Common Interest

The Official Publication of CAI-Connecticut

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Frequently Asked Questions: RESERVE STUDIES and AGING INFRASTRUCTURE

PATIENCE: How to Regain this Necessary Virtue

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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.

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

"The complaints aren't new. But my non-scientific conclusion is that demands are worsening, not improving."

This message comes on the heels of perhaps my favorite Chapter event, Fall Fun at Hops on the Hill in South Glastonbury. In addition to meeting vendors and getting a little smarter, the event is a perfect setting for connecting with my many friends who support the Chapter who I have not see in person for as long as I can remember. The setting is idyllic and again this year the weather was perfect. Kim and Ellen sure do know how to take advantage of weather windows! I urge every reader to make attending next year's Fall Fun event a priority.

The conversations that I had and those reported by others too often centered on the demands of the industry on managers and business partners. The complaints aren't new. But my non-scientific conclusion is that demands are worsening, not improving. The cumulative effect is a fatigue that many of us feel without any obvious or near-term solutions.

The specific complaints are all too familiar.

- Boards and owners are demanding more from us all the time.
- Boards themselves too often operate inefficiently, or worse.
- Our workdays are longer and longer.
- Boards' dissatisfaction often is on the rise.
- The volume of messages received daily, particularly emails, is overwhelming.
- Compensation is not keeping pace with the expectations.
- Finding help to supplement our ranks is an ongoing challenge.

I probably could go on. It is not my aim to cast a pessimistic picture. Rather I want to inspire us to tackle these most difficult issues we face. The themes I heard at Fall Fun were familiar, but also striking for their reach – everyone is saying the same thing!

It is a mistake to ignore or laugh off these grumblings simply because they are familiar. Honestly, I cannot remember a time when such discontent permeated our ranks so widely. We have an organization that is more than capable of leading meaningful change. The climate need not continue unchanged. The solutions will not come overnight. The first step, I submit, is to acknowledge their existence and then build actionable solutions. ■

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From the Chapter Executive Director

"The Platinum Rule: Do unto others as they would want done to them."

~ Dave Kerpen, author of the book The Art of People

Courtesy CAI-CT.

Kim McClain

Given all of the thoughtful words about the importance of civility expressed by several of our authors in this issue, it seemed logical to discuss the "Golden Rule." Little did I know that the notion of the Golden Rule has been reconsidered. While treating others as you would wish to be treated seems to make a great deal of sense, the "Platinum Rule" considers the reality that some people do not possess empathy skills, or they actually do prefer to have their own anger tossed back at them. It gives meaning to the concept of 'always hankering for a fight.'

Author Dave Kerpen argues that if we apply the Golden Rule to others, we do not take into consideration that they may not want to be treated the same way you wish to be. Clearly, all people and all situations are not the same. When using the Platinum Rule, a better result may be achieved since you would be doing what the other person wants done.

During these times of what seems to be searing incivility, bordering on contempt, it is no wonder that condo boards are exasperated, and community association managers are getting burnt out. This all begs the question: how can we try yet another kind of pivot and adopt the Platinum Rule in our communities and daily interactions? Aretha Franklin says it best "R-E-S-P-E-C-T…find out what it means to ME!"

At CAI-CT, we pride ourselves in working hard to treat our members with respect. When people call with frequent protracted litanies of issues in their associations, we listen patiently and offer some suggestions for how they might try to move things forward. We've been applying the Platinum Rule all along.

With the holidays just around the corner, maybe we can all take a breather and find ways to express our gratitude and appreciation for our fellow community members and those who provide the services that help to keep things humming.

Respectfully,
Kim

Congratulations!

The *Hartford Courant* has named two CAI-CT member companies as Best Places to Work 2021. **Bouvier Insurance** and **Robinson + Cole, LLP** were honored as Top Employers in the Mid-Size category. It was noted that "the winners have one thing in common: businesses that retain employees and successfully hire new ones are the ones that listen and act." Congratulations! ■

Calling all CAI-CT Members

The 2022 Directory is going to press on JANUARY 1ST!

Be sure your listing is correct!

- **Member Managers, Management Companies & Business Partners:** Visit https://www.caict.org/page/Directory to proof your listing.
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UPCOMING CAI-CT EVENTS

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Hosted on Zoom

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Reservations for Booth Space & Sponsorships now being accepted.

GOOD FOR 4.0 CONTINUING ED CREDITS

Visit www.caict.org to register and for updated information.

Statutory Snippet...

Role of Unit Owners versus Board

The board, as a general rule, is the decision-making body of the Association. Unit owner votes are required in limited circumstances such as board member election and removal, amendment of declaration and (sometimes) bylaws, budgets, or special assessments.

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.

Website Insight –
How to Manage Your CAI Emails

Did you know you can manage the type of emails you receive from CAI Headquarters & CAI Connecticut?

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Legally*Speaking...*

Adam Cohen, Esq.

Keeping Legal Bills Down

By Adam J. Cohen, Esq.

