

Common Interest

The Official Publication of CAI-Connecticut

Vol. XVIII: Issue 2 • 2023

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LEGISLATIVE UPDATE

Jumping Ahead of Other Creditors: Understanding the Association's LIEN PRIORITY

ACCOUNTS RECEIVABLE & DOUBTFUL ACCOUNTS

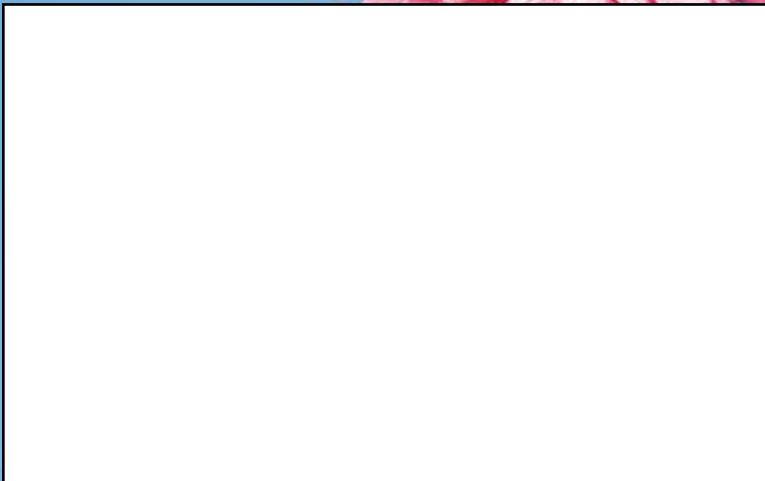
**COLLECTION:
Be Aggressive But Fair**

HARASSMENT OF BOARD MEMBERS from Community Association Residents — How to Avoid and Deal with This Matter

...and more!



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Staff

- | | |
|--|---|
| Kim McClain
<i>Chapter Executive Director</i>
kim@caict.org | Ellen Felix
<i>Director Program Operations</i>
ellen@caict.org |
|--|---|

Who Is CAI?

The Connecticut Chapter is one of 64 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 over 240 property managers, over 150 businesses, and over 800 community association volunteers representing over 80,000 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



Frank Pingelski, EBP

“The Annual Conference was a great success, and it was so nice to be back in full force with an attendance as strong as ever.”

The committees and staff of CAI-CT have been busy this year and its only April! We have a full legislative year ahead, several changes to some regular events, as well as reinvigorating some prior efforts!

The Annual Conference was a great success, and it was so nice to be back in full force with an attendance as strong as ever. I can't thank the committee enough for all their hard work over the last couple of years to keep the event going strong under almost impossible constraints. Also, a big thank you to all our association board members, managers, and service providers for showing up in force and making it all worth it!

Since this is a full legislative year, it is shaping up to be an extremely busy one for the Legislative Action Committee. The LAC has already put in considerable effort to help shape proposed bills and provide insight on others as to why they may or may not be beneficial. The strength of our membership helps to give this committee a more powerful voice in representing the industry and ultimately community associations' interests. While education and networking are two of our main pillars, the work this committee does is so important to what common interest communities will look like in the years to come.

In the coming months we have the Spring Fling, Empowering Women and Fairfield County Knowledge sessions. These events have seen changes made in the last year and I encourage everyone to come out and join us again. I look forward to seeing all of you in the coming months as it's going to be a busy summer! ■

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From the Chapter Executive Director

“Volunteers don’t get paid, not because they’re worthless, but because they’re priceless.”

~ Sherry Anderson



Kim McClain

Courtesy CAI-CT

National Volunteer Month in April celebrates the impact volunteers have on our lives and communities. At CAI-CT we would not have the ability to thrive as well as we have without the time and dedication of our many talented volunteers. Hundreds of hours are given to us annually by our volunteers and we are truly grateful!

Board members of common interest communities are also volunteers. Our best guestimate is that 15,400 individuals serve as volunteer leaders in their communities in Connecticut, providing approximately \$21 million in service. Now, when you consider that the collective total of monies spent to maintain those communities amounts to about \$847 million per year, it is clear that those volunteers are serving as heads of small businesses as well. It is common knowledge that unit owners are often quick to complain about things in their community, but often silent when there is something about which to be appreciative. So, in the month of April – but preferably all year – be sure to thank the board members who are taking time away from their families and other activities to serve. Or, better yet, the best way to express your gratitude is for you to offer to serve on the board or a committee.

April 22 is Earth Day! Hopefully, more communities are being inspired to include pollinator gardens and lessen lawn areas to save on water and chemicals. (Send us your pictures!) In my town, the Rotary Club is sponsoring several pollinator gardens in parks throughout our town. It will be exciting to see what pops up when they are in bloom and to be able to observe more activity from our pollinator friends.

Everyone can participate in gardening even if you don’t have access to outdoor space. You can still grow good food and/ or flowers indoors. There are creative solutions for growing just about anything indoors, but some plants especially thrive indoors. Look for tips for guidelines on growing food in containers. We would love to know what is blossoming in your home!

And finally, as can be seen on many of the pages in this issue, our Annual conference & Expo was a blast! We are so fortunate to have a giant cadre of volunteers to make this event so valuable for all who participated. Thank you!

Don’t forget to register for one – or all – of our upcoming events!

Happy Spring! ■

new location

CAI-CT Annual Golf Tournament

Tuesday, June 20, 2023

The Farms Country Club, Wallingford

Registration 11:00 am, Lunch 11:30 am, Shotgun 1:00 pm

**Register now at
www.caict.org!**



UPCOMING CAI-CT EVENTS

Spring Fling Education & Networking Party: Simple Steps to Avoid Costly Consequences

Wednesday, April 26, 2023

Education 3:00 - 5:00 pm / Networking 5:00 - 7:00 pm

NEW LOCATION— We're heading West!

