

Common Interest

The Official Publication of CAI-Connecticut

Vol. XVI: Issue 5 • 2021

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On Notices, Voting
and Records

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Who Is CAI?

The Connecticut Chapter is one of 63 Community Associations Institute chapters worldwide. 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 1,200 members including nearly 150 businesses, and over 450 community associations representing 50,000 homeowners.



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

President's Message



Reggie Babcock

"...we must as an industry recognize that maintenance and improvements are critical and cannot be deferred, as unfortunately was the case in Florida."

I apologize in advance if anyone feels it is too soon after the Surfside building collapse to engage in after-the-fact analysis. The victims' families and friends are still grieving and deservedly so.

But there is a major takeaway from the tragedy that is intrinsic to CAI's mission to train and educate those to whom we have entrusted the responsibility for overseeing our community associations.

Boards and managers alike must confront the imperatives of maintaining the integrity of the assets which comprise the communities they oversee. Often this imperative engenders essential, needed expenditures. But too often, these expenditures are unpopular to a point that required votes by owners fall short, or Board member are supplanted by Board members committed or pledged to not increase fees or impose assessments. Or simply a Board is dissuaded from taking unpopular but necessary action, call it peer pressure. But we must as an industry recognize that maintenance and improvements are critical and cannot be deferred, as unfortunately was the case in Florida.

We don't expect our volunteer Boards to make these decisions in silos. We understand that Board members do not have inherent experience in engineering, and certainly don't serve on Boards in such capacities. To a lesser degree even managers themselves are not always the best candidates to determine what needs to be done and when. Boards and managers can and should seek advice from qualified professionals to guide them.

Reserve studies are ideal for this purpose. But the studies must not only be performed, they must lead to action. Too many reserve studies simply collect dust on the shelves because their recommendations are unpopular. Lack of Board continuity undermines the urgency of adhering to reserve study recommendations. There are a myriad of public policy initiatives that would help. Many states impose a requirement for periodic reserve studies, but they are not panaceas. We face a challenge in how to support — or perhaps insulate — the guardians of our communities from recrimination in order that they can act decisively and prudently, fully discharging their vital duty. I hope this effort gains strength. ■

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From the Chapter Executive Director

“Getting old is expensive and cannot be avoided. It’s an issue facing every association with a common area.”

~ Robert Norlund, PE, RS

(An excerpt from “Breaking Point: Examining Aging Infrastructure in Community Associations.” 2020 Foundation for Community Association Research.)



Kim McClain

Courtesy CAI-CT

The condo collapse in Surfside, Florida is a tragedy. No doubt it will take some time to fully understand the “whys” and “hows” of what went wrong and lead to a horrific situation. National CAI is taking a leadership role in convening experts in a variety of professions to help determine how we can best move forward in a productive and meaningful way.

Back in 2018, the Foundation for Community Association Research convened a Task Force on Aging Infrastructure. We are proud to note that our former President, Pamela Bowman, served as a member of that group. They took some deep dives to better understand the issues regarding deferred maintenance, etc. which included surveying a breadth of managers, contractors and board members throughout the country. One number jumps out — more than 80% of survey respondents encountered unanticipated and unplanned for infrastructure issues over a recent three-year period. The publication which was produced from their efforts is well worth the read. Many of you will recognize some of the discussion about the challenges of garnering community support for upkeep and big-ticket items.

We are very pleased to note that our significant efforts with the Connecticut General Assembly have led to a major victory! Public Act 21-169 became effective on July 14, 2021. Adam Cohen’s

[Continues on page 6.]

FALL FUN + VENDOR FAIR

Fresh Air & Fresh Beer — Perfect Together!

WEDNESDAY, SEPTEMBER 29, 2021
3:00 pm - 5:00 pm
at Hops on the Hill, 75 Dug Road, South Glastonbury

Wouldn't it be great to actually see some of your great CAI-CT connections — for real?! Fall Fun at Hops on the Hill in South Glastonbury, CT might be just that opportunity! Join us for a Flash session with a variety of vendors.

Our Timely Topics for Fall Fun include issues affecting your community NOW:

- Preparing your Landscape for Winter
- How Reserve Studies Minimize Liability
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- Preparing your Property Damage Team
- Learn how to prevent serious disasters from happening in your community!

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Exhibitor Space & Sponsorships available – contact ellen@caict.org

CONDO INC. October WEBINAR SERIES

Hosted on Zoom

This LIVE webinar will be presented in 3 parts.
Wednesdays — October 6, 13, 20 from 6:00 pm - 8:00 pm

While we encourage live participation at each session so you may ask your session topic questions, we realize that each person's schedule is different. The components of the presentation will be recorded and sent to registrants for viewing as their schedule allows.

FOR A LIMITED TIME, PANDEMIC PRICING — \$50 for up to 3 attendees! Must register at the same time.

Sponsorships available – contact ellen@caict.org



Virtual Legal Symposium

Hosted on Hopin

Thursday — October 28, 2021 • 1:00 pm - 5:00 pm

Our panel of legal experts will cover topics important to your community. The components of the presentation will be recorded and sent to registrants for viewing as their schedule allows. (All proceeds to benefit legislative advocacy for Connecticut Community Associations.) Bring your questions!

Pricing: \$75 (CAI Members who sign into their account prior to registering will receive a \$25 discount.)

(Approval pending for 4 continuing ed credits).

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FYI

DEPARTMENT OF CONSUMER PROTECTION

Community Association Manager & Community Association Manager Trainee

A Community Association Manager is a natural person who provides association management services, and includes any partner, director, officer, employee or agent of such person who directly provides association management services.

