Common Interest

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CONNECTICUT CHAPTER
community
ASSOCIATIONS INSTITUTE

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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.

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

" Infrastructure is aging and the cost to complete every job has only gone up."

I recently came across a previous President's message written by Pam Bowman on the topic of "scary stories" coming from community associations. The point of the message was that a lack of planning and execution often created the scary story. The message stood out to me as it remains true four years later and honestly, was true for the previous twenty. It scares me a little, as in the world of insurance, I am often times on the other end of that call where the scary story is being recounted.

Tackling difficult and expensive projects can be daunting and painful, but the reality is that the work must still be done, and it doesn't get easier. The only real questions in most cases are how to build a consensus and how to fund it. Infrastructure is aging and the cost to complete every job has only gone up. The sooner everyone can agree on getting the work done the better off the community will be.

For a community to be successful in the long term it takes strong leadership and everyone working together. Many associations are at a crossroads and the decisions made now will have an effect for years to come! ■

EDITOR'S NOTE: If you want to avoid scary stories in your community, plan to attend our Fairfield County Knowledge & Networking event on June 14 at Zody's 19th Hole in Stamford. More details can be found on page 5 or at www.caict.org.

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From the Chapter Executive Director

Tasseography: A fortune-telling technique that involves reading tea leaves and other drink residues, like coffee grounds. Tasseographers interpret symbols from tea leaves in the bottom of a teacup to divine the future.

Courtesy CAI-CT.

Kim McClain

Attempting to predict what the future holds is an ancient human preoccupation. And for centuries, soothsayers have sought answers in the bottom of a teacup. When it comes to preparing for future projects and major expenses, we sometimes wonder if a number of unit owners (and boards as well) prefer to find answers from tea leaves rather than reserve planning which can provide more direct guidance.

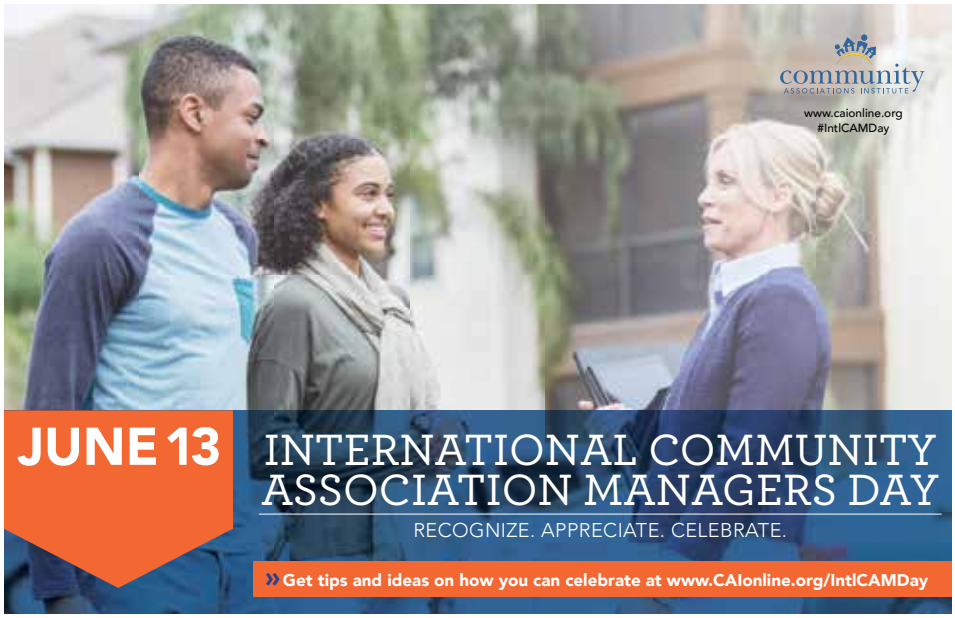
We have devoted a fair amount of space in this issue to discussing reserve planning and the realities of raising common charges regularly. Boards will often tout how they feel like heroes when they don't raise fees, but in the end, they are likely negatively impacting the long-term health and property values of the association.

"Have you attended a CAI-CT education program recently? Education gives boards, managers & unit owners more tools in their toolkit to resolve issues and be proactive about association operations."

Our next Knowledge and Networking program will be covering this topic. Our expert speakers will provide tools for how you can determine the age and issues of your infrastructure and how this will help in determining maintenance and capital improvement priorities. Plan to join us at Zody's 19th Hole in Stamford on June 14. More details can be found on our website: www.caict.org

Have you attended a CAI-CT education program recently? Education gives boards, managers & unit owners more tools in their toolkit to resolve issues and be proactive about association operations. Take advantage of the program we are told time and time again that is incredibly valuable. Our next live program will be held on October 7 in Stratford. Boards should be planning to make sure they have a line item in their budget for education and plan to send at least one or two people to this program. And remember… It's always available on demand, 24/7. So, what are you waiting for?

Spring is also a great time for a tea party, just maybe skip reading the leaves and enjoy! ■



UPCOMING CAI-CT EVENTS

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

2.0 CEUs

- 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:
$30 - CAI Members (when you sign into your profile before registering)
$55 - Non-Members

Service Providers:
$100 - CAI Members (when you sign into your profile before registering)
$125 - Non-Members

Annual Golf Tournament

Tuesday, June 20, 2023
Registration at 11:00 am, Lunch 11:30 am, Shotgun 1:00 pm, Banquet 5:30 pm
Get Ready! Golf is Moving! The Farms Country Club, Wallingford

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!