Charter Oak Brewery & Tap Room, Danbury, CT

Whiskey Tango Foxtrot — Simple Steps to Avoid Costly Consequences

Delve into how insurance claims work, hold backs, valuations; appraisals & arbitration as well as legal notice & hearing & bill backs. Lots to unpack!

Board Members & Managers: \$30 CAI Members / \$55 Non-Members
Service Providers: \$100 CAI Members / \$125 Non-Members

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Empowering Women: Self-Defense

Wednesday, May 10, 2023

Education 3:00 pm - 5:00 pm / Networking 5:00 pm - 7:00 pm

Hawk Ridge Winery, Watertown

Tracy Gonzalez, a Sergeant with the Cheshire Police Department, will be discussing self-defense tactics that the average person can use to keep themselves safe everyday. In addition to tips and advice on risk awareness and reduction, she will demonstrate basic self-defense postures, with volunteer participation from the audience. Tracy will not only focus on self-defense, she will also discuss de-escalation and current crime trends to be aware of. Q and A time is always one of her favorite parts so bring your questions!



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\$125 - Non-Members

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Fairfield County Knowledge & Networking: Reality Check — The Future is Now — (What you need to know about infrastructure)

Wednesday, June 14, 2023

Education 3:00 pm - 5:00 pm / Networking 5:00 pm - 7:00 pm

Zody's 19th Hole, Stamford

- Capital Projects DIY - Why it is important to find out the age of your infrastructure (roofs, siding/brick, paving, boilers, etc.). How to determine the age of these items, and where to find the replacement cost for budgeting purposes. These are the building blocks all associations should have.
- Capital Reserve Studies Professional - If you're not a professional estimator, you will need a reserve study done. What you get, how much it costs, etc.
- How to Pay? - Increased contributions to reserves (not quick, but slow and steady), Special assessment (quick, but hurts most wallets), Loans (payments spread over many years, but must pay interest).



Board Members & Managers:

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Annual Golf Tournament

Tuesday, June 20, 2023

Registration at 11:00 am, Lunch 11:30 am, Shotgun 1:00 pm

Get Ready! Golf is Moving! The Farms Country Club, Wallingford

Our great Golf Committee is excited to announce — drumroll please... Our Annual Golf Tournament is moving to The Farms Country Club a private course in Wallingford. After considerable research and quite a bit of deliberation, the committee decided to up our game and move to a more enhanced facility. Tuesday, June 20, 2023 — afternoon shotgun!



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

Legislative Update



SeanPavonePhoto/Stock/Getty Images Plus

This session has been quite busy for us. We have been tracking about 30 bills that affect our industry. There have been more than a few “head scratcher” type bills, as they appear to not take into account the existence of the Common Interest Ownership Act (CIOA) in terms of the actions they are seeking where solutions are already in CIOA. Nevertheless, we have been working productively with Rep. Jeff Currey on a bill regarding solar installations in associations with stand alone homes (RB 6805). We are still hammering out the details, but hope to come to a good resolution soon.

Other bills we are focused on include:

RB 1013 - AN ACT CONCERNING COMMON INTEREST OWNERSHIP COMMUNITIES – The original bill calls for the Commissioner of Housing to submit a report about the assessment of reserves in common interest communities. We support this bill in its original form and in our testimony we included the 54 page report produced by National CAI in the aftermath of the Surfside collapse in Florida. This report contains many recommendations both legislative and best practices regarding the issue of reserve studies and funding.

RB 1072 - AN ACT CONCERNING REVISIONS TO THE COMMON INTEREST OWNERSHIP ACT – The original version of this bill was drafted by our LAC delegates. We submitted some excellent testimony in support of the bill. We are hopeful that this bill will make to the finish line. If passed: it will increase the resale package fee to \$185 and will adjust to the Consumer Price Index moving forward; will mandate that identifying information be kept confidential but it will allow all owners to receive and review redacted voting records; clarify the voting process regarding to the whether a meeting in person or virtually is held, a unit owner can vote by ballot prior to or at the meeting or continuation thereof; and allow for flexibility for insurance for mixed use condo structures.

RB 5244 - AN ACT AUTHORIZING MUNICIPALITIES TO ESTABLISH A PROPERTY TAX ABATEMENT FOR CERTAIN CONDOMINIUM UNITS – This bill would allow local governments to establish a property tax abatement where municipal services are not received by associations. Several members submitted testimony and nearly 40 messages were sent to members of the Legislature in support of the bill. At this point, it appears to be stalled.

YOUR voice makes the biggest difference at the Capitol. To maximize our grassroots efforts, CAI launched the new Voter Voice program—a digital platform providing guidance, best practices, and recommendations for our CAI advocates. Sign up at: <https://voterveice.net/CAI/home> ■



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.

Source: Feldman, Perlstein & Greene, LLC. Reprint permission granted.

Good for 2 CEUs.

Education & Networking Party...

New Location...

Charter Oak Brewery & Tap Room, Danbury, CT

Wednesday, April 26, 2023

EDUCATION 3:00 - 5:00 pm

NETWORKING 5:00 - 7:00 pm

Topic:

Whiskey Tango Foxtrot — Simple Steps to Avoid

Delve into how insurance claims work, hold backs, valuations; appraisals & arbitration as well as legal notice & hearing & bill backs. Lots to unpack!

Board Members & Managers: \$30 CAI Members / \$55 Non-Members

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To register visit www.caict.org.

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Legally Speaking...



Adam Cohen, Esq.

Jumping Ahead of Other Creditors: *Understanding the Association's Lien Priority*

By Adam J. Cohen, Esq.