Prerequisites:

Background Check:

- A Criminal History Record report from the State of Connecticut, State Police Bureau of Identification, 1111 Country Club Rd., Middletown, CT 06457. The form is available at <https://portal.ct.gov/despp>. Select “CT Only Criminal Conviction History Record Search (Name/DOB Search will provide a copy only if a record exists)”.

Required Course and Examination:

- Certificate confirming the successful completion of a nationally recognized course on community association management. The Community Association Institute's (CAI) M-100 course satisfies this requirement. Information on the course can be found at <https://www.caionline.org/LearningCenter/Education-for-Managers/Pages/default.aspx>.
- Certificate confirming the successful completion of the National Board of Certification for Community Association Manager's (CMCA) examination. Information on the CMCA Examination can be found at <https://www.camicb.org>.

Community Association Manager Trainee:

Community association trainee means a natural person working under the direct supervision of a community association manager, for the purpose of being trained in the provision of association management services. A trainee may, for a period not to exceed six months, engage in association management services.

- the trainee must be directly supervised by and act under the direction of a currently registered community association manager who shall be liable for the actions or inactions of the trainee.
- a trainee has no authority to collect, control or disburse funds of the association.
- a trainee registration is a one time non-renewable registration.

Visit <https://portal.ct.gov/DCP/License-Services-Division/All-License-Applications/Real-Estate---Community-Association-Managers> for more information. ■

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Linda Drake
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Statutory Snippet...

Actions in Violation of Meeting Procedure. Are still valid, unless challenged in court within sixty (60) days of distribution of meeting minutes. (C.G.S. 47-250.)

This is an excerpt from a Condo Inc. presentation given by Michael Feldman, Esq. & Kasey Burchman, Esq of Feldman, Perlstein & Greene, LLC. Reprinted with permission.

CED Message...from page 4.

article in this issue offers a brief explanation of what those changes mean for our associations and their managers. We firmly believe that these updates to the Common Interest Ownership Act (CIOA) will lead to improvements in transparency and communication as well as lessen some of the administrative burdens. It is always important to remember that your membership helps to support our advocacy work. Without such a strong presence in Hartford and working relationships with key legislators, we would not realize these types of successes. Furthermore, some pretty bad bills would get passed without our intervention. The more members we have, the stronger we can be. Need more info about membership? Go to: www.caict.org.

Come one! Come All to our Amazing Vendor Fair! As part of our Fall Fun event on September 29 2021, we are including a new feature – A Vendor Fair! Since the middle of last year, many of our business partners have been oping about connecting with their current and prospective customers in person. We listened! We will have plenty of space at our venue – Hops on the Hill in South Glastonbury - to accommodate this fun fair. Space is limited. Don't delay in reserving your space today! For more information and to register, go to: www.caict.org or contact: ellen@caict.org

Stay cool and enjoy the summer! ■



Share your news and expertise!



Common Interest welcomes the submission of articles, news and announcements subject to space limitations, editing and appropriateness, including educational value. The *Common Interest* Publication Committee will make every effort to publish articles submitted and may even be able to help you with your submission.

**Please call (860) 633-5692 or
E-mail: kim@caict.org for
more information.**

Legally Speaking...



Adam Cohen, Esq.

Legislature Amends CIOA's Rules on Notices, Voting, and Records

By Adam J. Cohen, Esq.

Connecticut's General Assembly has passed House Bill 6538 to revise the Common Interest Ownership Act's provisions relating to notices, voting, and records.

Perhaps the most important change in this bill is that it will allow unit owner meetings to be held by online, video, or telephonic process unless the declaration or bylaws prohibit doing so. Until now, the law said the opposite; remote owner meetings were allowed only if the declaration or bylaws specifically allowed them. The Governor had issued executive orders allowing associations to hold meetings in this way during the pandemic, but those orders are expiring, and House Bill 6538 makes this option permanent. The meeting's notices must explain the conferencing process to be used and how owners can join it, and the process must allow all owners to perceive the discussion and offer comments.

Relatedly, this legislation will allow voting to be conducted electronically, either during a remote meeting or instead of a paper ballot at a live meeting, as long as the declaration or bylaws do not prohibit or restrict doing so. This provision is separate from the existing procedures for voting by referendum without any meeting.

A minor change made by this bill would eliminate the need to send duplicate notices of the meeting and its outcome by return-receipt mail to a unit owner who either requests a board hearing or against whom the board may file a lawsuit. Going forward, these notices need only be sent by regular mail.

Finally, House Bill 6538 will modify the rules for unit owners' inspections and copying of the association's records. It clarifies that the examination can be done either electronically or in person, regardless of what the declaration or bylaws say. More importantly, it extends the deadline for the association to provide the records from 5 to 30 calendar days, as long as the association responds to the request



Tashka/Stock/Getty Images Plus

"The Governor had issued executive orders allowing associations to hold meetings in this way during the pandemic...House Bill 6538 makes this option permanent."

within 5 business days to offer at least two proposed dates for the inspection and/or copying to occur.

These changes will apply to virtually every common interest ownership association in Connecticut, other than those created before 1984 which either are purely commercial or have fewer than 13 units. ■

Adam J. Cohen is an attorney with the Law Firm of Pullman & Comley, LLC headquartered in Bridgeport, Connecticut. As the Chair of its Community Associations Section, he represents and gives seminars to condominiums, tax districts, and other communities in matters ranging from amendments of governing documents to revenue collection strategies and commercial disputes.