CEO CAM Council – Hosted on Zoom

Tuesday, July 18 from 1:00 - 2:00 pm

Qualifications to attend: you must be an individual member or the designated chief executive officer or equivalent of a management company holding a CAI membership. No more than two individuals employed by the same company may participate on the Community Association Managers Council at the same time. Pre-registration is required.

SUMMER SIZZLER
Knowledge & Networking

Thursday, August 3, 2023
Education from 3:00 pm - 5:00 pm
Networking 5:00 pm - 7:00 pm
Amarante's Sea Cliff, East Haven

2.0 CEUs

Educated board members & managers = more productive management. We will take you on a quick tour of our most popular program: Condo Inc. Discover what you're missing. Learn what you need to know regarding state laws, governing documents; financial statements; reserve studies & funding and insurance to help you avoid. We will be returning to our favorite shoreline location – Amarante's – for another great Summer Sizzler party on the deck. Don't miss it!

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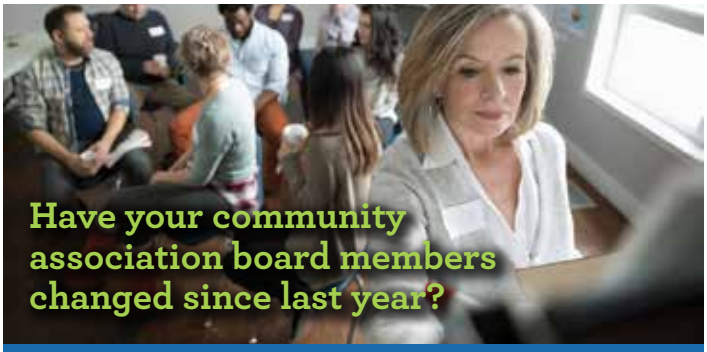
Visit www.caict.org to register and for updated information.

Statutory Snippet...

What is an annual report and how do I file?

Most Associations in Connecticut are incorporated and must file an Annual Report with the CT Secretary of State. Annual reports collect vital information about businesses to ensure the information on file is accurate. Connecticut law requires annual report filings for all corporations, nonstock corporations, limited liability companies, limited liability partnerships and limited partnerships. For more information, go to business.ct.gov/file-annual-report. ■



Be sure to update

your board's member names, titles (President, Vice President, Treasurer, Secretary, and Board Member), and contact information to ensure your board members receive all the latest CAI member benefits!

Update today:

ONLINE at www.caionline.org
EMAIL addresschanges@caionline.org
MAIL to CAI, P.O. Box 34793, Alexandria, VA 22334-0793

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THANK YOU NEW & RENEWING MEMBERS

Welcome New Members

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Torringford Farms Association
Webster Hill Estates
The Woodland House Condominium Association

Individual Managers
Ryan Corrow, CMCA
Christopher L. Farris
David C. Field, CMCA
John Charles Taney, IV, CMCA
Faith Tirado

Business Partners
re:fab

Thank You Renewing Members

Associations
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Birchwood Commons Condominium Association
Bramble Ridge Association, Inc.
Bryrewood Condominium Association, Inc.
Country Walk Association, Inc
Fieldstone Village of Orange, Inc.
Heatherwood Condominium Association
Kensington Woods Association, Inc.
Knollbrook Condominiums
L'Hermitage Condominium Association Inc
Linron Gardens Condominium Association
Long Hill Farm Association
The Meadows of Enfield Condominium Association, Inc.
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The Moorings II Association Inc.
New Concord Green
Newfield Commons Condo Association
Poet's Landing Association, Inc.
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Southfield Green Condominium Assn., Inc.
Summerwood Condominium Association, Inc
Summit Master Association
Sylvan Point Condominium Association
The Village at Crystal Springs Condominium Association, Inc.

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Propertyworx, LLC
South Shore Property Management, LLC

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Michael James Capasse
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Edward Dutka, CMCA
Norman Goodman, CMCA
Melissa Cathleen Gouveia, CMCA
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First Onsite
John C. Fiderio & Sons, Inc.
Mono-Crete Step Co of Ct, LLC
Pilera Software
Tangible Properties, LLC
Tooher - Ferraris Insurance Group
United Property Restoration Services
Vantaca, LLC
Windsor Federal Savings

Legislative Update

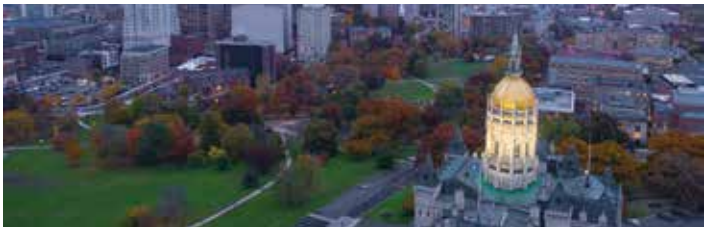
The session will have only a few weeks left by the time this issue hits mailboxes. We have continued to work with Rep. Jeff Currey on the solar installations bill (RB 6805). We believe we have resolution on language that should work.

Other bills we are focused on include:

RB 1013 - AN ACT CONCERNING COMMON INTEREST OWNERSHIP COMMUNITIES – The bill calls for the Commissioner of Housing to submit a report about the assessment of reserves in common interest communities. This bill has a fiscal note as the Housing Commissioner will likely require a consultant to develop the report. This bill is likely to pass.