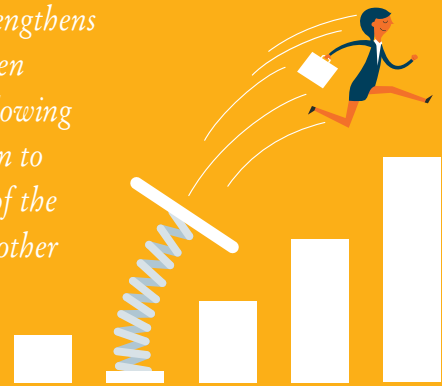
Connecticut law gives condominiums and other communities special powers to collect the common charges and fines they levy against their unit owners. For three years after they were due, these assessments are “inchoate” liens against the units, meaning that they encumber the unit automatically without the need to file anything in the land records. The association can foreclose its lien in court like a mortgage. But the law strengthens these liens even further by allowing the association to jump ahead of the unit owner’s other creditors who may also have liens against the unit as collateral for their own debts. Depending on the situation, these rules for “priority” can be devilishly complicated.

Liens are not guarantees of payment; instead, they’re more like a soup line. People at the front of the line get their bowls filled, each in turn. But when the soup runs out, everyone else still standing in line gets nothing. When a unit in a community is being foreclosed, its monetary value is like soup. The creditors are paid out of that value, and if it’s not enough to pay all of them, the ones with the lowest priority will get nothing.

According to Section 47-258(b) of the Common Interest Ownership Act, the general priority rule is that the association’s lien for unpaid common charges is first in line – that is, it gets paid ahead of all others – with four exceptions. Those exceptions are:

- Real estate taxes and other governmental charges. No surprise that these lienholders have highest priority: the government write the priority rules.
- Mechanic’s liens for work performed on a unit by contractors which began before the association’s unpaid assessment became due. Note that these liens are also inchoate and need not be filed in the land records until up to ninety days after the work ends.
- Any kind of lien which was recorded before the community’s own declaration. It’s rare any such liens still remain in older communities, but newer communities might still be encumbered by the original developer’s construction financing.
- The final exception is a first or second mortgage predating the common charges’ due date, but not “to the extent of ... an amount equal to the common expense assessments ... due in the absence of acceleration during the nine months immediately preceding institution of an action to enforce either the association’s lien or [the mortgage.]”

“...the law strengthens these liens even further by allowing the association to jump ahead of the unit owner’s other creditors...”



serbeto/Digital Vision Vectors/Getty Images Plus

To put the final exception more simply, the association jumps ahead of first and second mortgages for up to nine months’ worth of common charges. This priority also includes not just the common charges themselves, but also the association’s costs and reasonable attorney’s fees incurred to enforce its lien (such as for a title search, demand letter, litigation, and so on) – as long as the association sends a demand letter before foreclosing which satisfies statutory requirements. Those requirements include giving 60 days’ notice to the owner and mortgage-holders with certain details and disclosures. This “super-priority” does not, however, include late fees or fines for rule violations; those can be recovered only after the first and second mortgages are fully recovered first.

Let’s take a look at some scenarios using the example of a unit owner who finds himself in the following situation. He owes \$200,000 on his first mortgage to a bank, \$50,000 on a second mortgage home equity line, and \$5,000 on a third mortgage to a friend, all of which were recorded many years ago (but after the community’s declaration). He also owes \$3,000 to a contractor currently remodeling his kitchen, \$2,000 to the town for his last quarterly real estate tax installment, and \$1,000 on a recent judgment lien for a small claims case. Now he has fallen behind in his common charges owed to the association, which were \$500 per month during the same fiscal year.

In the first scenario, the association starts a foreclosure in March 2023 to recover common charges unpaid since July 2022, and the unit sells at auction for \$300,000. The taxes are highest priority, so they

[Continues on page 10.]

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LEGALLY SPEAKING...from page 8.

are unaffected by the foreclosure. The winning bidder will pay them to the town out of her own pocket. She will have to do the same for the contractor as long as the remodeling project began within the last 90 days. So the court will pay the association the first \$4,500 in auction proceeds, which is nine months at \$500 each, plus its reasonable legal fees. The three mortgages are next in priority followed by the judgment lien, but there will be more than enough money to pay all of them. The leftover auction proceeds will go to the unit owner himself.

The second scenario – which is far more likely – will disappoint some of the creditors. Suppose that by the time the association started its foreclosure in March 2023, the unpaid common charges went back 24 months, and also that the unit sells for only \$225,000. Just like in the first scenario, the taxes and contractor will be paid in full by the purchaser at the foreclosure auction and the association will receive the same nine months of common charges. The difference is that the older fifteen months of common charges will fall behind the banks. The first mortgage will be paid in full, the home equity line will only be partly paid, and nothing will be left for the other balances owed to the association, third mortgage, judgment lien, or unit owner. The unit owner continues to owe those debts and can be sued for them personally to be collected out of his other assets if he has any, but not the unit itself.

In the third scenario, the foreclosure is filed not by the association, but instead by the bank holding the first mortgage. At the time litigation

begins, the unit owner is only two months behind to the association, but he does not pay any common charges during the additional seven months it takes for the court to complete the foreclosure. The distributions will be the same as in the other two scenarios, except that the association will be paid in full all nine months it is owed by the winning bidder out of her pocket, not by the court from the auction proceeds. All of the association's liens survived the foreclosure, and the other creditors will be paid in their priority order until the proceeds run out.

