low-budget neighborhood associations have been targeted by imposters claiming to be an officer of the organization directing the treasurer to authorize a check or wire transfer, sometimes “confidentially” and often for an “urgent” transaction. Losses have ranged from a couple thousand dollars (or a couple gift cards) to tens of millions of dollars. These requests have come from email addresses that were either hacked or were spoofed to look like the real thing. They appear perfectly legitimate and may even resemble past practices for some organizations.

Insider activities may involve checks written to pay “vendors” who are either not real or for amounts that exceed the invoice, with the excess funds routed to the fraudster. This can be especially hard to detect if checks are written to cover multiple invoices at one time. During insurance claims, a property manager was recently accused of committing fraud by collecting excessive deductibles from homeowners and pocketing the funds that exceeded the amount actually required for the insurance claim. Another recent red flag involved a property manager inexplicably shifting funds back and forth between accounts, which obscured whether the total account balances were reflective of what should have been there. Sometimes the fraud can be even more basic, where the perpetrator bills for time or activities not actually performed. Sometimes an individual claims a payment was “approved” and issues the check to cover an invoice or expense based on the supposed product or service. Perhaps some element of the product or service was even delivered, but should have cost far less than the amount paid.

What most of these methods have in common is that they could have been prevented, or caught sooner, with adequate financial “controls.” Examples may include requiring more than one signature on checks, and more than one officer to approve wire transfers or the payment of an invoice. Verify the understanding by phone and in writing (at least over a certain threshold). Ensure that decisions to retain a new vendor or pay invoices are made during a formally held Board meeting for which there is a written record of the approval, so foggy memories don’t impair the ability to show an expense should not have been incurred. Limit the authority of managing agents (or whoever holds the purse strings) to write checks without Board approval in excess of a particular amount, either individually or in the aggregate in any given month. And, of course, don’t be so quick to save a few dollars every year by foregoing the annual financial review provided for in MCIOA. Even an audit from time to time may prove worth the investment when the alternative could be a six figure loss.

It won’t prevent fraud, but you should also have appropriate insurance in place. These policies should be written to cover not only the association, but also officers, committee members, and the association’s managing agent (usually naming the management company as an additional insured). This type of coverage generally isn’t issued unless the company already maintains other forms of coverage (property and liability coverage). Even more importantly, if coverage lapses, the period for which any fraud is covered will re-start when the new insurance is put in place (and may not extend to the beginning of the fraudulent activity). This aspect of the association’s preventative or protective measures should not be overlooked.

Matt Drewes is a Partner in the Minneapolis office of the DeWitt LLP law firm, and is the immediate Past-President of CAI-MN.

Please Note: This article is intended to provide general information only. You should not rely upon it for legal advice, as proper advice depends upon various facts and circumstances unique to each matter. No attorney-client relationship is formed without a signed letter or agreement by which the client and the firm agree to the terms of the representation.
When we take a closer look at this particular four-letter word, “hail” doesn’t get the credit it really deserves. In fact, it has several meanings as a verb. To hail is an enthusiastic greeting or salutation; it also means to praise vociferously. If I hail from Minnesota it means I’m a native of the state. Hailing a cab is a command to come; and situations that hail discretion should be discussed in whispers or behind closed doors.

It is hail’s ugly, stinging noun-version that gives it a bad name — one known exceptionally well by those who hail from Minnesota. Homeowners in Brooklyn Park, Coon Rapids and Blaine will remember the monumental storm of June 11, 2017, which wreaked havoc tearing down trees and electricity poles, and throwing giant, icy particulates called hail that gave roofs and siding the distinct look of Swiss cheese.

Unfortunately, sometimes it means experiencing an event like this for board and association members to take a closer look at the master policy and see what’s in there. As a property manager possessing Basic (with a capital B!) knowledge about the components of a policy, I can describe some things you definitely want to see.

• A clearly spelled-out deductible – With the intense changes in the Minnesota insurance industry (due to high losses and carriers coming and going), there are now several ways to present a deductible, with many insurers requiring a separate wind/hail deductible in addition to a flat deductible for other covered perils. This wind/hail piece can lead to extra confusion: Make sure you understand it well enough to be able to explain to somebody else — if necessary, ask your insurance agent to explain it till he’s blue in the face.