Visit www.caict.org for links to useful Condo/HOA legislative information.

Financially Speaking...



Daniel Levine, CPA

Audit Trail

By Daniel Levine, MBA, CPA

Part of conducting an audit requires having adequate records available to have the audit service be performed. If records are missing or unavailable, then the ability to do an audit becomes questionable. After all, how can an audit be completed when the underlying records aren't available to be audited? As a result, a critical component of the audit will be the documentation that an association keeps.

Every auditor will potentially request different documentation but for large or important transactions certain documentation being available will allow for an audit to be conducted efficiently. This article will look at some of these key documentation components which every association should strive to keep as part of their books and records in some form or fashion to assist in creating a detailed audit trail.

Loans:

Many associations borrow to be able to fund large scale capital improvements. The dollar amount of these loans can be upwards of seven figures at times depending on the project. As a result, accounting for the loan and transactions impacting the loan will most likely be a focus of any audit. An association should look to have on hand the following documentation:

- 1) Loan documents: these include any debt covenants or promissory notes that detail the maturity, interest rate, and monthly payment terms for any loan. Most financial statements require certain loan information to be disclosed and that information will be readily available in the loan documents.
- 2) Loan disbursement schedule: This will typically highlight any closing costs associated with the loan. Closing costs are typically attorney and bank fees that are taken directly from the loan proceeds and require specific treatment under accounting rules.
- 3) Loan Invoices: The best audit evidence is third party documentation. Ensuring that the association has copies of all loan invoices from the lender that reflect the interest and principal paid will help the auditor reconcile any loan transactions. This can be beneficial in cases of loans tied to special assessments by allowing the audit to have detail on additional principal payments and if they are appropriately applied to the loan.

“Every auditor will potentially request different documentation but for large or important transactions certain documentation being available will allow for an audit to be conducted efficiently.”



siraanwong/Stock/Getty Images Plus

Reserve transfers:

During any given year, an association can have multiple transactions that impact their long-term capital replacement fund. Understanding these transactions is important in determining whether it is a withdrawal or a deposit, associations should look to develop simple documentation related to reserve transactions:

- 1) Withdrawal approval forms: When an association decides to remove funds from their capital reserves it is important to understand if it is an appropriation or interfund borrowing. Having a formal form to document a withdrawal approval can not only document this distinction but also reflect the reason for the withdrawal and detail who approved it. This provides an audit trail for any type of reserve fund withdrawal and helps with ensuring the presentation of the transaction is correct in the statements.
- 2) Deposit forms: The association should develop simple documentation authorizing deposits into the fund. These can typically be something as simple as check requests to document monthly contributions or other deposits into the fund, but any additional documentation will help create a distinction between what a deposit

[Continues on page 10.]



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FINANCIALLY SPEAKING...from page 8.

is for which will help solidify presentation of the transaction in the financial statements.

Special assessments:

Special assessments are a common occurrence in many associations. When deciding to levy an assessment, especially one that is multiple years, an association should strive to keep relevant documentation relating to the assessment in their records. Any documentation will help an auditor or accounting department have the history behind the assessment and understand better how it should be accounted for.

1) Special assessment memo: Many associations draft a formal memo to the unit owners about any relevant special assessment. These memos typically reflect what the assessment is for and what the cost is to the unit owners. These high-level memos are helpful documentation for an auditor to have to apply any revenue recognition accounting principles to an assessment.

Minutes:

Whether a board meets monthly, quarterly, or just once a year having meeting minutes that capture the discussion and decision making of the board of directors are very useful for developing an audit trail. As part of an audit, being able to see formally documented decisions

and then trying to trace those decisions to the financial statements can help determine if there is any outstanding activity that needs to be recorded, or if transactions recorded in the records are reflected in line with the board's intent.

Bank statements and reconciliations:

An important control for any association is to receive monthly bank statements and perform a reconciliation of the activity on the statement to the activity in their accounting records. Being able to identify activity that has not cleared the bank yet is important to know in case any checks or deposits need to be followed up on. From the audit perspective being able to have access to statements to see the details of any account can allow for a better understanding of the transactions during the year.

1) Monthly statements: An association should work to make sure they have monthly statements for all cash accounts. This will allow for more accurate monthly reporting in addition to the any impact it may have on an audit. While this is commonplace, there are a few special circumstances to highlight that can cause issues with an audit trail.

a. Certificate of deposits: A common occurrence is that an association will own a certificate of deposit and not receive a monthly statement. The reason for this could be because the bank does not have a correct address on file or because the bank does not issue statements for these instruments. Regardless by not receiving a statement the association will not receive information on

[Continues on page 26.]

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Paradise 2021

Paradise was back — in person — on June 24, 2021. Given that electric vehicles (EVs) are becoming more prevalent, it's important to understand some of the trends and how EV owners will be charging their cars and how that can be handled in community associations. Our speaker from the CT Department of Energy and Environmental Protection (DEEP) gave us a great deal of information to ponder. We were also treated to see and touch a new Ford Mustang EV SUV — a very cool car with a display panel the size of a small television!

This year we were right on the Long Island Sound at the Ponus Yacht Club in Stamford. The weather could not have been more delightful. It was great to see folks out and mingling with a nice salty breeze in the air.

We are grateful to our sponsors for their generous support of this event!

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We also wish to thank Mea Anderson for her many years serving as Chair of the Paradise Committee. We truly appreciated her energy, humor and team spirit! We will miss you!