These scenarios leave out a lot of details. For example, the fees and expenses for the court-appointed lawyer to conduct the auction (often \$5,000 to \$10,000) are actually paid first, the creditors' late charges and attorney's fees are usually added to the balances owed, and any number of factual and legal disputes might affect the awards, priorities, or distributions. The litigation also takes time to adjudicate, during which the amounts owed to the association and the other creditors usually increase. Moreover, the minimal advertising and significant purchaser risk involved in foreclosure auctions usually makes the winning bid lower than a normal private sale price. Courts routinely approve auctions yielding only about two-thirds of "fair market" value as determined by an appraisal. All of these factors

"In the third scenario, the foreclosure is filed not by the association, but instead by the bank holding the first mortgage."

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mean that less money is recovered for the creditors themselves. Since creditors are usually competing for a pot of soup that isn't enough to feed all of them, the order of priorities will make all the difference in who gets how much.

Association boards need to understand these realities and where they stand in the soup line when deciding on a collection strategy for any given account. Generally, an association should get its lawyer involved once an account is at most six months behind. This will give the lawyer enough time to identify the mortgage-holders in the land records, issue a 60-day demand letter, and begin the foreclosure lawsuit before the nine-month priority period ends. Negotiating a payment plan with the owner cannot change these deadlines, and waiting too long to start the process can make the older balances difficult or impossible to recover. ■

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.

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Annual Conference & Expo – Putting the Pieces Together!



What an awesome day! Our 25th Annual Conference & Expo had hundreds of pieces all fitting together splendidly. We had nearly 100 booths – including several brand new exhibitors, over 400 attendees and lots of Legos! The aisles were so full at times it was a challenge to make your way through. The best part, of course, was seeing all the smiles!

Our amazing Conference Committee built a schedule of excellent educational sessions. Many attendees remarked about how valuable they found the programs and how knowledgeable the speakers are. We were delighted to hear so many exhibitors say they can't wait to be back next year.

Be sure to mark your calendars for March 16th for our 2024 event! We have already begun working on ideas for next year. We would love to know if you have any suggestions or inspiration for what you would like to see in 2024.

A TREMENDOUS THANK YOU to our wonderful Conference Committee:

- Chair, Karl Kuegler, Jr., CMCA, AMS, PCAM, Chair – *Imagineers, LLC*
- Michael Famiglietti, CMCA – *CM Property Management*
- Carrie Mott, EBP – *Bowvier Insurance*
- Frank Pingelski, EBP – *Tooher - Ferraris Insurance Group*
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Thank you, Alan!

Alan Barberino, CMCA has done a fantastic job as our roving photographer! We are grateful for his time and talent. Another terrific volunteer in action!

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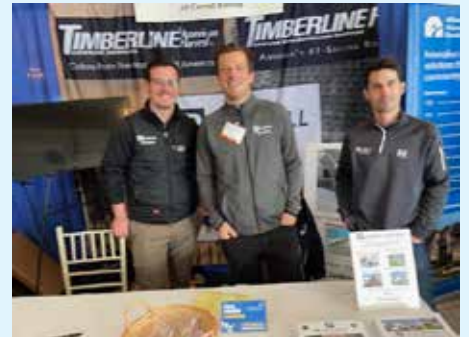
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Financially Speaking...



Daniel Levine, CPA

Accounts Receivable and Doubtful Accounts

By Daniel Levine, MBA, CPA

Many issues ago we wrote an article highlighting accounts receivable and their importance. Since that article, accounts receivable remain just as important for a variety of reasons and we felt it made sense to address this topic again and add some additional highlights as it relates to prepaid income and its accounting. This article will be from the perspective of an association who is on an accrual basis.

What are Accounts Receivable and Prepaid Fees?

As a quick refresher, let's look at what accounts receivables are and how they are created.

The first important concept is the basis of accounting. As stated in the opening of the article, this will be from the accrual basis perspective. Under the accrual basis, revenue is shown when earned, not when payment is received. As a result, an association on an accrual basis will be reflecting monthly income that matches its budget because this income was earned by providing common element maintenance during said month. Since the association often doesn't receive cash in the exact amount the association has billed, accounts receivable are recorded to reflect the amount assessed but not yet collected in cash.

Receivables not only come from common fee assessments but can come from when the association has claim to certain funds (like insurance or litigation proceeds) or is due back money from an overpayment. All receivables have in common the fact that they are related to income that has to be shown now but, the association hasn't yet received those funds. When the association collects the outstanding funds, the receivable is removed and cash increases.

Prepaid fees on the other hand are a liability of the association. The reason they are a liability is because the association has received some type of payment prior to rendering services. For common fees a unit may prepay their next month's common fee. The association, in exchange for receiving this common fee, is required to provide certain services such as maintenance of the common elements. Since the association hasn't done this yet it cannot show this payment as revenue and so it must reflect a liability. Another way to think about this is that if that unit owner who prepaid moved prior to the month they prepaid, the fees would have to be reimbursed, therefore making it a liability and not income as the association hasn't earned the income yet.

Receivables can come from many things:

- Common fees assessed but not yet collected.
- Insurance claim or other maintenance billbacks to unit owners.



designer491/Stock/Getty Images Plus

“Receivables not only come from common fee assessments but can come from when the association has claim to certain funds...”

- Long-term special assessments that a unit will eventually pay off.
- Refunds of duplicate payments, outstanding insurance claim funds yet to be received.

Prepaid Fees typically are because of the following:

- Prepaid common charges.
- Common fees collected for capital repairs but not yet expended for such a repair.
- Prepaid special assessment fees.

How Can a Board Use Their Accounts Receivable and Prepaid Fees for Cash Flow?

At a thirty-thousand-foot level, prepaids and receivables are gauges on an association's cash flow.