• Crime/fidelity – This covers the association in a loss by theft from an employee or a managing agent. And, more importantly it should include loss through computer fraud, since many of today’s thieves are picking virtual locks by computer instead of actual locks on a home.

• Directors and Officers coverage – A wise person once said (and wise people continue to say it today), you just don’t know what you don’t know. Board members are responsible for the maintenance of an association and its fiscal health but may not understand how or aren’t willing to raise their own dues. Underfunding the association and not disclosing it is a lawsuit waiting to happen: D&O coverage protects board members from their own unfortunate cases of naivete.

• Worker’s compensation – It can be confusing why this is important even if the association doesn’t have its own employees. You should always get a current Certificate of Insurance from any person working on your property, but not everyone is required to carry it. For cases like this (and in case obtaining the COI falls thru the cracks), a Work Comp policy protects the association in the event of an injury on the job.
• Sewer backup – This isn’t automatic in a standard association master policy, but incredibly important to have. Possibly one of the dirtiest, worst-smelling losses is when the storm sewer is flooded or clogged and, until it subsides, there is nothing you can do but watch the lower level swim in watery sewage. An event like this can result in tens of thousands of dollars in damage, which makes sewer backup coverage look like the best idea you ever had.

As always, board members should work with a knowledgeable agent when it is time for the master policy insurance renewal, and a good one is worth holding on to. Saving a few thousand dollars by jumping from one agency to the next every year may eventually catch up, leaving the association in the incompetent hands of a rookie agent or a carrier that doesn’t know how properly to insure the community.

It’s also a good idea to invite the insurance agent to the association’s annual meeting, where homeowners can ask questions and may better understand the relationship between their personal coverage (the HO-6) and the master policy.

Now – brace yourselves, because spring storm and hail season is here! With any luck and fingers crossed, maybe we won’t need the “other” four-letter words to describe hail this year.

Carin Garaghty is a CMCA working at Cedar Management, Inc.
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While conflict is an opportunity and often a welcome way to challenge assumptions, work creatively together and form new understandings, sometimes the highest good is to avoid conflict altogether. This does not mean to practice “denial” or stick your “head in the sand.” It means thinking through a troublesome situation and making some decisions about what to do next and weighing possible consequences. It is the old familiar rule of “picking your battles.”

Take the example of Suzy Homeowner who was tired of the common garden area in front of her home being left without flowers; she thought the grass looked bare and unlovely. She mentioned it once or twice to a board member of her Association, but felt she got no response. So, Suzy just headed out one fine day and created an entire bed of purple pansies!

Unfortunately, she had no right to choose purple pansies and no right to plant in the common area at all. On top of that, one of her neighbors hated purple. Another hated flower beds. The Association hated the upkeep. Her private solution to beautification inevitably invited a fight. And a fight followed in real life! Suzy’s governing Association objected to the situation, dug things up, tried to levy fines, ended up bringing a lawsuit, and everybody spent more than $20,000 on the whole thing until Suzy just gave up. Was it worth it? Was just spontaneously planting pansies a surefire way to stir the pot? Probably. Was it the best way to deal with the appearance and upkeep of the common areas? Probably not.

The example illustrates three important conflict avoidance principles. When disagreements start bubbling up, first ask “How important is it to me?” Some things just aren’t worth arguing about. Perhaps Suzy should have asked herself “If the common area grows only grass and not flowers, is that really the hill I want to die on?” Develop a filter for winnowing out things that really matter to you, that affect you frequently or deeply, and learn to let some less important things simply roll off your back. It is in the nature of living in community to recognize that compromise is vital, and it may have to start with you.

Second, even if something is important enough to pursue, is there a way to do it short of stewing about it, letting it get to you, allowing your mental patience to boil over, and then taking unilateral action that you know is going to go south? Instead, take the steps of thinking through what you want to accomplish, talking to others about whether your goals are shared, and putting together some ideas – more than one – for satisfying both you and those in charge. Then engage in dialogue about proposed solutions. Was it the color of the pansies that was objectionable? That pansies wilt in the heat? That grass is easier to care for? If the Association wants grass because it is easier to care for and Suzy wants flowers – can she plant pansies in pots on her deck instead of digging up the common grounds? Would the community as a whole benefit from switching to more ornamental grasses? Talking first is always the right idea – especially talking with ideas and flexibility in mind!