A doctor and a lawyer meet at a dinner party. The doctor complains that strangers at events like these always ask him for free medical advice. "It happens to me too," says the lawyer. "Do what I do: bill them. You're entitled to be paid for your professional advice." The doctor agrees that makes sense. After driving home, the doctor finds a bill from that lawyer waiting in his mailbox. (Ba-dum-bum.)

The primary role of lawyers is to communicate. They advise their clients about their rights and obligations, explain strategies for handling their affairs, and represent their clients in dealings with others. It takes education, experience, attention, and expense, not to mention a degree of risk. Obviously, they deserve to be paid for it. Since most lawyers formulate their fees based on the time they devote to the client's matters, and since most clients want to pay as little as possible, the keys are both minimizing the need for legal assistance and keeping the communications with the attorney efficient, organized, and effective.

There are several ways that community association boards and managers can help keep legal bills from the association's lawyer reasonable. One of the best is for association leaders to thoroughly inform themselves on the laws governing these organizations from reliable sources – not to replace the lawyer's involvement, but to identify potential issues for bringing to the lawyer's attention, to ask intelligent questions, and to avoid unintentional legal missteps in the first place. In fact, state law specifically requires boards to encourage owners and directors alike to take part in basic education programs on the purpose and operation of common interest communities and the rights and responsibilities of the people who live there. CAI offers excellent programming in this regard, and many attorneys will also provide this service for their clients as well. Attend seminars, read articles, and stay updated on legislative changes. Some boards host a "new director orientation" after every election for this purpose. Your communications with the association's attorney will be more productive if you already have a basic understanding of the issues and are not taken totally by surprise by what the law requires.

Relatedly, and to put it bluntly, try not to break the law. Follow what the applicable statutes and your governing documents say to do, avoid cutting corners, and be transparent at all times. Don't just do things the way they've always been done without confirming they're proper. Some of the more common missteps which trigger the need for legal assistance include inattention to property maintenance, reusing outdated forms, missing deadlines and technical notice requirements, ignoring legitimate records requests, and making decisions behind closed doors. Even when the association is legally right, simple discretion can help prevent a small problem from becoming a big (and expensive) one – belittling a disgruntled resident and not walking away from petty disagreements are prime examples.

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Having a good manager you trust will also minimize your reliance on an attorney. Managers should be familiar with routine legal and paperwork requirements, and any unusual clauses in your declaration and bylaws. You generally shouldn't need to pay a lawyer to explain them. Hiring a manager based outside of Connecticut, or with less experience with communities like yours, can easily drive up legal fees incurred to effectively teach them their own jobs and fix their mistakes. Always avoid asking a lawyer to do non-legal work that a manager, other vendor, or board member is qualified to do.

Updating your declaration, bylaws, and rules will also help avoid legal expense. Older governing documents contain obsolete provisions, references to repealed laws, ambiguous language, and mandates that are not actually followed. They are also silent on many issues which modern laws fill in by triggering undesirable defaults. Boards frequently rely on terms in their bylaws which they don't realize have since been superseded by newer statutes. Documents with numerous and complex amendments attached to the end can be confusing to follow. All of these problems can cause an association to find itself accidentally doing the wrong thing or in an unclear legal position, resulting in tough choices and expensive litigation. Paying a lawyer once to make your governing documents concise, readable, and modern can be cheaper than paying that lawyer to repeatedly walk you through what they meant to say.

Good recordkeeping will also help reduce legal fees. Since turnover on boards can be a problem, easy access to the association's records

– especially in an electronic, searchable format – promotes institutional memory and gives the association's attorney the information and evidence needed to give the right advice. A single document can prove an association did the right thing, preventing a lawsuit before it begins. When records are missing, the lawyer may have to guess about the facts on which to base advice, or even worse, defend their absence to a court tempted to assume those records would have been incriminating. Ideally, an association will also keep permanent records (separately, to preserve attorney-client privilege) on all past legal advice and review them periodically to avoid having to get the same questions answered over and over.

When a legal issue inevitably arises, have a protocol in place. A single board member or manager should be designated as the liaison with the association's lawyer to avoid redundant or unauthorized communications. Contact the lawyer as soon as an issue develops, since a deferred problem or do-it-yourself solution will be harder to address. Remind the lawyer which association you're from at the start of the call or email, (Forgive us, our memories may not be perfect.) Have all of the relevant information and records at your fingertips at the time of the contact and be ready to jot down notes on what else the lawyer says must be retrieved. Be ready with the specific legal questions you need answered; don't just forward a lengthy email string with "please comment" at the top for the lawyer to search through and guess what you're asking about. Remember, if you don't ask the right question, the answer will always be wrong.

Finally, you should follow the lawyer's advice. If you question that advice, explain your concerns and consider getting a second opinion from another lawyer rather than simply ignoring it. Undoing a client's errors can be expensive or even impossible. Also, when the lawyer asks that you come back with more details, recommends a specific course of action, or prepares a draft document for your review, don't sit on it. Circumstances might change in the meantime, legal deadlines might expire, or at the very least, the attorney will need to become reacquainted with the matter (which is time billed to you) before responding to your belated follow-up. The client is the one paying for the attorney's time, so make the best use of it – both to achieve the best outcome and to avoid buying more of that time than you need. ■

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.