As stated earlier, an association bills its unit owners each month their share of the common elements. If unit owners are billed charges but do not pay, while income and profit increases, cash does not increase. Accounts receivable on the other hand have increased. If accounts receivable decrease, it means that items the association has billed have either been collected or the association has written off the charge. If the decrease is due to collections, then that means an association's cash should increase.

The opposite is true for prepaids. If prepaids increase it means the association has received funds but has yet to earn the ability to show as revenue. Cash has increased but it may have to be returned. When prepaids have decreased, the association has either reimbursed the funds or earned the right to reflect the payments as revenue and increased net income as a result.

One new item that may stand out to associations is a line item called “Contract Liability”. This line item stems from an accounting pronouncement and rule change beginning in 2019. This item is also prepaid income and mostly deals with how associations fund their capital repair fund. While an association contributes to this fund over time, it often engages in actual capital repairs infrequently. Since we are on an accrual basis the revenue assessed to a unit owner today for a project done ten years from now should be deferred until that project is completed. As a result, from a cash flow perspective as contract liability increases it means it has received funds into either the operating or reserve fund.

Using the knowledge of how the changes in these balance sheet items relate to cash and the income statement. A board can monitor these balance sheet line items and better understand its cash increasing because of collections or due to receipt of advanced payments, etc.

Key Aspects to Manage Accounts Receivable

Receivables and prepayments are important financial aspects to manage. While many boards focus on budget variances, this can at times not be the whole story of an association’s finances. Reviewing accounts receivable, or prepayments can help result in financial success.

For example, if an association has high accounts receivable, but decides to engage in aggressive collections and reduces that number, it will result in a better cash position. Developing and enforcing a collection policy is a good way to ensure accounts receivable remain low and what is being billed is being collected.


Review of prepaid fees is also important to understand why a unit owner may have a prepaid balance. Is someone prepaying a year’s worth of fees? Does it make sense to potentially refund a unit owner? Are there any small prepaid balances that should be cleaned up and resolved? Most unit owners rely on an association to maintain their account history. While an association will send a statement for past due charges it should consider perhaps annually addressing prepaid balances above or below a certain dollar threshold. This can help smooth out any unnecessary cash flow disruptions that could result from unexpected refunds needing to occur.

Conclusion

Accounts receivable and prepaid fees are a critical component to cash flow management for an association. Understanding what causes these and putting plans in place to address outliers in either category can allow an association to have more predictable cash flow and result in a financially healthy association. ■

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.

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Jonathan Chappell, Esq.

Collection: *Be Aggressive But Fair*

By Jonathan Chappell, Esq.

Paying for services required for the day-to-day operations of your community depends on the timely payment of the common charges and other assessments by your owners. Using purely zero-based budgeting, if someone neglects to pay, the rest of the owners cover the decreased revenue created by the defaulting owner. This author's opinion is an association should have a collection and foreclosure policy and use it, without delay. Consistent and timely collection of unpaid charges and assessments is necessary to properly fund your operating budget. Aggressive collection benefits the community at large and those owners who timely pay their share.

Adopt a Standard Policy.¹

Many communities already have a standard collection/foreclosure policy. If not or you are not sure, check with the association's manager or lawyer. If you do not, you should adopt one. If you have one, you should review it to see if any changes are needed.

Generally, the adoption of a policy promotes consistent enforcement. Rather than waiting for an upcoming board meeting to discuss and vote on each collection referral to counsel, your policy sets up an "automatic" process for doing so. A policy could reduce credible allegations of arbitrary or discriminatory treatment.

Your policy should include:

- The due date for common charges.
- The date that a late fee/interest will accrue.
- How/when a "warning letter" will be sent, usually by the manager, prior to a referral to the attorney.
- That the owner will be liable for any returned check or like charge (e.g., for insufficient funds).
- That the owner will be responsible for the manager's transfer or collection referral fee.
- The process and how an account will be turned over to the attorney, and least an estimate of the additional costs, including attorney's fees and costs that will or may be incurred.
- How partial payments will be applied to the account. Two examples, (1) an owner might pay their regular monthly payment though in an amount excluding assessed fines (an attempt to avoid paying the fines) and (2) an owner referred to counsel for collection pays the principal owed, but not the amount of the attorney's fees. A written policy removes all doubt about the application of these partial payments, to the oldest assessment, to fines, late fees, attorney's fees.



enhu11979/Digital Vision Vectors/Getty Images Plus

Do Not Wait.

This lawyer recommends that an association should be ready to refer a collection file to counsel once an owner is delinquent for a sum of two months of common charges. This is mindful of the limited "super-priority lien" relative to a mortgage on a unit.

The first limitation is that CIOA §47-258(m)(1)(A) prohibits foreclosure until an owner owes a sum equal to at least two months of common charges. By itself, this limitation is not actually problematic. It seems pursuing foreclosure based on one late payment is too aggressive.

The real limitation is the combination with CIOA §47-258(b). This subsection further limits the super-priority lien over a mortgage to the sum of nine months of common charges plus the association's attorneys' fees and costs in the enforcement of its lien. The entire balance owed to the association is otherwise inferior to a mortgage. Anecdotally, it is somewhat common that a unit owner in arrears to an association may also owe a sum close to or even greater than the value of the unit to the mortgage company. If so, the association's debt greater than the super-priority lien may be unsecured and/or uncollectible. If there is a mortgage on the unit, delaying collection puts the association's chance to be paid in full at risk.

You Can Re-visit Collection.

An association board has discretion "whether to compromise any claim for unpaid assessments," provided the board is not "arbitrary or capricious."² This discretion is maintained even after referring a delinquent account to counsel or commencement of a foreclosure. If the owner produces information which convinces the board it should resolve an account, the board can generally decide to do so.

Every community, large or small, will experience non-payment. Be prepared and adopt a policy to collect. Since an association cannot start a foreclosure until it is owed a sum of at least two months of com-

[Continues on page 31.]