Third, if solutions cannot be found through introspection and dialogue, make a conscious decision about how much of your personal and financial capital you want to spend on the issue. This is the last step of choosing your battles. If Suzy thought the availability of purple pansies was essential to her happiness in life, then by all means she could decide to spend her time, reputation, and money on fighting the flower fight. In the real-life example underlying Suzy’s story, this homeowner ended up spending a lot on lawyers, earned some community ill will, and in the end just gave up the battle after the damage was done. That is a question that ought to be faced BEFORE and not after resources have been wasted.

In short, while a conflict is still in its infancy, think through these three avoidance steps: How much do I care about this? Can I solve this through generating ideas and talking it through? If I can’t solve it, how much am I willing to spend or sacrifice to carry out the fight? This will help keep conflict in its proper place!

By Madge Thorsen, Esq. & Patricia McGinnis, Mediators, Trainers, Facilitators.
Q: A bunch of us homeowners think that the landscaper for our community is using pesticides that are toxic to children and pets. What can we do about it?

A: From a conflict resolution point of view, first go through the “avoidance” steps discussed in the accompanying article. Pesticide toxicity seems like a pretty important subject and so this is probably not a subject that can be avoided. Step two is to do your homework. Talk together and make sure your group of concerned homeowners knows the facts; do not just react to rumors or possible inaccuracies. Write down people’s questions and the areas of concern. Step three is to ensure that you are heard: governing documents may describe the channels you should use, but the important thing is that someone—HOA board or the management company or an ombudsman—authentically listens. Ask good questions. Seek informed solutions and actively follow up. Attend Board meetings if your issue is going to be discussed. Remember to be patient and respectful—the Board and management must deal with every issue, not just one, so allowing time and showing a supportive attitude will be important.

Q: I got a notice from the HOA that I am going to be fined because of my garbage cans. They say I put them out too late or too early or something, but anyway I am inclined to just ignore it because I don’t think I’ve done anything wrong and it shouldn’t be a big deal. Is that okay?

A: Again, there may be a legal answer to that question found in the governing documents, but the dispute resolution professionals’ answer is “no, don’t ignore it!” Think of notices like that as a welcome chance to inquire and to address anything you or your Association may have misunderstood or done wrong. The easiest way to avoid conflict blowing up into an unnecessarily serious and expensive thing is to take advantage of the chance you have to fix the problem. If you did not in fact do anything wrong, a quick phone call may resolve everything and sometimes a fine may even be reversed. If you did make a mistake, you can learn more about it and understand what you might have to change in the future. Clear communication is the heart and soul of conflict resolution so do not bypass a chance to fully communicate, be listened to, correct matters and to learn.
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As storm season approaches, property managers, community association board members, and other property owners often find themselves in conversations with insurance adjusters regarding wind, hail, and even tornado damage to their property. While many insurance claims go smoothly, under the terms of an insurance policy and Minnesota law (Minnesota Statute § 65A.01, et seq.), when there is a dispute regarding the value of the loss, a process known as appraisal is one of the most efficient ways to settle any differences.

The typical scenario where an appraisal process may be helpful exists when an insurer simply presents a number far too low for the correction of all of the issues with the property; or, in the alternative, presents a low estimate from a contractor who has no intent or ability to complete the work at their proposed price. In this circumstance there is not a dispute regarding coverage, but instead a dispute regarding the value of the loss and the opportunity to appraise the loss is ripe.

The fact that the term “appraisal” is used for this process should not create confusion with a real estate appraisal. In the insurance context, they are appraising the damage rather than the property itself. Appraisals very commonly result in a higher number than the figure initially offered by an insurer.

Under Minnesota law, an appraisal does not determine the liability or coverage of the loss, but instead sets out the value of the loss (see Johnson v. Mutual Service Casualty Insurance Company, 732 N.W.2d 340 (Minn. Ct. App. 2007)). Thus, it may be necessary to address coverage with a court even if the appraisal sets the value of the loss.