EDITOR'S NOTE: *Public Act 06-123 states: The executive board of each association of a common interest community shall encourage each member of such association, including the officers to attend a basic education program concerning the purpose and operations of common interest communities and the rights and responsibilities of unit owners and their board. The Act goes on to state that all or part of the fees should be considered a common expense of the association and paid from association funds.*

CONDO INC. *is CAI-CT's most popular education program. Our experienced speakers cover the key areas of association operations. Learn how to prevent problems before they happen. Our next program will be offered in late January via ZOOM webinar with all the modules available on demand. It's convenient and worthwhile. Follow Adam's advice for helping to keep legal costs down and register today: www.caict.org.*

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Financially*Speaking...*

Daniel Levine, CPA

Can You File as Under IRC 528?

By Daniel Levine, MBA, CPA

Most associations are formed as a non-stock corporation. When created in this manner they are in fact still a corporation and as a result still required to submit an annual income tax filing. Typically, an association's tax treatment of income and expense is governed mostly by Internal Revenue Code (IRC) Section 277.

However, annually most associations elect to file under a simpler, less costly filing by taking advantage of code section 528. What isn't commonly known is that to use this election an association has to meet certain requirements and there are times where an association cannot take advantage of this simpler filing despite being a common interest community. This article will look at explaining the requirements of filing under IRC 528.

Requirements:

Under the rules for qualifying for IRC 528, the internal revenue code specifies an association must meet the following tests:

- *Substantially Residential Test:* Substantially all units must be held for residential purposes. 85% of the square footage of all units must be for residential purposes for condominiums and 85% of the lots must be zoned for residential use for homeowners' associations.
- *60% Income Test:* At least 60% of association's gross income for the tax year must consist of exempt function income.
- *90% Expenditure Test:* At least 90% of the association's expenses for the tax year must be for the purpose of carrying on one or more of the exempt functions of a condominium or homeowners association.

What these requirements mean:

Substantially Residential Test: This test requires that the community consist of mostly residential units vs commercial. It is usually met by most associations as they are set up as residential communities. However, for mixed use communities that have commercial (business) members this can create an issue where the association doesn't qualify for IRC 528. Additionally, associations want to be cognizant of any unit being used for transient purposes. If that is the case, these units are not considered as residential. Units meet this transient definition if for more than half of a year each of the individuals living in the unit occupies it for less than 30 days.

60% Income Test: Most communities are set up to collect fees from members in relation to their ownership in the common elements. Fees charged like this are based on membership in the community and for

erhui1979/DigitalVisionVectors/Getty Images

IRS purposes are considered exempt income and therefore not taxable.

However, some associations could have units that are owned by the property which are used to generate rental income. Perhaps the association charges guests a fee for access to a parking space, has laundry facilities, or has substantial interest earnings. The income derived from these types of sources are classified as income from providing services or is considered income that is being generated from outside someone's membership in the community. When that line is crossed this income is considered non-exempt income and is considered taxable under IRC 528.

If an association has more than 40% of its income derived from non-exempt sources, they will not qualify to file under IRC 528. Most times non-exempt sources of income are much less than an associations main source of income which is membership fees. However, for an association that is a community with a smaller budget, the more sources of revenue that qualify as non-exempt will make it harder to qualify to file under IRC 528

90% Expenditure Test: The main purpose of IRC 528 is to let the IRS recognize that a common interest community is created to maintain property and isn't in existence to create profits like a business. However, to ensure that the income collected from members is used appropriately, IRC 528 has a provision that restricts how much of an association's expenses can be used for something other than qualifying expenditures.

Qualifying expenditures are either current operating expenditures or capital expenditures that are made for the acquisition, construction, management, maintenance, and care of association property. Generally speaking, association property is all property that provides benefits to the association members regardless of who owns said property. Most association expenses that maintain common elements or handle capital repairs will qualify for the 90% test.

[Continues on page 10.]

FINANCIALLY SPEAKING...from page 8.

Why This Matters:

While most associations have generally the same types of income and expense from year-to-year it is important to understand the above requirements because at times, a unique transaction will occur. For example, if there is receipt of a large amount of income from an easement, then there could be an issue in qualifying for a simple IRC 528 filing.

Additionally, as technology continues to evolve, and new types of services/industries are created this can indirectly impact an association's tax elections. For example, in the recent tax court case of Wood v. Evergreen Condominium Association (July 7, 2021) it was ruled by the appellate court of Illinois that units that rented out their space for Airbnb violated the commercial use prohibition at that community. This ruling reaffirms the treatment of transitory units mentioned before. If a community has many units being rented out under AirBnB, a business not prevalent 20 years ago, then they could have unexpected tax consequences that they didn't have to consider in previous years.