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Manager's Column...



Rich Wechter, CMCA

Being Practical, Part LXXXIV

Harassment of Board Members from Community Association Residents— *How to Avoid and Deal with this Matter*

By Rich Wechter, CMCA

In this column, I tackle various topics of interest with the intent of imparting practical advice. In this issue's column, I address an extremely difficult and dangerous matter: the increase in harassment and physical assault of board members by residents at community associations.

A. Setting the Table on this Topic

In a previous article (Being Practical LXIX) written just over two years ago, I commented on the breakdown of civility both generally and in the world of community associations. Since the publication of that column, we have now seen the horrific deaths of board members in both Stuart, Florida and a suburb just outside of Toronto, Canada by community association residents. Many board members that I personally work with have commented on the increasing dangers associated with serving on community association boards, feeling that they have the proverbial target on their respective backs. With the increased number of tragic mass shootings and isolated homicides, and the growing unwillingness of many states to pass even the most benign gun control legislation and/or legislation to help those with mental illness and protect society as a whole, this pattern of violence is destined to grow, unless the adults in the room shed their partisan and selfish considerations and come up with sensible and enforceable measures for both the increase in violence and mental illness. Accordingly, I will provide a few helpful suggestions for board members in community associations to avoid and deal with these individuals and confrontations.

B. How to Avoid and Deal with Harassment and Physical Violence

I offer a few suggestions for board members on how to avoid and deal with harassment and possible physical violence from fellow community association residents:

1. Treat everyone that comes before you with respect. Board members need not come across as being above their neighbors.
2. Listen to what others have to say. As noted by Stephen R. Covey, "Most people do not listen with the intent to understand, they listen with the intent to reply."
3. Seek compromise wherever and whenever possible.
4. Seek alternatives from the requesting individual. Getting them to be part of the solution/response to a request goes a long way in calming down a potential violent situation.



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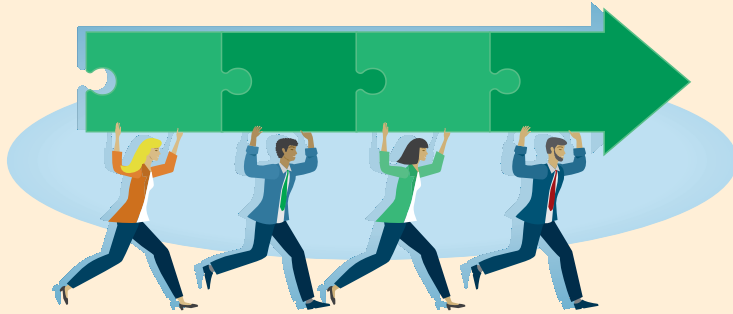
*"Seek compromise wherever
and whenever possible."*

5. Talk in a calm manner and avoid raising your voice, criticizing the person who is making a request or demand, or demeaning them or their position in any way. You can disagree respectfully without making it personal.
6. Encourage them to take some time to think over what you are advising them.
7. Set up a follow-up communication on the subject matter, if possible, with the resident.
8. Phone calls both audio and virtual in place of face-to-face meetings are encouraged, especially if there is a confirmed suspicion that the requesting individual might be a threat to the board member(s).
9. Avoid without exception the desire to play cop or social worker. Board members are not trained for that work and should not take matters into their own hands.
10. Document any threats made both internally in the records of the community association and with all local governmental officials (police, health department etc.).
11. Conduct board and unit owner meetings virtually.
12. If a unit owner becomes threatening at a virtual board meeting or unit owner meeting, mute them, or if necessary, remove them from the meeting.
13. If this conduct occurs at an in-person meeting, reach out to the police immediately if you cannot calm down the situation.

[Continues on page 31.]

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- **Capital Reserve Studies Professional** If you're not a professional estimator, you will need a reserve study done. What you get, how much it costs, etc.
- **How to Pay?** Increased contributions to reserves (not quick, but slow and steady), Special assessment (quick, but hurts most wallets), Loans (payments spread over many years, but must pay interest).

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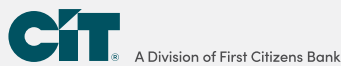
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Melissa Yocum

TECHNICAL EXPLANATIONS:

Dues, Special Assessments, and Reserves – *What's The Deal?*

By Melissa Yocum

As you know, dues and special assessments come with the territory of residing in any type of community association. Understandably, it can be confusing for boards and residents to navigate exactly what both of these payments are used for, when they should be used, and how they affect the association as a whole.

Dues are a given when it comes to living in a community association and are paid monthly by each occupied unit. A percentage of dues will generally be deposited into a reserve fund, which is essentially a long-term savings account for community upkeep of reserve components, or components that have longer-term maintenance or replacement needs. When the time comes for the maintenance or replacement of association-maintained components including anything from roofing and heating systems to amenities like clubhouses or pools, the money is already available if the association has followed a professionally developed reserve study funding plan. The other portion of dues is allocated to the general operating budget for non-reserve component expenses, such as landscaping, staffing and management, trash removal, insurance premiums, and more. However, if these dues are not properly handled and utilized, associations run the risk of special assessments being necessitated.

Now, what exactly are special assessments? Special assessments are generally implemented when unexpected costs arise that monthly dues and the current reserve fund cannot cover. Since special assessments are utilized when unexpected circumstances arise, there is no way to know how much the assessment will be, or when residents will be required to pay them. These assessments will also vary based on the cost of the project and how many residents the cost will be divided by – a \$50K emergency roof replacement will cost each resident more in a 50-unit association than in a 100-unit association.