RB 1072 – AN ACT CONCERNING REVISIONS TO THE COMMON INTEREST OWNERSHIP ACT – Things continue to look good for passage of this CAI-CT LAC drafted bill. The increase in resale package fees along with clarifying the voting process and protection of voting records is part of the bill and it will also 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 failed.



ChrisBoswell/istock/Getty Images Plus

Did you know…According to the Congressional Management Foundation's report, *Citizen-Centric Advocacy: The Untapped Power of Constituent Engagement*, **94% of lawmakers** says an in-person visit from a constituent would influence them on an issue they're undecided on.

Are you planning any social events this summer in your association? Take your event to the next level and invite one of your community's elected officials! These events are great opportunities for your elected officials and their staff to experience the incredible culture of your community and learn firsthand about the community association housing model.

Take a few moments to tell us WHEN and WHERE your event is, and CAI will do the rest!

https://www.votervoice.net/CAI/Surveys/8926/Respond?unregistered=wO6wPuV9f1xDQq0XIojPfw

Legally*Speaking...*

Adam Cohen, Esq.

A Legal Eye on Landscaping

By Adam J. Cohen, Esq.

In most common-interest communities, landscaping is the responsibility of the association. Trees, grass, shrubs, hedges, underbrush, decorative plantings, and outdoor ornamental fixtures are common elements, and their appearance and maintenance are matters of communal concern. Therefore, unless the declaration says otherwise, the Executive Board has complete control over these outdoor areas rather than individual residents. Even residents whose units are immediately adjacent to landscaped areas or whose views would be affected by changes to them usually cannot overrule the Board's discretion on landscaping issues.

A rule which implements this general authority of the Board might read something like this:

> *The Board has exclusive control to select, install, alter, and remove all landscaping throughout the community. Unit owners and residents may not plant, cut, move, damage, or remove any tree, shrub, grass, flowerbed, garden, or other flora, or direct or interfere with the Association's landscapers, without the permission of the Board. Unauthorized plantings will be removed at the unit owner's expense, while authorized plantings must be maintained at the unit owner's expense.*

Additional rules might be tailored to apply to more specific situations, such as prohibiting anyone from allowing landscaped areas to be damaged or obstructed with vehicles, toys, garbage, chemicals, or pet waste.

The cost of routine landscaping will ordinarily be chargeable to all of the units like any other common expense. The Board will only have the power to allocate a landscaping expense to a particular unit or units if, for example, the Board determines after a hearing that a resident caused uninsured loss by violating a written maintenance standard, or if the declaration makes a yard a limited common element and assigns the cost to maintain it to the adjoining unit or units.

If, like most associations, a professional landscaper is hired to maintain the grounds, the contract should segregate out work-items for separate pricing if allocating those charges to particular units is appropriate. The Board should also make sure that any landscaping contract spells out the landscaper's exact responsibilities and deadlines, a reasonable procedure for reimbursing any property damaged by workers, and an opportunity to cancel the contract in case the community is unhappy with the landscaper's performance. State law gives the owner-elected boards of residential associations an absolute right to not use the developer's choice of landscaper with no more than ninety days' notice.

ligonography/iStock/Getty Images Plus

"If the declaration or rules allow unit owners to propose gardens, flowerbeds, or other plantings near their units, the Board should insist on a written and pictorial plan..."

If the declaration or rules allow unit owners to propose gardens, flowerbeds, or other plantings near their units, the Board should insist on a written and pictorial plan identifying as many of the details as possible. The Board's permission should clearly state in writing that the plantings will always remain the unit owner's responsibility and that the Board may instruct that they be modified or removed if they later become a nuisance.

Whether new landscaping features are to be installed by a resident or by the Board itself, it should carefully consider the exact species and location before they are approved for planting. Saplings start out small, but mature trees can have branches that damage building façades, leaves that clog gutters, and roots that destroy sidewalks and underground pipes. Some plants attract pests, like aphids or deer, while others are invasive, such as certain types of bamboo which have been known to obliterate driveways. Also remember that "call before you dig" programs should be used to learn the exact location of underground electrical wires before installations begin.

Finally, Boards must also be aware of the risks potentially posed by existing plantings, especially large trees. The law says that the owner of a tree is not responsible for any damage it causes if it falls over or drops branches unless the risk of such an occurrence was obvious or actually known; in other words, there is no affirmative legal obligation to inspect trees for disease or dangerous limbs. Nevertheless, safety is paramount. If the condition or location of a tree or any other planting seems to present a risk to nearby structures, walkways, parking spaces, recreational areas, or utility lines, then it should be promptly inspected and/or removed by a qualified arborist. If the threat instead comes not from one of the community's own trees but rather from a neighbor's tree hanging over property boundary, then the association's own rules will not apply. Instead, the Board must work with that owner, like any two neighbors, to cut the tree back or take whatever steps are necessary to remove the danger. After all, landscaping should be what makes the community lovely… not liable. ■

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.

Financially*Speaking...*

Daniel Levine, CPA

Management Transition Accounting Challenges

By Daniel Levine, MBA, CPA

Many associations within the common interest community industry engage with professional management companies to handle their accounting and record keeping. Consequently there are times where a switch from one professional management company to another occurs. While this can happen for a myriad of reasons the end result is that the records of the association will have to migrate. Transitions of accounting information can become complex but are critical from the standpoint of consistency in the records and avoiding potential accounting misstatements that impact decision making.