Having an understanding of these rules and reaffirming the association qualifies can help the association maintain a simple and cost-effective method of filing their taxes. ■

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 and serves on the CAI-CT Board of Directors.

Fall Fun – A Fantastic Time!

We went back to Hops on the Hill in Glastonbury, CT for our Annual Fall Fun event. Fortunately, the glorious fall weather allowed us to be outdoors to enjoy a lovely evening. Our flash speakers gave us some insights about handling common problems in association maintenance.

A mini-expo component was added to the event this year. Attendees were able to spend time visiting several familiar – and some brand new – vendors. It was great to see so many smiling faces and be part of great conversations.

Our terrific Fall Fun Committee did outstanding job of organizing all of the fun! We are grateful foe their commitment!

Fall Fun Committee

Licia Ciotti — *United Property Restoration Services — Chair*
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Rich Mellin, CMCA

CONNECTICUT CHAPTER community ASSOCIATIONS INSTITUTE

Why CAI-CT?

By Rich Mellin, CMCA

When my family and I moved to Connecticut in 1982, we purchased a home in a homeowner's association (HOA). There were wonderful amenities, but problems developed with management maintaining an olympic size pool, two har-tru tennis courts, a paddle court, a large pond, and lots of open space. Additionally, the financials were a nightmare and there was no planning for future capital expenses.

Gail Mellin was asked to join the Board during our first year in the community, and in 1985 was asked to be the property manager thus creating Mellin & Associates, LLC. She did so until the end of 2020… a 35-year run. I joined the business in 1988 and managed the same two large condominiums until this September… a 33-year run! Our firm remained the two of us as partners, with no employees, while striving to maintain a minimal overhead. Being small for us was the most profitable organizational structure that met our personal goals and allowed us to provide our clients with quality personalized service.

"I became very involved in CAI-CT and benefited significantly from the education, resources, and interaction with fellow colleagues."

Because we had no formal homeowners' management experience we turned to the Community Association Institute, Connecticut Chapter (CAI-CT), for information, guidance, contractors, and to form business relationships with fellow managers. Since we have a reputation of longevity with the associations we manage, we have been repeatedly asked over the years, "How does a community association manager (CAM) survive managing the same two properties for such a long period of time?" The answer for me is simple.

I became very involved in CAI-CT and benefited significantly from the education, resources, and interaction with fellow colleagues. When Kim McClain, the Executive Director CAI-CT, called me to congratulate me on my retirement, we talked for some time about the advances and growth in the organization.

We reminisced about the ten years starting in 2002 when I was Chairperson of the Managers Council. This was the first-time managers talked and worked together. She commented about the numerous articles I wrote and about her favorite one in the Manager's Perspective section of *Common Interest,* September 2004, titled "It's a Lifestyle and a Choice.

I learned a great deal about the legal and political environment due to my years on the CAI-CT Legislative Committee. I wrote testimonial letters to the Connecticut State Legislative Committees regarding raised bills that affect condominiums and participated in seminars and educational classes.

The knowledge I garnered from the education and experiences with other CAMs was a contributing factor to my longevity with the properties I managed. CAI-CT provided the forum to grow and develop. The seminars and educational articles helped me to acquire a professional acumen and perspective that greatly benefited the communities I served.

One article that stood out was by Julie Warren in the January/February 2015 Community Manager titled "Good Things in Small Packages". It presented the premise that small LLC companies like mine have many advantages over larger community association management (CAM) firms. On the other hand, her article made me think about some of the disadvantages of a smaller firm and the economic costs that hinder our ability to create top-notch back-office support, the ability to procure advanced technology, and provide improved accounting services tied to a single bank.

The community association industry has become more sophisticated and complex, making staying on top of ever-advancing communications and technology, a major and expensive challenge. The trend, as in many industries, is to increase the productivity of back-office operations such as processing assessment payments, printing and mailing letters, creating, and distributing statements and notices, and processing accounts receivable and payables.

Our business philosophy has always been to provide the best management expertise, provide better personalized custom service as well as enhance the value of the properties we manage. Our objective has been to provide better personalized services than our competitors. While this practice provided us with long-term staying power with our properties, it left us little personal time since we did not have the resources to develop a high-tech back office while having to complete all those tasks in addition to the daily management of the properties.

Our solution was to "partner" with a larger CAM firm and jointly provide an enhanced back-office service and umbrella support. The partnership we created provided us with better accounting and technological resources while maintaining our individual company identities. This partnership allowed our company to gain a highly experienced and trained support staff of professionals that helped ease our accounting burdens without increasing costs to the associations we managed.

The partnering of our two firms created a different perspective on how to maintain the best practices (and advantages of a large as well as a small organization) all of which better served our clients. After two years we merged our companies so that both Gail and I could retire.

I can state without any hesitation that CAI-CT was fundamental in my success in the CAM business and the answer to the question Why CAI-CT?

I encourage anyone working with or living in a condominium to get involved, become educated, and grow with CAI-CT in this changing and challenging COVID-19 business environment.