EDITOR'S NOTE: CT Public Utilities Regulatory Authority (PURA) recently announced a rebate program through electric utility companies of up to \$40,000 for common interest communities and other multifamily developments to install EV charging stations on their property. ■

(below) Erin Kremser, CIT; Reggie Babcock, Westford Real Estate Management, LLC and Patty Coleman, Westford Real Estate Management, LLC



(left) Lynn Jackson, CMCA, AMS, The Property Group of CT, Inc.; Dave Pilon, CIRMS, Bouvier Insurance; Mary Elizabeth (Mea) Anderson, Crystal Restoration Services of Connecticut; Robert Pacelli, Esq., Zeldes, Needle & Cooper, P.C. checking out the new Ford Mustang EV.

(below) Cathy Luciano, CMCA, Connecticut Condo Connection, LLC; Rich Wechter, CMCA, Westford Real Estate Management, LLC and Jean Dobbin, Dobbin Management, Inc.



(above) Craig Leppla, CMCA, Westford Real Estate Management, LLC; Jo-anne Kelly, Hayes House Condominium Association; Robert Pacelli, Esq., Zeldes, Needle & Cooper, P.C. and Peter Zonis, Hayes House Condominium Association





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Scott J. Sandler, Esq.,
CCAL



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CIRMS

Catastrophic Losses and Condominium Insurance

Who Covers What?

By Scott J. Sandler, Esq., CCAL and
Richard Bouvier, CIC, CIRMS

The recent collapse of a portion of a high-rise condominium in Surfside, Florida, is nothing short of a horrific tragedy. The immediate response is, of course, the search for survivors and accounting for all of the residents and guests within the building. After that, and after clearing the rubble and debris, the next response is rebuilding the condominium and the homes within it.

Unfortunately, events like this bring to light the confusion among the condominium unit owners and residents over who is responsible for repairing the damage and restoring the units, and what they could have done to better insure themselves against the costs associated with such work. Connecticut has specific statutes that address the repair or restoration of a condominium following a casualty loss, i.e.: a loss that would be covered by property insurance.

General Rules for Maintenance, Repair and Replacement

Generally speaking, unit owners in a condominium are responsible for the maintenance, repair, and replacement of all portions of their units. The association is responsible for the maintenance, repair, and replacement of the common elements.

These responsibilities apply to work necessitated by time, wear and tear, or obsolescence. They also apply to preventative maintenance, i.e.: work performed to minimize the risk of failure of a building component.

Repair or Restoration After a Casualty Loss

If a unit is damaged or destroyed by a casualty loss, then the responsibility for repairs and restoration of the unit shift from the individual unit owner to the association.

Events that are casualty losses:

- Fire or smoke damage.
- Sudden and accidental water damage, such as from a failed hot water heater or a burst pipe.
- Damage caused by wind and wind-driven debris.
- Damage caused by ice dams.
- Collapse of the building.

Events that are not casualty losses:

- Damage caused by continuous and repeated exposure to a peril, such as a small leak where the damage accrues over a long period of time.



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- Sewer and water-line back-ups (though coverage for these events can be purchased separately).
- Mold remediation after a water loss, if the mold is the result of not promptly repairing the water damage.
- Flooding from surface or groundwater, including seepage through foundation walls.
- Wind-driven rain, unless there is other physical damage caused by the wind or wind-driven debris, which allowed the rain to enter the building.

If a unit sustains damage caused by a casualty loss, then the association, not the unit owner, is responsible for repairing or restoring the unit.

Insurance Coverage

Section 47-255 of the Connecticut Common Interest Ownership Act requires the association to maintain a master insurance policy, including coverage for property damage. If the condominium contains units stacked on top of one another (garden apartment style or high rise), or three or more units attached side-by-side (townhouses), then the master policy must also cover the units.

If there is a casualty loss, the master policy is primary. This means that the association must first obtain and use the available proceeds under the master policy, before it can tap into any other available funds. The concept is that the association makes the repairs, using the proceeds from the master policy.

The Importance of Unit Owner Insurance Policies

The following expenses are not covered by the master policy.

Deductibles: Deductibles under master policies have risen quite high over the past couple of decades. We are now seeing deductibles anywhere from \$10,000 to \$25,000. For certain types of claims, such as damage from ice dams, we are also seeing insurance policies applying per-unit deductibles. As a result, much larger portions of the repair costs are not covered by the master policy.

Personal Property: The master policy does not provide coverage for the personal property of the residents. If the loss damaged televisions, clothing, furniture, jewelry, electronics, etc., the master policy will not compensate the owner.

Relocation Expenses: If the resident must move out of the unit so that the association can perform the repairs, the resident's relocation expenses are not covered by the master policy. Similarly, the master policy does not cover the cost of storing personal property while the repairs are performed.

Lost Rents: The master policy will not compensate a unit owner for lost rents while damage to his or her unit is repaired.

Unit owner policies, typically referred to as HO-6 policies, bridge the gap in coverage not afforded under the master policy. The HO-6

[Continues on page 16.]

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CATASTROPHIC LOSSES...from page 15.

policy will cover the following:

- The deductible under the master policy.
- The owner’s personal property.
- Any relocation expenses incurred by the owner.

For these reasons, all unit owners should have their own insurance policies which, on average, cost approximately \$250 to \$300 per year.

A unit owner who leases his or unit should obtain additional insurance covering lost rents. Landlord policies are typically referred to as DP-3 policies.

Tenants should obtain rental policies to cover their personal property and relocation expenses. These policies are typically referred to as HO-4 policies.