The fundamental rule of a management transition is that whatever the balances were at end of prior management, those should be your starting balances with new management. There are typically little to no exceptions to this rule. Equity should not change, income or expense should not change. Payables, receivables, or any other account for that matter should not change. If numbers have not migrated over equivalent to what they were previously, something is not accounted for correctly. The north star to follow in any management transition is this fundamental that nothing should be different after the transition.

While this may sound like a simple concept, there are many things that can occur that complicate a transition. Below is a small sampling of complicating factors:

1) Missing records, or delay in receiving detailed records.

2) The new management company operating under a different accounting method (moving from accrual basis to cash basis or vice versa).

3) Accounting for outstanding activity on the old management's sets of books for new management.

4) Change in chart of accounts.

This article will take a look at management transitions from the accounting function and potential areas where issues can occur.

Accounts Receivable (A/R) & Prepaid Fees (PPD)

When conducting a management transition most balances from the prior management company are entered via a journal entry by the new management company. While this is all that has to be done for most income statement accounts, the balance sheet can be more complex. This is a result of the balance sheet balances being a cumulative total the doesn't reset each year like an income and expense account.

KrizzDaPaul/DigitalVision Vectors/Getty Images Plus

"...whatever the balances were at end of prior management, those should be your starting balances with new management."

Therefore the details of that running total becomes important to preserve.

For A/R & PPD fees this is the case and for these accounts it must first be understood that an association's accounts receivable is presented in two ways within an association's records. The first is the aggregate gross amount of accounts receivable as presented in the general ledger and on the balance sheet. The second is the detailed subledgers for each unit which reflects a unit's specific balance. The total of all the subledgers should total the general ledger. If not, then there is a disconnect between the two that has to be reconciled.

As a result, when a management transition is occurring it is important to enter accounts receivable or prepaid balances starting at the specific unit owner/sub ledger level to preserve their history. Entering just the aggregate amount will not preserve unit history and result in potential account errors.

The easiest way to therefore handle entering A/R & PPD fees is to actually handle it as a separate step in the transition process. By posting the detailed subledgers balances and posting any offsetting entry to a clearing account, it is possible to ensure the accuracy of the

[Continues on page 12.]

FINANCIALLY SPEAKING...from page 10.

A/R & PPD numbers as a smaller piece of the ultimate management transition. Then when entering any remaining balances the balancing portion of that entry would offset the clearing account created in this step and remove any balance there.

As unit owner history and balances are critical to collection or reimbursement/payoffs issues, having this a separate step allows for easy reconciliation or correction if an error is made.

Accounts Payable (A/P)

Similar to A/R & PPD fees A/P is an account whose balance can't be entered as just a cumulative number. The reason is the same, the balance of A/P are bills where the expense has been recorded on the books but it hasn't been paid yet. Therefore, the specific vendor balances need to be entered so the specific vendor can be paid. However, A/P can create a larger issue when switching management companies is also resulting in an accounting method switch.

If switching from the accrual basis to cash basis, then A/P becomes a number that shouldn't ultimately be present on the new set of books. As stated earlier, however, there shouldn't be a change from one set of books to another. So, when encountering this issue, I recommend that the transition be done in steps to ensure an audit trail. First, the prior management company numbers should be recorded as is, then if something should no longer be reflected due to the management switch it should then be adjusted in a different subsequent entry.

For the case of A/P, what occurs with a change in accounting method is a potential double counting of expense. When an association has A/P on the books those expenses are recorded but not paid. So the bills are in the expense numbers recorded by the new management. If new management pays the bills and expenses them again, as would be the case with cash basis accounting, they double count and distort the income statement. Instead, the management company should record the expenses then record an offset with the adjustment to A/P. These cancel each other out and then when the bill is paid by new management there is no double counting.

Equity

Equity is both the simplest and most complex component of a management transition. It is simple in that equity rarely changes. The only time equity should change is when net income for the year is closed out to that account. Therefore, it should just be simply recorded as it is presented on the previous management's books. It is complex in that most individuals don't look at this number or quite understand it's purpose in the financial statements. That lack of knowledge or comfort with the number results in situations where items are put into equity that should impact other aspects of the financials which results in overall errors that need to be corrected.

Most times in a management switch the new management company uses equity as the catch all balance account when recording balances.

[Continues on page 26.]

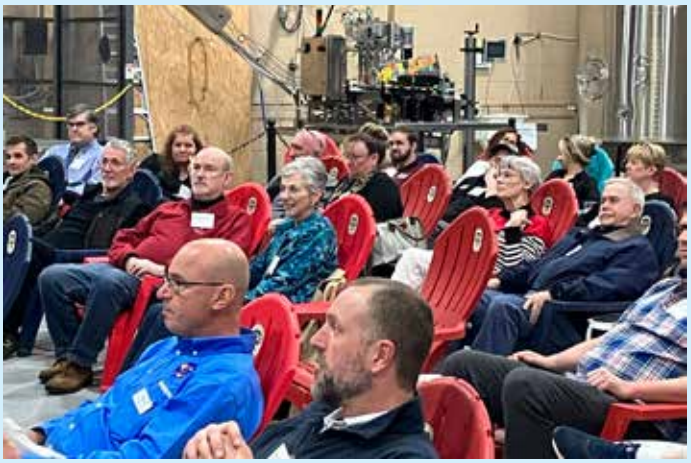
We Headed West — It was Great!