Many times, special assessments are used in cases of emergencies, natural disasters, or other unexpected events that could not have been financially planned for. In this case, while the assessment will most likely still take a toll on residents, it's often an understandable and necessary step to take. In more unfortunate circumstances, associations may implement special assessments if there has been a mismanagement of reserve funds, resulting in the inability to afford large-scale maintenance or replacements that are critical for building safety or community operation in the near term. Depending on the situation, boards may decide to either require the assessment to be paid in a lump sum, or in smaller installments that are added to monthly dues.

Because dues and special assessments vary widely between associations, it is not uncommon for residents to look into what other



“Associations must be diligent in following a sound financial plan, which all boils down to their reserve funding strategy and ensuring adequate funds.”

communities in the surrounding areas are charging. In many cases, residents are curious as to how the property value of their unit or home compares to those in similar associations, seeing as some lenders take into account monthly dues, special assessments, and the association's current reserve fund balance when determining if a buyer can afford the unit.

Suppose special assessments are common and/or historically expensive, or a buyer is aware that the community is severely underfunded. This may take away from the appeal of buying into that association, and, depending on a buyer's financial situation, lenders may reject a loan altogether. This puts sellers in an unfair bind while also making the association a less desirable community to reside in. In some cases, residents may actually request that special assessments be imposed as a way to keep dues lower and in turn seemingly raise property values, citing that a one-and-done assessment payment is worth the outcome of lower dues. However, this practice would not be recommended by most experts, as it is not a sound way to generate revenue and manage funds, and is more of an idealized plan than one that will be effective in the long term.

So, what's the bottom line? Associations must be diligent in following a sound financial plan, which all boils down to their reserve fund-


ing strategy and ensuring adequate funds. Because of the complicated nature of maintaining a community both physically and financially, and the consequences that stem from deferring maintenance or reserve funding, the benefits of reserve studies are indisputable. Associations must develop multi-year plans that help them understand their long-term budget needs and, at the same time, anticipate and responsibly prepare for the timely repair and replacement of common area components. When these plans are followed, the risk or need for raised dues or special assessments is significantly lowered.

In most cases, these tasks are not able to be accurately achieved without professional guidance. Reserve studies lay out a comprehensive, 30-year plan that does just that. Acting primarily as a capital planning tool, reserve studies allow associations to gain an understanding of both their current and ideal future reserve fund needs. Along with the physical inspection, reserve study professionals dive into the current financial status of your association’s reserve funds, and using the data collected during the physical inspection, determine how the association should go about funding reserves and projects in the future. Again, this helps associations to avoid special assessments, keeping residents happy and the community running fairly and smoothly.

We know that emergencies and circumstances arise that are out of an association’s control, and sometimes raised dues or special assessments are the only option to keep a community running, or more importantly, structurally safe. However, the goal of any board should be to have adequate reserve funds on hand as the first line of defense. ■

Melissa Yocum is a Senior Account Manager with Reserve Advisors.

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Self Defense

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CONNECT with CAI • 25

Is Your Shoreline Putting Your Property Value and Residents at Risk?

By Trend Nelson

Imagine driving down a new street and noticing the most beautiful house you've ever seen. Its bright paint, glistening windows, and clean, welcoming porch show that it's well cared for. But you find yourself distracted by something – a neglected lawn. It's overrun with weeds, debris, and uprooted trees. It has dusty bare spots and deep channels where water flows anytime it rains. How can the owners take pride in their home when the yard looks like this?

This is a similar problem aquatic experts see with lakes and ponds. No matter how much a community association prioritizes water quality, it will never reach its full potential without a healthy shoreline. And just as a neglected lawn can lead to complaints from neighbors, cause home values to plummet, and even citations by the city, so can a deteriorated shoreline.

Most shoreline damage doesn't occur overnight, it slowly develops over the course of several years. If you assumed responsibility of a waterbody when it was in good condition, it can be easy to overlook the signs of deterioration – and forget that it's much more than an aesthetic problem. Shorelines with deep grooves, cracks, exposed pipes, and steep, jagged peninsulas can lead to constant gripes from homeowners and cause serious safety issues for residents, guests, employees, landscapers, and other vendors working around the property. If someone falls or is injured as a result of a neglected shoreline, the association could be held liable.

Waterbodies with degraded shorelines also tend to experience flooding problems. Most of the ponds we see in HOAs, POAs, CDDs, and urban areas are man-made to collect stormwater when it rains. Eroded sediment can fill them with muck, reducing depth and volume. Dangerous flooding is more likely to occur if the stormwater facility cannot function properly. In addition to the liabilities this can cause, flooding expedites the rate of erosion and may cause waterfront properties – and their estimated value – to “shrink” over time.

In addition to the obvious signs of erosion, property managers may notice that maintaining healthy water quality is becoming more challenging. Lakes and ponds filled with muck are more likely to have dissolved oxygen (DO) deficiencies and elevated nutrient levels. These



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“Once erosion occurs, it can be difficult to halt future damage.”

imbalances often manifest as nuisance aquatic weeds and toxic algae blooms, fish kills, bad odors, and cloudiness—resulting in an unsightly lake and an influx of complaints from residents.


These problems aren't just surface level, they can have disastrous, lasting consequences for residential communities. According to a 35-year study of 2,000 lake homes, Bemidji State University in Minnesota found that a 3 ft decrease in lake clarity caused a \$700 decrease in the sale price per foot of shoreline. For example, this calculates to a \$28,000 decline in the value of a 40 ft waterfront lot. We know the effects of erosion can be stressful, but when you fully understand how it occurs, you can implement strategies that will help preserve property values and make your job easier over time.