When a loss occurs, the master policy, the unit owner’s policy, and, if the unit is leased, the tenant’s policy, working in tandem, provide the coverage necessary to make everyone financially whole again. ■

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Both of the authors have served as past presidents of Community Associations Institute – Connecticut Chapter.

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Joel W. Meskin, Esq.,
CIRMS, CCAL

The Ethical Dilemmas of Community Association Insurance

By Joel W. Meskin, Esq., CIRMS, CCAL Fellow, MLIS, EBP
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The procurement and maintenance of Insurance in the community association industry is shrouded in unique ethical considerations that do not apply to individual insurance consumers. Enter the Community Association Board's ("Board") "fiduciary duty." This process is imbued with inherent ethical considerations for not only Boards, but also Community Association Managers ("CAMs"), Community Association Attorneys, Community Association Insurance Professionals and other business partners.

A fiduciary duty is the legal responsibility to act solely in the best interest of another party (i.e. "the community association"). Fiduciary duties include duties of undivided loyalty, due diligence and reasonable care, full disclosure of any conflicts of interest, and confidentiality. While a fiduciary duty may be violated accidentally, it is still a breach of ethics. Emphasis added.

Ethics Unwrapped: <https://ethicsunwrapped.utexas.edu/glossary/fiduciary-duty>

A Board's fiduciary duty in the insurance procurement process differs from an individual insurance consumer. For example, a board president may want to use his insurance agent brother-in-law who does not have experience in community association policies, the board president may not fully disclose his potential conflict of interest here. Whether the president perceives this as a conflict or not, failure to disclose is a breach of fiduciary duty and therefore an ethical violation. On the other hand, if an individual insurance consumer selects his brother-in-law, it would not be a breach of a fiduciary duty or ethics, but it could be a bad decision. As Forrest Gump says, *"stupid is as stupid does."*

A board's fiduciary duty requires the board to protect, preserve and enhance the assets of the association. These assets are the common elements of the association, both tangible and intangible. The keystone to this duty is that *the board members must put the interest of the association above his or her own personal interests.* This can be counterintuitive for many board members. In fact, many board members seek to join the board for the primary purpose of protecting their personal assets or pursuing their own agenda. As we know, perception is reality. The president above may see this as a 'no harm no foul situation.' On the other hand, others may very well perceive the act as a breach of its fiduciary duty. This misunderstanding by board members regarding their duty is directly or indirectly the genesis of many Director and Officer Liability Claims.

The duty to place the association's interests above the personal interests of each board member can be subtle, obvious, or anywhere in between. The key reason that unit owners elect multiple board mem-

"...the board members must put the interest of the association above his or her own personal interests."



shodonnell/E-/Getty Images

bers to manage the association, at least theoretically, is as a check and balance insuring the various interests of the membership have a voice.

The By-Laws (the association's operating manual) and other applicable laws are in place to facilitate board fiduciary duties and ethical considerations. This is why it is generally required that board business be conducted during a properly noticed board meeting. Furthermore, most states, have Open Meeting Laws. This is a check and balance on the board's fiduciary duty avoiding decisions being made in smoky back rooms.

So what do fiduciary duties and ethics have to do with community association insurance? The board is the association's Risk Manager elected to protect, preserve and enhance the assets of the association. The fiduciary duty does not require that the board make the best decisions, or even a good decision. Rather, the board is required to act with a duty of loyalty by putting the association's interest above their own, act with due diligence and reasonable care, and to fully disclose any conflicts of interest.

The board is not expected to be professionals or experts that require special training. For these matters, the board is authorized to seek professionals and experts. Keep in mind that a directors and officers liability policy only provides coverage for board members in their capacity as a "board member" and not as professionals or experts.

For over 20 years I have asked Boards, CAMs and Insurance professionals what is the first question board members ask when considering insurance options? Without exception they all ask "how much?" The only time this is acceptable as the first question is if all insurance, insurance companies and insurance professionals were the same. It never is! I have never seen any governing documents that requires a board to save money when procuring insurance, yet that would appear to be the case based on decision makers' conduct. Yes, a board must be vigilant. The fiduciary duty, however, is to purchase the best insurance to protect the assets. Once the board has done its due diligence by listening to Community Association Insurance Professional presentations, than a cost benefit analysis can be done. Knowledge of price up front will influence your decision process and be a distraction.

Boards must understand that the association is fully insured for every risk! The question is: *are they covered by an insurance policy, or will they be self-insured having to look to association assets, a special assessment or a bank loan to fund a claim or loss. At the end of the day, someone must pay.*

Another problematic practice by many boards is to defer its due diligence to its independent CAM to procure and maintain insurance. This practice is inherently a breach of the fiduciary duty by the board as well as an unwitting professional error or omission by the CAM. What boards must understand is that no matter the CAM's insurance acumen, she or he is not covered for that E&O under their E&O as it is excluded and not under the D&O as they are not covered when the association sues the CAM.

The board must also keep in mind that if the board sues the CAM, the D&O policy will not defend or indemnify the CAM. To make this an even greater breach of fiduciary duty and ethical dilemma, is that the management agreement more likely than not includes an indemnification provision that would require the association to defend the CAM when the association sues the CAM for not procuring or maintaining the proper and sufficient insurance. Therefore not covered under the policy, but for all intents and purposes, covered pursuant to the indemnification agreement. This latter consequence is another reason the CAM should bring in the insurance professional.