Best regards,
Richard E. Mellin

Editor's Note: Rich Mellin has been a loyal and enthusiastic CAI-CT member and volunteer for many years. We have benefitted from Rich's numerous contributions to our chapter including growing our robust manager education program and strengthening our voice at the Capitol. Many thanks, Rich/ We wish you well in your next adventures!

Michael Lockhart

Frequently Asked Questions:
Reserve Studies and Aging Infrastructure

By Michael Lockhart

The recent highly publicized Surfside tragedy has motivated many property managers to contact us with questions about reserve studies for aging infrastructure. Below are answers to the most common questions we receive.

Do reserve study firms conduct structural inspections?

Yes, but only non-invasive, visual inspections. For a reserve study, a qualified engineer will document visually apparent structural conditions that are abnormal and/or a potential safety hazard. Any further invasive inspection must be conducted by an expert specific to the component in question if conditions warrant. The reserve study will provide guidance as to conditions that warrant invasive inspection or a complete structural engineering analysis.

Does a reserve study include necessary preventative maintenance recommendations to ensure we avoid structural issues as our building ages?

Yes. Reserve studies provide recommendations to repair, replace and maintain your property components. It is typical to include expenditures to maintain structural components, such as concrete facades, garage floor systems and vaulted/elevated concrete structures. If there are areas of concern (including but not limited to spalling, settlement and water infiltration), the reserve study will document these conditions and recommend further evaluation by an expert specific to the component. As your community approaches a near-term structural repair, hiring a professional to monitor the changing conditions of the structure will help to ensure you know when to conduct the related capital project.

We have major structural repairs on the horizon. Should we have a reserve study now or wait until the repairs are complete?

A project of this magnitude can have a significant impact on capital planning. We typically recommend conducting the reserve study only after the scope of work for structural repairs has been determined because it ensures the accuracy of the study's recommendations. However, it may be beneficial to complete the reserve study prior to completing structural repairs to bring to light other near-term capital projects that you may or may not be aware of. This will help your association understand its upcoming financial obligations and helps minimize the risk of not being able to fund upcoming projects.

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Who should we hire to do a reserve study?

Choose a firm that specializes in conducting reserve studies because it will best understand the complex nature of your community. These specialists have the necessary expertise to assess the condition of and complete a lifing analysis for each of your association's common elements. The condition assessment and lifing analysis are critical to ensuring your reserve funding recommendations support your long-term capital needs. Furthermore, firms that specialize in reserve studies commonly staff engineers with related qualifications. Hiring a firm who utilizes licensed professional engineers (PE), reserve specialists (RS) and professional reserve analysts (PRA) ensures you are partnering with the most qualified individuals in the industry.

What are the limitations of a reserve study?

A reserve study will not provide an exact recommendation on how and when to complete a capital project. As a budgetary tool, the reserve study puts capital projects on your radar. Nobody knows for certain when a future capital project will need to be completed, and the reserve study should not be the sole documentation that drives the timing of structural repairs. Associations should hire a specialist to conduct regular inspections to document the rate of deterioration and develop a scope of work and timeline for repair. Furthermore, the reserve study is based on visual observation and is non-invasive in nature. Whereas a supplemental inspection by a specialist can deploy invasive testing, if warranted, to determine a precise scope of work. ■

Michael Lockhart is a Regional Account Manager for Reserve Advisors and is responsible for assisting managers and community boards throughout New England and the Mid-Atlantic with their custom reserve study needs. Michael is a member of the CAI-CT Education Program Committee and is a speaker at our education sessions.

Manager's *Column...*

Rich Wechter, CMCA

Being Practical, Part LXXIII

Patience: How to Regain this Necessary Virtue

By Rich Wechter, CMCA

In this column, we tackle various topics of interest with the intent of imparting practical advice. In this issue's column, we look at what may be the one of the most important issues facing community associations, the lack of patience. Whether we look to unit owners and residents, boards, community managers, or vendors, a common theme that is quite apparent as we reach almost two years of the COVID-19 crisis, is the complete lack of patience that prevails over the world of community associations. We have been locked up for so long that we have forgotten what it is like to operate in pre-COVID-19 conditions. Supply chain delays, the absence of in-person board meetings, and the return of what the late Sen. John McCain called "regular order," have created such impatience, that a return to a degree of patience seems unattainable. Yet, through this all, we cannot and will not accept a surrender to the current impatient state of affairs so prevalent in our community associations. We look to provide some glaring examples of this rising impatience and offer suggestions to regain this necessary virtue.

A. Setting the Table on this Topic

As noted by David G. Allen, a productivity consultant, "Patience is the calm acceptance that things can happen in a different order than the one you have in your mind." Mathatma Gandhi noted that "To lose patience is to lose the battle." Each of us has a timetable for the events in our personal lives, business lives and in our communities. The breakdown of patience in a community association undermines the ability to lead, govern, manage, maintain and live together in harmony. Community associations can and must rise above this level of impatience. To fail this mission is to surrender to a toxic environment that can be harmful to a community association and all of the players that maintain a community association.