Poor shoreline management can also accelerate the timeline for more substantial maintenance services like dredging, which is one of the largest expenses a community may ever face. Though all waterbodies will need to be reset at some point by digging out all accumulated sediment, communities usually have 20-30 years to plan and budget for a major dredging project. In cases of severe erosion, this could drop to less than 10 years, leaving community leaders in a very difficult position – divert funds from other important maintenance projects or increase dues and suffer the blowback?

Once erosion occurs, it can be difficult to halt future damage. When partnering with a professional, they will work with you to evaluate the level of deterioration and muck development, and design a restoration plan that's customized to the unique qualities of your waterbody. Often, these involve the use of tools that allow aquatic experts to bioengineer a new shoreline that is incredibly stable and aesthetically pleasing. They may recommend pairing these efforts with mechanical hydro-raking to scoop out bottom muck in target areas, which will then be shaped and sodded over to reestablish several feet of land back to the property.


[Continues on page 28.]

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SHORELINE...from page 26.

Shoreline erosion is a slow burn; it's easy to ignore, but it's also easy to intervene. Professionals recommend integrating several proactive solutions into the ongoing maintenance practices on your property:

- Cultivate a beneficial buffer of tall native plants around the perimeter of your waterbody to slow stormwater runoff and help hold the soil in place.
- Monitor wildlife populations – species like muskrats and invasive armored catfish (found primarily in Florida) are known to burrow and destabilize banks.
- Introduce docks or special paths for visitors to safely fish, kayak, or enjoy the view without trampling vulnerable areas.
- Partner with a professional to regularly survey the area for invasive weeds that can quickly take over sensitive shorelines.
- Properly dispose of yard waste, pet droppings, trash, and other debris so it doesn't decay and contribute to muck build up in your waterbody.
- Reduce the use of lawn and garden fertilizers, which fuel the growth of aquatic weeds and algae.
- Break down muck by introducing nutrient remediation products, biological bacteria, and aerators that increase DO, which is essential to the digestion process.

While erosion is a natural part of pond ownership, property managers have a lot of control over how quickly it occurs. Responsible management practices not only help enhance aesthetics and recreational opportunities, but also safeguard the value and reputation of a community.

Become the most desirable community in your region with beautiful, healthy lakes and ponds. With proactive shoreline solutions in place, you can be at ease knowing your water, residents, and assets are protected from future erosion damage. ■

Trend Nelson is an Aquatic Specialist at SOLitude Lake Management

ENVIRONMENTAL TIP

SAVING ENERGY & MONEY:

Service your air conditioner. Easy maintenance such as routinely replacing or cleaning air filters can lower your cooling system's energy consumption by up to 15 percent. Also, the beginning of spring is a good time to check your air conditioner's evaporator coil, which should be cleaned annually to ensure the system is performing at optimal levels.



Jean-Philippe WALLET/Stock/Getty Images Plus



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>.

Board Concerned Over Management Company Employees' Salaries

D.D. from New Haven County, Connecticut writes:

Dear Mister Condo,

We are a coop that pays a management company to pay for our porters, doorman, and office staff via a signed contract our Board has with the company. The contract only lists a few office staff and their compensation and benefits. This compensation is very high, we don't know if these employees actually are paid this amount. Are we as treasurer and finance committee allowed to see actual salaries (W2s) of these employees to see if the management company is pocketing the overage we are paying?

Mister Condo replies:

D.D., your coop has contracted for services rendered, which it would appear the management company is providing satisfactorily. I am a bit surprised that the contract lists the actual compensation for the individual employees. Far more common would be to provide the price for the services of these employees to you, the customer. Unless the service contract with the management company includes direct access to the W2 earnings of their employees, I can't think of any reason they would share that with you. They hire and manage their employees. What they pay them is a matter between the employee and their employer. Also, they do need to make money as part of their running a successful business. It is typical for any business to earn money from the efforts of their employees. All the best!

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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[Continues on page 30.]

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BEING PRACTICAL...from page 22.

14. Encourage other residents to report any act of harassment or physical violence they experience or witness to the community association and to the appropriate local authorities.
15. Investigate every report of harassment or physical violence.
16. Keep the reporting individuals informed of the status of the investigation into each report. In many cases, the reporting individual is the target of the harassment and/or threat of or actual physical violence.
17. Establish a zero tolerance for harassment or physical violence against board members, or anyone one else associated with the community association.
18. If a face-to-face meeting is necessary, have more than one member of the community association present.
19. Do not provide personal e-mails or phone numbers. You can create board e-mail addresses while serving on the board.
20. Utilize association counsel when matters cross the line from board involvement into involvement by association counsel.
21. Do not allow any such incident of harassment or physical violence to deter you from serving your community association. If that would occur, then you and your respective community association loses out on your service.

C. Conclusion

It is sad that this topic is one that I need to write about. There are so many positive and rewarding matters for board members and community association residents to deal with and read about. However, the reality of the world that we live in, which does not stop at the border of community associations, warrants this brief examination and comment. Safety of all that reside and work in community associations trumps all other considerations. I hope that this article has been helpful in shedding light on this difficult matter. ■

Rich Wechter, CMCA is Senior Vice President at Westford Real Estate Management, LLC. Rich is a member of the Legislative Action Committee and Golf Committee and is also a member of the Legal Symposium Task Force.

COLLECTIONS...from page 20.

mon charges, but this priority over a mortgage is limited to nine months of common charges, the association should aggressively pursue collection, without much delay. Your community depends on collection of the revenue needed to fund its budget. ■

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 member of our Publications Committee.

End Notes:

- 1 A policy must be adopted/amended using the process for the adoption/amendment of a rule. See, CIOA §47-261b.
- 2 CIOA Subsections 47-244(g) and (h). The details of compromising or what may be arbitrary or capricious are beyond the scope of this article.

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