Our Annual Spring Fling event was moved to Danbury in order to reach more of our members in the western part of our state. We were pleased to see nearly 80 people in attendance at the Charter Oak Brewery. It was fun — we even brought our Axe Throwing game and lots of people played! Our education program provided some depth to the many — and increasingly complicated — issues associations face with respect to insurance claims, etc. One manager stated that she was taking what she learned and was bringing it directly to a board meeting that evening as the information was so important to what needed to happen at the board meeting.

As we drove to the event venue, we noticed that there was a vast number of condos and HOAs in the immediate area in Danbury. We need to understand how to get board members from those associations to join us for future events in their backyard.

The Spring Fling Committee will be meeting soon to begin planning for 2024. We would love to welcome new committee members!

Our sponsors are the key to making events like this happen. Thank you for your generosity!



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Jonathan Chappell, Esq.

Adopt Your Budget or Special Assessment Correctly

By Jonathan Chappell, Esq.

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The adoption of a budget and/or special assessment have been subject of many previous articles by several authors. However, questions about the process or issues related remain. Here is my latest attempt to address a few issues that are, anecdotally to me at least, frequent questions, and, then to summarize the adoption process. As always, this is intended as guidance; you should discuss specifics with the association's lawyer.

Our documents differ from CIOA, what do we do?

To adopt a budget or special assessment, follow CIOA.

Your community, no matter when it was created or whether you follow CIOA generally, must follow CIOA § 47-261e[1] to adopt a budget[2] or special assessment. Section 47-261e, with limited exceptions, supersedes any differing document provision. This has been so since July 1, 2010. Especially older communities may have documents that dictate a procedure to adopt a budget or special assessment that conflicts with CIOA.

Do owners get to vote?

This may differ for a budget or special assessment:

Budget:

Yes. Always. Even if there is not an increase in common charges.

CIOA § 47-261e(a) mandates unit owners be given the opportunity to vote. A board's "proposed budget" is given deference, meaning only if at least "a majority of all unit owners or any larger number specified in the declaration" vote to reject it is the board's proposed budget defeated. But there must be a unit owners' vote and opportunity to reject it.

Special Assessment:

It depends on the amount of the proposed special assessment.

This threshold determination is found in CIOA § 47-261e(b), which states in relevant part: "Unless the declaration or bylaws otherwise provide, if the proposed special assessment, together with all other special and emergency assessments proposed by the executive board in the same calendar year, does not exceed fifteen per cent of the association's last adopted periodic budget for that calendar year." If the 15% threshold is exceeded, the unit owners must be given an opportunity to vote to reject the board's proposed assessment. If not, the board's special assessment is effective immediately.

Can't the Board just deem it an emergency special assessment?

Most times, probably not.

The "emergency special assessment exception" in CIOA § 47-261e(c) states:

If the executive board determines by a two-thirds vote that a special assessment is necessary to respond to an emergency: (1) The special assessment becomes effective immediately in accordance with the terms of the vote; (2) notice of the emergency assessment must be provided promptly to all unit owners; and (3) the executive board may spend the funds paid on account of the emergency assessment only for the purposes described in the vote.

CIOA does not define "emergency."

Connecticut does not have anything directly on point where a common interest community has imposed an emergency special assessment. However, our courts have defined "emergency" in other contexts as something "unexpected or unforeseen, and it must necessitate immediate action."[3] Our courts routinely consult a dictionary, and Black's Law Dictionary, consistent with our courts, defines it as: "1. A sudden and serious event or an unforeseen change in circumstances that calls for immediate action to avert, control, or remedy harm. 2. An urgent need for relief or help."

A case decided in 2018 by an appellate court in Illinois[4] upheld a board's emergency assessment. An owner unsuccessfully tried to stop a condominium from imposing an emergency special assessment. That case was decided in favor of the board – a court found there was an emergency to replace 90 decks. The language in the documents and the statute defined emergency as an "immediate danger to the structural integrity of the Common Elements or to the life, health, safety or property of the Unit Owners." There was an opinion from the contractor identifying why it needed to be done urgently.

This author suggests attempting to deem something as an emergency very sparingly. For example, a multitude of roof leaks is currently a significant concern, but because of years of deferred maintenance – is this a true unforeseen emergency? It is best to use the usual procedure.

Can we adopt a "flat" special assessment?

Probably not. A "flat" assessment means every unit is to pay the same amount.

Generally, a common expense must be assessed against all units in accordance to your allocation table.[5] To determine how much a unit pays, multiply the total sum needed by the community by a unit's percentage of the common expense liability.

How do we properly adopt a budget/special assessment?

The process for a budget/special assessment is very similar, and each requires board action and then a unit owner vote.[6] With each, the board's proposal is given deference, in that only if unit owners with at least a majority (or a greater percentage in your documents) of the total voting power actually vote "no" is the board's proposed budget/special assessment successfully rejected. Otherwise, the budget/special assessment is approved or deemed approved.

The following are basic outlines to adopt a budget and special assessment.

Budget (CIOA § 47-261e(a)(1)):

1. The board adopts its "proposed budget."
2. Within 30 days of board approval, a "summary" of the board's proposed budget must be distributed to unit owners.
3. "Simultaneously" the owners must be given notice of a unit owners' vote within not less than 10 but not more than 60 days.