As noted above, Minnesota Statute § 65A.01 sets out a process for insurance appraisals. A paraphrase of this statute is as follows: (1) When there is a dispute regarding the value of the loss either party may make a written demand for appraisal and name its own appraiser. (2) The responding party shall have twenty days to name its appraiser. (3) The appraisers shall then select a competent and disinterested umpire within fifteen days; and (4) if they cannot agree upon an umpire a court may be petitioned to name one for them. (5) The appraisers then appraise the loss stating separately the actual value of the loss and, failing to agree, shall submit their differences to the neutral umpire (see Kavli v. EagleStar Insurance Company, 288 N.W. 723 (Minn. 1939)).

The benefit of the appraisal process is that it can be completed in less complex or large losses easily without an attorney, although there are attorneys who practice in this area. Appraisers are typically considered far less expensive than litigation with an insurer over insurance coverage. It should be noted, however, that even if litigation over coverage is started, the question of the value of the loss may still be subject to an appraisal procedure. This is because appraisal does not determine liability (coverage), but only the value of the loss (see Johnson, supra) in the context of a Community Association (“HOA”).

In the event there is a dispute with an insurer regarding the actual cost of repair for storm damage,
Appraisal can be one of the simplest forms to resolve that dispute favorably for the HOA. Interestingly, if an insured demands appraisal from the insurer and the insurer refuses to participate, under Minnesota law the insurer may be barred from participating in the appraisal, at which point the appraisal goes forward with only the insured’s appraiser and the umpire. Under this circumstance, the insurer will have very little say regarding the value of the loss and it is a central reason why insurers typically agree to participate once an appraisal has been demanded. It is also possible for an insurer to demand appraisal when they see a dispute between the company and its own insured regarding the value of the loss. When an insurer demands appraisal, the process goes forward in the same manner as when the insured makes the demand.

Whenever a conversation arises about the proper administration of insurance claim processes whereby anyone indicates that “the insurer simply didn’t pay enough to get it fixed,” a bell should ring in any property manager’s head which reminds them of this simple alternative dispute resolution process. It is rare for the amount of the loss to go down during the appraisal process although at times it can remain consistent with the insurer’s original adjustment. More often, when the insured presents their own estimate for repair to an appraisal panel, they are given the opportunity to point out where the deficiencies exist in the adjustment process and a new amount can be found.

Most typically, with the exception of those circumstances whereby a coverage dispute exists, this can result in a resolution of the claim on more beneficial terms.

J. Robert Keena, Esq., is with the law firm of Hellmuth & Johnson.
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The master insurance policy is one of the most important purchases that an association makes and like the association, a homeowner’s HO-6 policy is one of their most important purchases.

An HO-6 policy coverage can be the difference between owing $500 vs. owing $10,000. The HO-6 policy is in place to cover damages that occur under the association’s master insurance policy and it also covers the association’s master insurance deductible in the event there is a loss that occurs at a homeowner’s unit and the deductible is assessed back to them.

Association insurance and especially HO-6 policies can be very complex and hard to understand what coverages are needed in the event of a loss that is covered under the association’s master insurance policy. That is why it is very important that each homeowner selects an insurance agent that is familiar with association and HO-6 insurance policies. The degree of knowledge and understanding of these types of policies does not necessarily vary from insurance company to insurance company, but in most cases it varies from agent to agent within an insurance company. So, the question becomes “How do I select an agent that knows what is going on?”. The best answer is to ask questions.

Below is a list of questions that can help determine:

- What experience do you have writing “Master Insurance Policies”?
- Do you service any association’s master policies?
- What can you tell me about what happens in the event of a claim that exceeds the association’s insurance deductible?
- Do you have experience handling HO-6 claims?
- How long have you been writing HO-6 and master insurance policies?

These are examples of a few questions a homeowner can ask that will give them a pretty good idea of how much knowledge and experience an agent has dealing with HO-6 policies.

Once a homeowner has selected an agent to service their HO-6 policy, the next question is: “What coverage do I need?” To answer that questions, the best thing a homeowner can do is provide that insurance agent with the association’s master insurance policy deductible and coverages. It is crucial that the HO-6 policy covers any deductible amount that may be assessed against the unit. If the association has a deductible and coverage policy, it is helpful to provide that to the HO-6 agent as well, so they understand what the association covers and in the event of a loss that occurs under the association’s master policy deductible, what happens.