Tip: Insurance professionals do not charge the association for his or her time to present a proposal and answer all questions the board may have. I am also often baffled why a CAM would not mandate

that the insurance professional present the proposal(s) and answer all board questions. This is a win-win for a CAM's insurance dread and transfers the CAMs risk of E&O to the insurance professional. ■

Joel Meskin, Esq., CIRMS, CCAL Fellow, MLIS, EBP is the Managing Director of Community Association Products at McGowan Program Administrators. He has been a community association insurance expert for over 20 years, and is a prolific speaker and author nationwide.



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Reza Koosha-Mirsaidi

TECHNICAL EXPLANATIONS

By Reza Koosha-Mirsaidi

Charging into the Future! *Electric Vehicle Charging Stations in your Community*

Through innovation, electric vehicles are trending in popularity, and are becoming more commonplace in society. As more people are considering buying electric vehicles, thought has to be also given on how to provide the means to charge them. While single family homeowners install charging stations for their vehicle as part of their vehicle buying considerations, communities such as Condominium Associations that have common element parking facilities generally do not have existing car charging facilities for their residents. Associations may look to the future of their community and may consider the value and feasibility for installing charging stations. Having charging stations is a potential selling point for prospective residents, as some may currently use electric vehicles and would prefer residences with charging facilities. For current residents, it can also be seen as a perk, as it allows them the option to acquire an electric vehicle that they otherwise could not have practical usage of. In some situations, Associations also will need to address legislation on car charging stations that might affect the existing Association's rules/bylaws in regard to these stations.

However, as many Communities were originally built without consideration to future charging stations, Associations will need to determine how robust their existing electrical infrastructure is to accept these new installations. It is advisable to perform an assessment of the existing site and existing electrical systems, and identify key points of the feasibility of installing new charging stations, such as:

- Determination of existing electrical capacity
- Quantity of charging stations based on available space and electrical capacity.



Extreme Media/Stock/Getty Images Plus

- Potential locations the charging stations
- Required real estate for new electrical infrastructure for the charging stations.
- Recommendations of electrical system upgrades (including service upgrades) needed to meet your Community's target.
- Potential federal/state incentives for installing charging stations. ■

Reza Koosha-Mirsaidi is a Senior Electrical Engineer with The Falcon Group.

ENVIRONMENTAL TIP

Keeping things cool — including your food — can be a challenge in the height of summer especially. Your refrigerator freezer accounts for about 1/3 of the total electric bills in most homes. Freezers will work better when they are full. When they aren't full you can use crumpled up paper or bubble wrap to stop warm air circulating when opened.

*Keep the
freezer full to
save energy...*



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Rotted Door Caused by Rotten Condo Sprinkler System

C.B. from Connecticut writes:

Dear Mister Condo,

My garage door bottom panel had begun to rot on the right side. When I asked management whose responsibility it was, they said the unit owner. Soon after, I left early one morning for work and found water puddles pooling inside my garage at the same location as the rot origin on the door. Upon opening the garage, I realized the sprinkler system head was directed at my unit. The water was hitting my door each time the sprinklers ran. I placed a work order and the heads were redirected. However, the damage was too far along and the door had to be replaced. As the damage was from the Sprinkler System, whose responsibility is it to replace the door? Management says it is not their responsibility and the Sprinkler System vendor says it is not their responsibility. However, by redirecting the heads, it shows the heads had not been monitored and maintained properly.

Mister Condo replies:

C.B., I am sorry that your garage door was damaged by the association’s sprinkler system. While I understand your frustration, I sincerely doubt you will get the association or the sprinkler vendor to take responsibility for the damage. It would be almost impossible for you to prove the damage was caused by negligence so this would fall under the unfortunate circumstance category of responsibility, in my opinion. Since the garage door maintenance is your responsibility, this is likely on you to pay for the repair. Your homeowner’s policy (HO-6) may provide some relief but my guess is that it wouldn’t be worth the time and trouble to file a claim unless the expense is exorbitant. Sprinkler heads fail often and can be turned around from lawn mowers, foot traffic, and just general wear and tear. Moving forward. Keep a close eye on your garage door after each watering cycle.

R.M., added this additional thought via the Ask Mister Condo website:

“You can file a claim and then the insurers (between unit owner and master policy) can duke it out. The contractor who replaced the

garage door, you could ask them for a letter about where the damage came from, i.e. water from sprinkler, etc., if they have a perspective about it. You may be able to figure out from the condo docs who is responsible for the actual garage door (i.e. not the apparatus). I just reviewed a lawsuit in CT where the property manager said the unit owner was responsible for something, because they had simply asked their retained attorney as he was walking by whose responsibility it was, without having done any due diligence. However, when it became a lawsuit, the association had an attorney review and provide a legal letter, and that attorney said the item in question was the responsibility of the association. The hard part with filing any claim, is what is your threshold dollar amount that makes it worth it to you to seek redress, i.e., \$2K, \$5K? You can get out your docs, dig in, and see if it is in there, plain as day – it could be, then you know you have a legitimate concern about responsibility. If it isn’t perfectly clear, it can be murky who is responsible, as if often the case.”

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Jonathan Chappell,
Esq.

Connecticut Legalized Recreational Marijuana.¹

Now what?

By Jonathan Chappell, Esq.

On June 22, 2021, Public Act 21-1, An Act Concerning Responsible and Equitable Regulation of Adult-Use Cannabis² became law. Now what?

As the late, great Attorney Matt Perlstein would often say about new potential issues including those resulting from changes in legislation outside of CIOA: “Do we care?” In my opinion, here an association should care and at least discuss (among board members and counsel) what, if anything, it may want to do.

Even prior to this Act, likely every association lawyer has fielded questions about marijuana, for medical purposes or recreational/criminal use (until now). Connecticut’s legalization of recreational use will probably lead to more, new and potentially complex issues. Also, remember cannabis remains illegal under federal law.