Special Assessment (CIOA § 47-261e(b)(1)):

1. The board approves a proposed special assessment.
2. You must determine if the 15% threshold is exceeded (see above). If not, the board's special assessment is immediately effective.
3. If the threshold is exceeded, within 30 days a summary must be sent to all owners, and the board must schedule a unit owners' vote to occur within not less than 10 or more than 60 days.

Adopting a budget or special assessment correctly is important. Doing this right should always be the goal. ■

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.

ENDNOTES:

1 CIOA § 47-216(a) makes CIOA § 47-261e applicable to common interest communities created on, before, or after January 1, 1984.

2 This includes a budget amendment.

3 See, Bd. of Selectmen of Town of Ridgefield v. Freedom of Info. Comm'n, 294 Conn. 438, 449–50, 984 A.2d 748, 756 (2010).

4 Dedic v. Bd. of N. Shore Towers Condo. Ass'n, 2018 IL App (1st) 171842, ¶ 3, 105 N.E.3d 821(2018).

5 See, CIOA § 47-257(b).

6 Assuming a special assessment more than the 15% threshold.

Maxwell LaFrance, Esq.

Condominiums, Tenants & Evictions

By Maxwell LaFrance, Esq.

Condominium Associations and their Boards have a toolbox of options on how they may enforce their governing documents (The Declaration, Bylaws, and Rules and Regulations.), and one of those tools is eviction. Associations have the power to evict under the Common Interest Ownership Act, specifically General Statutes § 47-244(d). This article will provide you a roadmap on how an Association may evict, and the eviction process.

Here is a scenario: The Board receives complaints that Unit "X" is making excessive noise at night which is disturbing the quiet enjoyment of the premises by unit owners in adjacent units, and in violation of the Association's Rules. The persons residing in the Unit have not changed their behavior after receiving notices of violation, and the adjacent unit owners are demanding the Board take action. After investigating, the Board determines that the owner of Unit "X" has rented it out, and the noise is being caused by their tenants. The owner of Unit "X" is not responding to the Board's requests that they address their problem tenants.

How should the Board respond to this scenario? Amassing fines and commencing a foreclosure can take a year or longer, during which time the noise issue might continue. The solution is that the Association may evict the tenants. An eviction, referred to as a Summary Process action with the court, is typically faster, taking approximately three to four months, and is less costly than foreclosure.

The first step is that notice must be given to the tenants and the unit owner regarding the tenants' violations, and that notice must provide the tenants and the unit owner a minimum of ten (10) business days' notice and the opportunity to be heard regarding the violations. Preferably, that notice should be sent by certified mail or similar service or served by state marshal to set a record of its receipt. The ten business days prior to the hearing can also act as the cure period. If the tenants do not or cannot cure the violation at the expiration of the ten days, then the Association may begin the eviction process.

The eviction begins with the tenants being served a Notice to Quit, which will specify the basis for the eviction, and give the tenants a date that they need to vacate the unit by, also called the quit date. If the tenants remain in the unit after the quit date, then they will need to be served a Summary Process Summons and Complaint to bring them to court. If the tenants respond to the Summons, then the court will schedule a hearing date.

At the hearing, the Association and the tenants will first be required to attend mediation. The mediation is conducted by a court mediator, who will attempt to have the Association and the tenants come to an agreement that would either allow the tenants to stay in the unit with agreed upon conditions, or for the tenants to vacate by an agreed upon date. The majority of cases are resolved by mediation, but there is no requirement that they be resolved by mediation. If an agreement cannot be reached, or if either the Association or tenants request it, the case will go before a judge that day for trial.

"How should the Board respond to this scenario? Amassing fines and commencing a foreclosure can take a year or longer...The solution is that the Association may evict the tenants."

Once the Association receives a judgment in its favor, or if the tenants remain in the unit after the agreed vacate date, then the Association can request an Execution of Eviction from the court. The Execution of Eviction is what authorizes a state marshal to schedule a moving company and remove the tenants from the unit.

There are limits on who, and for what an Association may evict. Unit owners residing in their unit cannot be evicted by the Association, removing them must be done through foreclosure. Another limitation is that the Association cannot enforce the terms of the unit owner's lease with tenants. The basis for the Association to evict must come from the tenants' violation of the Association's Governing Documents. It should be noted that the costs of the eviction process may be billed back to the unit owner, if the Governing Documents permit it.

It is strongly recommended that Associations and their Boards consult with their legal counsel if considering an eviction to ensure compliance with notice, deadline, and other legal requirements or concerns.

To conclude, eviction is another enforcement tool that Associations can use to ensure tenants comply with their policies. ■

Maxwell LaFrance is an Associate Attorney with Bender, Anderson and Barba, P.C., and handles the majority of the firm's Landlord-Tenant matters.

Manager's *Column...*

Rich Wechter, CMCA

Being Practical, Part LXXXV

Disputes Between Neighboring Unit Owners/Residents

How Best to 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 increasing occurrence of disputes between neighboring unit owners/residents that mirrors the general trend for conflict, and unfortunately violence that prevails our country and the world. This article is a follow-up from my last article regarding harassment of board members.