B. Examples of the Lack of Patience at Community Associations

We offer a few examples of the current lack of patience at Community Associations:

1. Unit owner/resident unwillingness to accept supply chain delays in performing repairs in units and on common property.
2. Unit owner/resident unwillingness to accept delays in contractor availability.
3. Unit owner unhappiness with the time it takes for boards to make decisions.
4. Unit owner and board unhappiness with property managers for the time it takes to take care of both unit owner and association maintenance and administrative needs.

SchultzeProductions/iStock/Getty Images Plus

"To fail this mission is to surrender to a toxic environment that can be harmful to a community association and all of the players that maintain a community association."

5. Unit owner and board unwillingness to accept the rising costs of labor and materials.
6. Unit owner unwillingness to accept delays in repairs to their unit during the increased number and intensity of storms this year.
7. Increase of violations of Association rules with the increase of home office use.
8. An increase in the perennial battle between the need to make extensive capital improvements at properties and the need for increased revenue to pay for those improvements.
9. Board and property manager frustration with vendors who have staff issues.
10. Resident intolerance with their neighbors.

C. How to Regain the Virtue of Patience

We offer a few suggestions for community associations to regain the virtue of patience:

1. Increase the frequency of communications with unit owners/residents on vendor and material availability and the increased costs of labor and materials. Let everyone know that the supply

chain issues seen on the evening news impacts their community association and their individual unit.

2. Offer regular updates on association wide projects and the reason for any delays or postponement of any work.
3. Let individual unit owners know what can reasonably be achieved with their units during these trying times.
4. Provide regular reminders on those rules that are significant and most violated.
5. Work with vendors with staffing issues while securing alternatives for critical services.
6. Continue to educate unit owners on the need to proceed with capital improvement projects, especially in older community associations with infrastructure issues.

D. Conclusion

The lack of patience in community associations is indicative of what is going on in this country. We all have run out of patience. However, as failure is not part of our vocabulary, it is imperative that we meet this challenge head on and make every effort to preach patience. Anything less is unacceptable. We hope that this article will aid community associations in this effort. ■

Rich Wechter, CMCA is Senior Vice President at Westford Real Estate Management, LLC. Riche serves as a LAC Delegate and a member of the Legal Symposium Task Force.

Jonathan Chappell, Esq.

Transition: "Failing to Prepare is Preparing to Fail"[1]

By Jonathan Chappell, Esq.

When it is time for transition – the transfer of the operation of a community from the declarant to the owner-elected board – it is best that the owners are ready in advance of it occurring. Successful preparation should result in community success.

Know When Transition Should Happen:

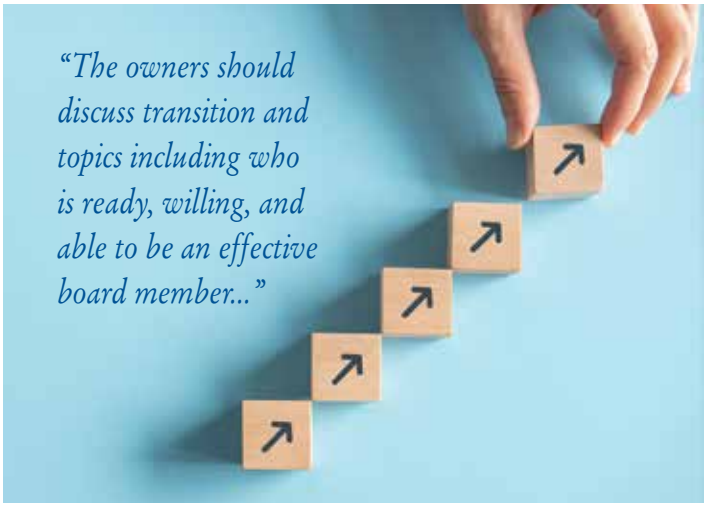
Section 47-245(d) of CIOA contains things that mark what should be the end of declarant control: (1) 60 days after the conveyance to unit owners other than the declarant of 60% of units that the declarant reserves the right to create; (2) two years after all declarants have ceased to offer units for sale; and (3) two years after any right to add the new units was last exercised. The owners should be ready to prepare for transition before it occurs.

It has been said that a policy of CIOA is that control of the association should be turned over to the unit owners within a reasonable time after the declarant stops building and selling units, even if it has the right to build or sell more units in the future. For this reason, Section 47-245(d) of CIOA requires that the unit owners elect a majority of the board "two years after all declarants have ceased to offer units for sale in the ordinary course of business" or "two years after any right to add new units was last exercised."

Knowing when transition should happen puts the owners in a better position to make it happen if the declarant does not agree to do so.

Prioritize:

The owners should discuss transition and topics including who is ready, willing, and able to be an effective board member, which documents the declarant should provide and which documents are necessary, and which professionals will be hired.