Cody Gorsuch is an Association Manager with Omega Property Management and a member of the CAI-MN Editorial Committee.
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Hailstorms are a townhome association’s largest risk. They tend to be so damaging in Minnesota that the losses incurred make insuring townhome and condo associations extremely difficult for insurance companies. Unlike other damaging risks, such as fire, mold and the like, wind and hail losses are very unpredictable and difficult to prevent. In the past few years, hailstorms in Minnesota have been so frequent and severe that insurers have been forced to adjust how their policies respond to this specific risk in order to continue to protect townhomes in the Midwest.

First, many insurers introduced the peril-specific deductible – a separate deductible that only applies when the loss is attributed to a certain cause; in this case, wind or hail. These peril-specific deductibles were initially introduced on a per-occurrence or per-building basis. The difference between the two being that per-occurrence only applies once each time a particular event happens, whereas per-building applies separately for each building that is damaged by a wind or hail storm.

While this kept the frequency and severity of hail losses down for a bit, many insurers are now choosing to use a percentage wind/hail deductible. This means, in the event of a loss caused by a windstorm or hailstorm, the deductible will be calculated on a chosen percentage of the building value. The deductible is not a percentage of the damage to the building – this is a common misconception and a very financially threatening error to make.

Discerning the difference between the various options can, understandably, be confusing to many unit owners, so it vital to know what your deductible would be in the event of a loss and communicate that to the association. Take the below hypothetical association as an example:

Breezy Meadows Townhomes Association is a 14-building, 56-unit townhome complex that, when added up, has a total building value of $20,000,000. They receive five insurance quotes:

Q1) $25,000 per occurrence - $50,000 premium
Q2) $10,000 per building - $46,000 premium
Q3) 1% of building value - $42,000 premium
Q4) 2% of building value - $38,000 premium
Q5) 5% of building value - $36,000 premium
If the board at Breezy Meadows decides to only look at the bottom line premium, they would select Quote #5 with the 5% deductible. However, while they may be saving the association $14,000 in premium difference (compared to Quote #1 with the highest premium), if a hail storm comes through their side of the city and damages their buildings, they will now be spending $975,000 more on their deductible.

Not every insurance company offers all of the deductible options shown here, so it is prudent to ask when seeking out quotes. Additionally, it is helpful to have that discussion with your agent, so they know what the board would like to receive in terms of quotes.

Additional things to consider would be your association’s roof age, materials, and quality. Most insurance companies are willing to offer better rates and better deductible options if your association has recently updated your roof. Other considerations would be the quality of the shingles, and the length of warranty on the shingles. Purchasing high quality roofing materials is always a plus and can give you some leverage on pricing, while simultaneously better protecting your association from losses in the first place.

It is up to the board and the association to determine what wind/hail deductible makes the most sense for their association. In many cases, a high deductible like 5% can be so pricey that the amount the association pays out of pocket for the deductible covers all or most of the roofing and siding repairs – it’s almost as if the association doesn’t have insurance for those things in the event of hail damage.

While there may be some associations that a high deductible make sense for, no matter what it is vital to know what your association has and what your deductible responsibility will be in the event of a loss. Don’t put your association in financial jeopardy simply to save a few bucks on premium.

Grant Herschberger is a Business Insurance Consultant with Marsh & McLennan Agency and a member of CAI-MN’s Editorial Committee.
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Kudos to the CAI-MN Education Committee for producing another excellent educational program on April 4, 2019. The “Bad Board Decisions” session was well attended and proved to be both enlightening and entertaining.

Special thanks to Moderator Anthony Smith (Smith Jadin Johnson, PLLC) and panelists Christine Gnerer (Gassen Company), Amanda Johnson (New Concepts Management), Jeffrey Mayhew (American Family Insurance), Chris Schellenberg (Go Get Fred, LLC), and Stacy Sheridan (New Concepts Management).

This “cast” did a great job of posing various scenarios that might be encountered during a board meeting and the “referee” provided guidance as to when and how to reel in rogue board members and homeowners to ensure a productive board meeting.

Event Recap: Bad Board Decisions
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