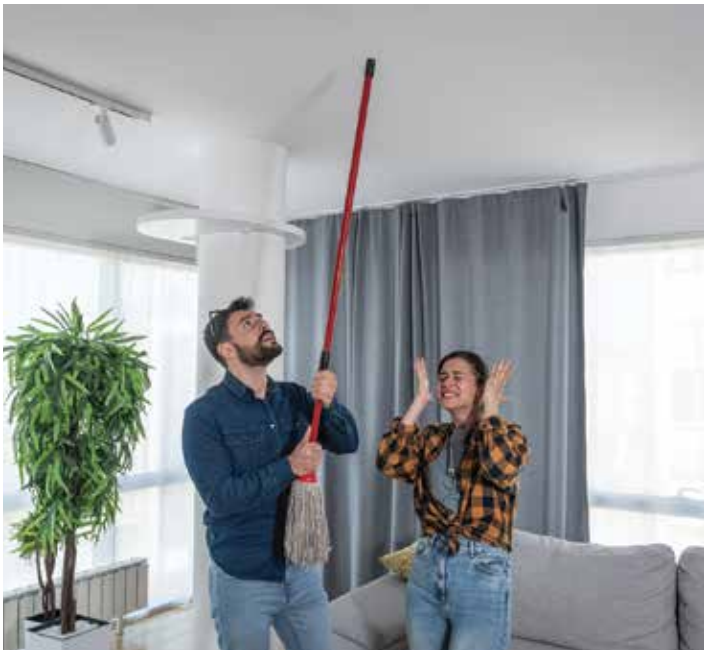
Setting the Table on this Topic

In a number of internet sites, there is a list of Good Neighbor Tips that is not attributed to any particular person. These tips are as follows: Be respectful (watch the loud music); Be a good pet parent; Follow parking guidelines; Stay safe at home; Be tolerant of your neighbors; Stay aware of neighborhood goings-on; and Remember the Golden Rule. Seven tips that if followed, by all, would have eliminated the need for me to write on this topic in the first place. Unfortunately, we live in a world where the slightest purported offense leads to violence and in some extreme cases, cold blooded murder. In the world of community associations, the tightness of many residential communities raise the boiling point of many people to a degree when violence erupts. I now offer a few suggestions that may help avoid these horrific situations.

How to Deal with Disputes Between Neighboring Unit Owners/Residents

I offer a few suggestions for unit owners and residents on how to deal with disputes with neighboring unit owners and residents:

1. Understand what the dispute is about. You need to be clear about what it is that your neighbor is doing/not doing that is unacceptable behavior.
2. Come to the table with "clean hands". If you are also causing a dispute to fester, then you need to resolve that behavior before dealing with your neighbor.
3. Learn everything there is to learn about your neighbor. Do they have any impairments (hearing, vision, etc.)? Is there a language barrier that may be causing the dispute? Is there anything that would suggest that your neighbor is violent or may become violent if contacted by you regarding a particular dispute?
4. Weigh the benefits of reaching out to a neighbor on any particular dispute against the particular matter in question. Trivial disputes may just not be worth having any contact with a difficult neighbor.



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"Unfortunately, we live in a world where the slightest purported offense leads to violence and in some extreme cases, cold blooded murder."

5. Discuss your concerns with other neighbors who either have similar feelings in the matter or may offer a different perspective that could resolve the dispute.
6. Develop a thoughtful, safe, and productive approach to your neighbor. Never proceed rashly or in anger.
7. Determine what compromises you can live with.
8. When you engage with your neighbor, start the conversation with matters of agreement. Find common ground with your neighbor before getting into the heart of the dispute.
9. Ask help from the subject neighbor to resolve the dispute. Let them offer a solution so that they feel important.
10. Talk to them calmly and avoid raising your voice. Yelling will never work, especially with someone who has violent tendencies.

11. Bring cookies or something equally enjoyable to eat in your first visit to your neighbor. Everyone likes food.
12. Avoid seeking an instant solution to the dispute. Give your neighbor some time to ponder what you have said to them.
13. Set up a follow-up communication on the subject matter, if possible, with your neighbor.
14. If you are concerned about your safety or just do not feel comfortable with a face-to-face meeting with your neighbor, write a personal letter to your neighbor.
15. If you sense or see any threatening behavior toward you by your neighbor, retreat immediately and then report this behavior to the local police and to the community association management company.

Conclusion

Above all else, you must feel safe if and when you reach out to a neighbor in an effort to resolve a dispute. There is no one-size-fits-all approach to resolving disputes with neighbors. My suggestions should be considered but ultimately, each of us must decide for ourselves, whether we even wish to meet a neighbor under these circumstances, and, if so, the manner of such a meeting. Caution is paramount when attempting to resolve a dispute with a neighbor. I cannot emphasize that enough. 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.

Doug Newman, CMCA

Comparing Monthly Common Charges and Are We Reserving Enough?

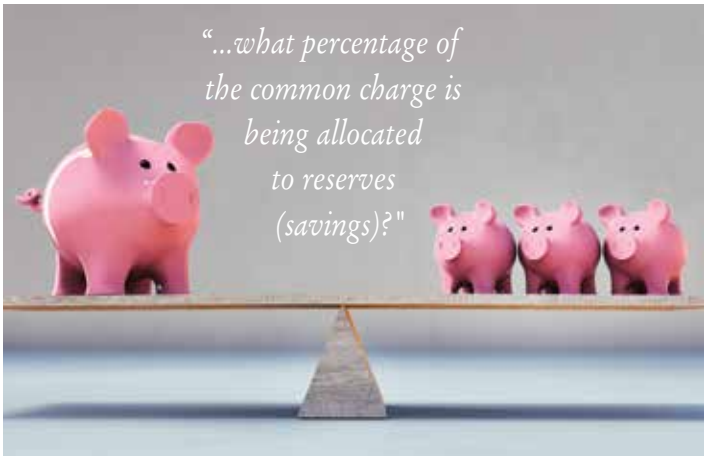
By Doug Newman, CMCA

A condominium association client executive board recently formed a long-range planning committee to study its level of reserves and upcoming reserve expenses for both the short and long term. This is a very healthy exercise, one that I recommend be done annually, and fortunately they are working off of a 2019 reserve study.