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For example, before transition a group of owners might decide to hire an attorney to assist leveraging the declarant to start the transition process. If so, and the declarant refuses to proceed with transition the attorney can help to call for the meeting or vote.

Some associations have also established transition committees to create a checklist of what the owners must or at least should do before, during, and after transition.

What Should We Receive After Transition?

Section 47-245(h) of CIOA provides what be turned over by the declarant to the unit owner-controlled association within thirty days after unit owners other than the declarant elect a majority of the members of the board. Also, Section 47-245(h) requires that "all property of the unit owners and of the association held by or controlled by the declarant" be turned over, including but not limited to the items specifically listed in the statute.

Whether any Contracts "Entered Into" Before Transition Can/Should Be Terminated?

This part of this article could potentially save the association money and save it from even more headaches. CIOA may allow the association to undue and walk away from some agreements that the declarant entered into prior to transition, even without any cause.

Section 47-247 of CIOA allows a unit owner-controlled, residential association to terminate certain contracts "without penalty upon not less than ninety days' notice."

These contracts include certain, critical agreements including management and employment contracts and a lease of recreation or park-

[Continues on page 26.]

Trent Nelson

3 Common Lake & Pond Management Misconceptions

By Trent Nelson

As an Aquatic Specialist with more than a decade of experience, I've assisted hundreds of property managers with their lake and stormwater pond management needs over the years. Despite the diverse types of lakes and ponds they oversee, I've noticed that many clients have the same set of concerns or misconceptions about their waterbodies. These often come to light as we work together to design a freshwater management program. Let's take an in-depth look at some of these common assumptions.

1. Lakes and ponds are permanent fixtures in the landscape

While lakes and ponds can be long-lasting features in our communities, they are not permanent. They fill with sediment that erodes from the shoreline or flows in during rainstorms. Weed growth and decomposition may lead to the development of muck. And trash, tree branches, and other pollutants can build up over time.

The aging of a lake or pond is a natural phenomenon, but can be highly accelerated through human activity and industry, reducing a waterbody's life by decades. If left unmanaged over the years, your waterbody could eventually fill up until it becomes a marsh or puddle. This is a process called lake and pond succession.

The best way to prevent this inevitable decline is through proactive, ongoing management aimed at reducing erosion, nutrient pollution, muck development, and nuisance aquatic vegetation. These benefits are two-fold. In addition to prolonging the depth and overall lifespan of your lake or pond, you'll also help prevent problems like algae, toxic cyanobacteria growth, bad odors, murkiness, invasive species infestations, fish kills, and more.

2. Herbicides pose a danger to n on-targeted plants and animals

The most eco-friendly and long-lasting lake and pond management programs lean on holistic, natural solutions, but sometimes herbicides and algaecides are necessary to set your waterbody up for success. Herbicides tend to be a point of concern for property owners, but I've found that once they better understand the strict scientific processes surrounding the use of herbicides, their fears are alleviated.

Herbicides used in the lake management industry are designed to exclusively target specific weed and algae species without impacting desirable plants and animals. They do so by interfering with the unique growth mechanisms identified in nuisance species that are not found in beneficial ones. Likewise, the concurrent use of eco-friendly compounds called surfactants helps confine herbicides and algaecides to the affected area without migrating elsewhere. Historically, herbicides have been applied by licensed professional ground crews, but new industry technologies like drones are making it possible to remotely apply products with more accuracy and efficiency, particularly in areas that are hard to reach or unsafe to navigate by foot.

Courtesy CAI-CT

"The best way to prevent this inevitable decline is through proactive, ongoing management aimed at reducing erosion, nutrient pollution, muck development, and nuisance aquatic vegetation."

All herbicides must be evaluated and registered by the Environmental Protection Agency (EPA). In addition to collaborating with scientific authorities throughout the US, the EPA also carries out bilateral cooperative programs with the World Health Organization (WHO) and many other countries around the world. Once approved, all herbicides are subject to compliance monitoring and periodic reevaluation processes to ensure lasting safety and success.

3. All freshwater management programs are the same

It's not uncommon for a property manager to assume that the solutions used on a friend or colleague's lake or pond will work on theirs. Unfortunately, there's no one-size-fits-all approach to lake and pond problems because no two aquatic ecosystems are the same.

[Continues on page 27.]

Share your news and expertise!

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TRANSITION...from page 20.

ing areas for facilities, "any other contract or lease between the association and a declarant or an affiliate of a declarant, and certain "unconscionable or commercially unreasonable" contracts or leases. The policy may be summarized as follows:

> The developer's duty to turn over control can be thwarted if the developer obligates the association to long-term arrangements that effectively deprive the owners of control of the common property. By the same token, the value of the members' investments can be significantly devalued by long-term leases or other arrangements that commit them to pay potentially exorbitant costs for services or facilities. While the association is under the developer's control, the members have little opportunity to protect themselves. Accordingly, modern statutes permit the association to terminate certain contracts that are likely to be critical to the members' enjoyment of their rights after the developer has relinquished control. The greatest abuses have occurred in contracts for maintenance and management services to the association and leases for recreational and parking facilities. This section adopts the rule that the association may treat as voidable contracts for maintenance and management services, leases for recreational and parking facilities, and leases and contracts to which the developer is a party. The association may also terminate any contract or lease that is unconscionable. Unconscionability is to be determined under the circumstances prevailing at the time the contract was made.
>
> Restatement (Third) of Property (Servitudes) § 6.19, Comment D.