This article cannot address a complete list of potential issues an association may face, but aspires to at least provide a foundation for things to consider before a problem actually arises from recreational use (e.g. a complaint: “My neighbor’s pot smoke is entering my unit and making me sick. Do something.”).

Please remember that the association, its board, manager, and/or attorney do have certain powers, but are not a police force. However, Connecticut’s legalization may take away calling the police for just use, provided there is not a demonstration that it is being sold illegally, the quantity present is above that allowed, or the users are not of the appropriate age.

(Very) Basic Summary of Public Act 21-1³

The approval of the Act made Connecticut the 19th state in our country to legalize some form of recreational use of marijuana. I invite you to read the entire 303-page Act!⁴

There are certain provisions that an association must be aware of:

- A person 21 years or older can have 1.5 ounces on their person and a total of 5 ounces in their home/unit or vehicle (glove compartment). A 21-year-old person (or older) sitting in his/her front lawn in plain view smoking a joint is no longer violating Connecticut law.
- A person can grow up to six plants indoors; this is currently restricted to those using medical marijuana, but anyone can as of July 1, 2023.
- Municipalities, including through zoning, can regulate areas where it is used (e.g. prohibit use in town parks).
- Use is prohibited in state parks and beaches.

Most provisions became effective on *July 1, 2021*, including those cited above.



“My neighbor’s pot smoke is entering my unit and making me sick. Do something.”

Can Any Existing Documents Regulate Marijuana?

It depends. If a document provision already exists that can simply be applied to cannabis, then maybe the association is in the position to enforce its existing documents. This avoids the delay caused by amending document provisions. The association should also be cautious, because it is always more difficult to enforce violations of the documents for conduct within a unit. A few possibilities:

Prohibition of Smoking

If your community has units that share horizontal or vertical boundaries, it is very likely that you have already received complaints about smells or smoke coming from another unit. It seems reasonable to project an increase in frequency of complaints.

Some associations prohibit smoking, in the common elements or even within units. There are totally smokeless communities. These associations may not have documents that specifically state the smoking of “marijuana” is prohibited. The documents might also not specifically prohibit smoking methamphetamine, cocaine, or opium. Does that mean those smokeless associations could not enforce violations against someone smoking “crystal meth”?

A basis for prohibiting tobacco smoke relies on medical research that demonstrates that second-hand tobacco smoke negatively impacts the health of those around a tobacco smoker. While for a time can-

nabis' medicinal qualities were touted and there was not research that second-hand smoke from marijuana negatively impacts the health of others, it appears that may no longer be the case.⁵

Smoking within a Unit Impacts other Units and/or Common Elements.

Many association documents and Subsection 47-261b(f)(2) of CIOA prohibit doing something within a unit if it effects other units or the common elements. If certain strong cooking smells have may have violated this provision, cannabis smoke could too.

Is the smell of marijuana a “nuisance”?

You may have a document provision that is intended to stop conduct that causes a nuisance in the community. Whether there is a nuisance may depend on your documents.

What about “edibles”?

The three provisions discussed so far obviously do not apply to edibles. There are ways to ingest cannabis, including in flour (think brownies) and gummies. The point is that the use of an edible does not create smoke, and you likely will not even know if a neighbor uses them. In my opinion, an association should not regulate edibles, which may not impact the community.

Compliance with Laws

Many associations have a provision that requires that all residents comply with all laws, federal, state, or municipal. Despite the legalization in Connecticut and other states, cannabis is still illegal to possess or use under federal law, specifically United States Code Sections 21 841(a)(1), 844(a), and 812(b)(1)(A) through (C). It is unclear how the lack of enforcement of federal law by federal authorities may impact an association's reliance on a compliance with the law's provision.

If Prohibited, Does the Association Have to Make an Exception for Medical Marijuana?

This is also still to be determined. This section applies to medical marijuana. My assumption is with the legalization of recreational, there could be an increased willingness to use the substance, even more if a physician supports the use as medicine.

There are a number of laws, including the federal Fair Housing Act, Rehabilitation Act, and Americans with Disabilities Act,⁶ that, in certain instances, require an association to make a “reasonable accommodation” to its governing documents. Think about having to allow an emotional support animal because of the federal Fair Housing Act, despite the association's “no pet policy.”

Where cannabis, medical and recreational, violates federal law, it may not make sense to force an association to allow the use of cannabis, despite the association's prohibition. In 2011, the United States Department of Housing released a memorandum that medical marijuana could not be allowed as a reasonable accommodation even in states where it was legal.⁷ But, the courts have not reached any consensus, nationally or in Connecticut.⁸

The legalization of marijuana is likely to lead to questions in your community. It is better for an association to plan before problems arise, and planning should include consulting your attorney. ■

Jonathan Chappell, Esq. is an attorney in the law firm of Feldman, Perlstein & Greene, P.C. based in Farmington, CT. Jonathan serves on the CAI-CT At Large Legislative Advocacy Committee and is a new member of the CAI-CT Publications Committee.