Here is an exaggerated example. The day before the transition meeting, the declarant signs contracts. The first is an employment contract with a 10-year-term and escalating salary for an on-site handyman (this association has never had an employee, has only 12 units, and is a planned community where owners each maintain their separate lot and home). Next, the declarant signs the association into a "great deal" with a landscaper he owns by himself. Finally, the declarant executes a trash-hauling contract with a 20-year term that automatically renews every 20 years unless the association gives notice of non-renewal during a 10-minute period and the rates are double every other hauler in town.

When the newly elected unit owner-controlled board do? Without question the board can simply give written notice to the employee and landscaper and, without any analysis of the fairness of the terms of these contracts, can terminate them with 90 days' notice. The trash hauler requires some time to determine if the terms are reasonable, but, assuming not, the board can terminate the trash hauler too.

Conclusion. Plan for transition. It is best to know when and what must be done before it should happen.

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

END NOTE:
1 This quote is credited to Benjamin Franklin.

LAKE...from page 22.

Your waterbody's unique makeup and the way it responds to different treatments can be dictated by many factors, including water use, location, surroundings, plant and animal presence, pollution, and weather - just to name a few. Likewise, every stakeholder has different goals and budget requirements. That's why freshwater management programs are most effective when customized for your unique aquatic environment.

Typically, the program design process begins by establishing a baseline of your waterbody through a visual survey of the property and comprehensive water quality testing. Your Aquatic Specialist should work with you to identify the challenges your aquatic ecosystem is facing and determine the best course of action based on your needs and limitations. And because all of these factors can change over time, these conversations should continue on a regular basis.

"The management of lakes and ponds is truly a science and should be treated as such."

The management of lakes and ponds is truly a science and should be treated as such. When considering a management program, look for a freshwater management firm that prioritizes getting to know you and your aquatic ecosystem before implementing any services. Seek out an Aquatic Specialist who is educated about the responsible use of herbicides and is capable of sharing that knowledge with you in a clear manner. Our lakes and ponds are valued features that our communities rely on every day. If you oversee the management of these water resources, make sure you're investing in both the present and its future. ■

Trent Nelson is an Aquatic Specialist at SOLitude Lake Management.

ENVIRONMENTAL TIP

With days getting shorter and nights getting colder, it's important to remember to bring in any houseplants what might have spent the summer outside. Or, if you don't have any houseplants, it might be a good time to consider getting a few. Houseplants provide several benefits, they brighten up your living space, improve air quality and may serve to reduce stress too.

AleksandarNakic/E+/Getty Images

Ask Mister Condo!

You have questions! Mister Condo has answers! Every issue of *Common Interest* features an "Ask Mister Condo" Question submitted by a reader of the Ask Mister Condo website at https://askmistercondo.com. There are often many reasonable suggestions and solutions to condo questions. Mister Condo is asking you to participate and share your wisdom with the world. Review the question and Mister Condo's answer below. Do you have anything else you'd like to add to this question or answer? Comment online at https://askmistercondo.com.

PUD Defines Home as "Studs In"

D.M. from Connecticut writes:

Dear Mister Condo,

We have a small Planned Unit Development (PUD) community of free-standing homes and our declaration refers to ownership as "studs in." Can you tell me what exactly I am buying if I purchase a home and whether I will need condo insurance or regular homeowners I insurance?

Mister Condo replies:

D.M., the term "studs in" basically means that you own everything in the interior of your unit, including the sheetrock. Everything behind the finished parts of your home are the wood and studs that frame out the condo unit. The association owns everything above, below, and behind what you see in your unit. As for insurance, you better believe you need insurance that covers you from the "studs in." Typically, in Connecticut a HO-6 policy will cover what you need covered. Any competent insurance agent will know exactly what kind of insurance will cover you. Your governing documents may require that you maintain insurance for the inside of your dwelling as well. The best insurance is the kind you never need! Get the coverage that is right for you and enjoy your PUD living experience! Good luck!

Did you know that you can subscribe to the weekly Ask Mister Condo newsletter? Go to https://askmistercondo.com/subscribe/ and you'll get Mister Condo's best advice delivered to your Inbox every Monday! Follow Mister Condo on Facebook or Twitter and get daily updates on current questions delivered right to your phone, desktop, or tablet. Since 2012, Mister Condo has been politely offering some of the best HOA and condo advice to readers just like you! Join in the friendly conversation at the website or on Twitter, Facebook, and LinkedIn. Visit us at https://askmistercondo.com. There's plenty to talk about! ■

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