End Notes:

- 1 Like the Connecticut legislation, in this article marijuana and cannabis are synonymous.
- 2 A copy of Public Act 21-1 is here: <https://www.cga.ct.gov/2021/ACT/PA/PDF/2021PA-00001-RO0SB-01201SSI-PA.PDF>
- 3 The state also created an informational website: https://portal.ct.gov/cannabis?language=en_US
- 4 In fairness, the Act both includes provisions the legalization of recreational and amendments to the statutes about medical marijuana.
- 5 See <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5015313/>
- 6 Connecticut has certain, similar statutes. While there is not the time or space here for this discussion, there is a possibility that a Connecticut agency (e.g. CHRO) could order allowing medical marijuana use as an accommodation under *Connecticut law*.
- 7 See: https://www.hud.gov/sites/dfiles/FHEO/documents/BAY%20Medical%20Marijuana%20Reas%20Accom%20Final%20Version%20Accessible%20_020411_.pdf
- 8 See, *Eccleston v. City of Waterbury*, No. 3:19-CV-1614 (SRU), 2021 WL 1090754, at *4 (D. Conn. Mar. 22, 2021) (employment case in Connecticut's federal district court; “Although Connecticut has enacted laws prohibiting discrimination on the basis of authorized use of marijuana, it is somewhat unclear whether a state-authorized medical marijuana user may claim protections under the [federal] ADA against discrimination on the basis of medical marijuana use where that use is related to a disability and super-

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interest earnings which can lead to under reporting of interest income and incorrect balances in the cash accounts

- b. Management switch: When an association switches professional management companies it is important that copies of all available statements from the prior management company be obtained. This preserves access to an audit trail, but also allows the new management company to determine if any change of address forms are required to ensure statements for accounts continue to be received.

Conclusion:

Accounting records can come in many forms and are not just checks or deposits. Associations should periodically review what is being kept in their files and whether there is enough documentation there to help develop a solid audit trail to support the numbers being presented on the financial statements. ■

Dan Levine, MBA, CPA is a Certified Public Accountant at Tomasetti, Kulas, And Company P.C. Dan has extensive experience with tax and attestation services to condominium associations from all around Connecticut. Dan is an active participant in CAI-CT related programs and can be found presenting accounting best practices at these events throughout the year. Dan is also a member of our At Large Legislative Advocacy Committee



Ronald J. Barba, Esq.

Proper and Enforceable Board Hearings

By Ronald J. Barba, Esq.

Hearings with unit owners for rules violations, to determine repair and maintenance responsibilities or to assess costs are commonplace in community association life. The Common Interest Ownership Act (“CIOA”) has a number of provisions that a board must follow so that the fines it imposes are enforceable. Frequently, however, boards don’t follow proper procedures and so jeopardize the enforceability of their decisions. This article will focus on some issues to consider when imposing fines or enforcing board directives.

Notice and An Opportunity to Be Heard

The first consideration is providing proper notice to the offending owner or parties concerned. Connecticut General Statutes Section 47-244(a)(11) makes clear that a board has the power to levy reasonable fines only after the owner is provided notice and an opportunity to be heard. Does that mean that a hearing is required before any fines can be levied? A reading of the plain language of the statute says “no.” There is a considerable body of law in appellate and superior court cases which conclude that the issuance of notice to the owner about the nature of the violation, the applicable rule or rules and the fine(s) being levied suffices. As long as the board informs the offending owner of their opportunity to be heard, it will have fully complied with the statute. Of course, if the owner requests a hearing, then they are entitled to one.

Very often, boards direct the manager to impose a fine or, worse, the manager unilaterally does it. Either is a mistake. The authority to levy fines rests with the executive board. It can only do that if a majority of the board votes accordingly, after notice and an opportunity to be heard or, if requested, after the hearing. If the board cannot vote to levy the fine at a regularly scheduled meeting, it must do so by voting electronically and a record must be made of that vote. To do otherwise weakens the collectability of the fines.

Notice and a Hearing

When the levy of fines is solely contemplated by the board, notice and an opportunity to be heard under CIOA is sufficient. Where it is contemplated that legal action might be taken to deal with the problem, then the detailed formal procedure of CIOA Section 47-278(c) must be followed. They are mandatory. If things get that far it’s a good idea to consult with association counsel to make sure that all of the technical requirements are met.

What is often lost on boards when scheduling hearings that are not part of a regularly scheduled board meeting, is the obligation to comply with meeting rules in CIOA. Hearings may take place at regular or special board meetings. Boards must treat special meetings in the



same manner as regular meetings. Observing and documenting the formalities of the meeting is a must. All of the time, effort and expense put into taking action to address a major problem in the community could end in dismissal by a court that finds a flaw in the process. The best way to avoid problems is for boards to follow the meeting rules.

Documentation

As important as following the strict requirements for a valid board meeting, the significance of proper documentation of each phase of the hearing cannot be overstated. If the association is required to take legal action to enforce its decisions against a unit owner, it must be prepared to offer documented proof of its compliance with the rules of process. Proof of notice of the hearing and notice of the board’s decisions after the hearing are crucial in establishing a record of compliance. Minutes of the hearing/meeting must be concise and reflective of all board decisions and the votes taken for each decision. Minutes are the only admissible evidence of board decisions in court. Without minutes, an association’s court case could fail for lack of evidence despite the unit owner’s wrongdoing. Minutes speak for the board in court.

Conclusion

Community association boards should review their practices for imposition of fines and taking actions for rule and document enforcement. Boards that do not follow the meeting rules found in CIOA risk considerable time and association funds in a doomed effort to enforce its governing provisions. Each hearing should be treated as though it will be reviewed and judged in court. Hearings are an important function of association boards and directors should be aware of their obligations going into them. ■

Ronald J. Barba, Esq. is the Managing Partner of Bender Anderson & Barba, P.C. Ron is a frequent speaker at CAI-CT education programs. He serves on our Legislative Action Committee and is a member of our Golf Committee.



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