One of the committee members asked about comparing monthly common charges between other associations to "see where we stand as compared to others" and asked if I could provide some data for generally like-kind condominium associations in the immediate area. Unit owners often bring this question up at an annual budget meetings, someone always says (with a somewhat negative connotation) something like; *the association across from us pays $375 per month, why are we paying $425?* For the record, and you can quote me, please do not compare monthly common charge amounts, it is a very bad idea. Without understanding the needs of each individual association, you are not comparing apples to apples and what is the end goal anyway, to state that your common charges are the lowest with pride? Other than a ranked listing, comparing the monthly common charge tells you essentially nothing in terms if one association is one a path to success or something less than that.

For example, one association with a rash of insurance claims or costal exposure will pay more for insurance than another without claims and no coastal exposure. One association may have more roadways and sidewalks on a per unit basis than another and therefore its snowplowing expense is higher. Another may have an irrigation system or septic systems to maintain and another does not. I can go on and on but as you can see, comparing the total monthly common charge amount is a very poor metric to use. You can, however, compare specific line item expenses which is much more meaningful. And should you do this comparison, I suggest you first go right to the reserve contributions and ask, *what percentage of the common charge is being allocated to reserves (savings)?* This percentage will vary greatly between associations and is a significant reason why comparing monthly common charge amounts between associations is an extremely poor practice.

At the March CAI-CT Expo there was much discussion about reserves. How much should we reserve? What are your reserves? Do we have enough reserves? Did you hear there is newly proposed legislation that might mandate reserve studies? With a big broad and generalized brush, the contribution to reserves is often too low. I've heard some board members say, "we reserve 10% of their budget" with some pride. When I then ask where they got that percentage



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number from the answer is typically, we always reserve 10% as if it that is some magical standard. I've heard others say, "well 10% is the state law." To be clear, there is no state law percentage, you can reserve zero if an association choses. Additionally, it seems that the FHA 10% minimum requirement (to obtain an FHA backed mortgage) has somehow morphed into a very false, best practice standard by many associations. Caution: if you are reserving 10% of your budget for a long time, you are very likely setting your association up for the future need of a large bank loan and/or special assessment in the future.

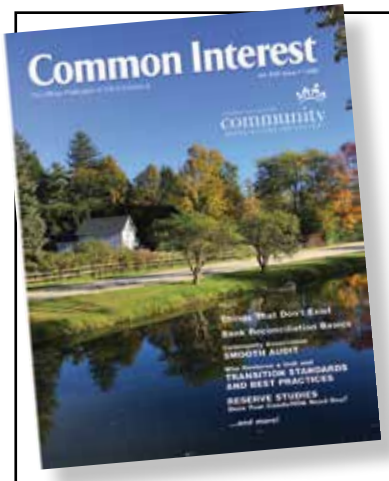
Recently, a newer condominium association client board was finalizing its upcoming fiscal year budget. The treasurer recently wrote, *"If the common charges go up to $575 per month, that will hurt market values. Hopefully we can keep our budget the same as 2022 and not increase fees and also maintain our reserve balance."* My reply:" That is not true. *Low common charges and little or inadequate reserves equals lots of future expenses and that is what negatively impacts market values. Additionally, I always advise against keeping common charges the same year-over-year as there is always inflation and unit owners need to understand that. Even if all budget line item expenses were to remain constant, you must at a minimum keep up with inflation as it pertains to reserves and that number must increase annually."*

In a perfect world, a condominium association will not need a bank loan or a large, multi-year special assessment for the inevitable replacement of roofs, roads, siding, pools, street lights, mailboxes, etc. When I say that, I often then cite my very first client, Greystone Manor with 90 units. I immediately give credit to its long-time community association manager, Bob Howard, and its executive board who very early on, and without a reserve study, knew that they needed to save for future reserve expenditures to make for a successful association.

About five years ago, Greystone Manor had to unexpectedly spend about $350,000 for extensive carpentry repairs that were unforeseen. The siding around many chimneys was installed around the gutters, the gutters were installed first and water was getting behind the siding from day one. Anyway, they were able to write a check for these repairs but that was a significant an unexpected hit to reserves. Today, some 35 plus years later, Greystone Manor is reserving 39.8% of their operating budget. Stated differently, for every $100 of income from monthly common charges, $39.80 is being allocated monthly to reserves. Currently, Greystone is underway with an approximate $1,000,000 project to repave the entire complex, install new concrete sidewalks and curbs, mailboxes, etc. Greystone did close a $850,000, 10-year bank loan to help fund this work but here's the kicker; they did not need to abnormally increase the common charge or have a special assessment. They will comfortably make the monthly bank loan payments from the monthly amount being contributed to reserves and, they will still be adding to reserves each month after making the monthly loan payment.

The moral to the story: set your association up for success by appropriately funding reserves. Unit owners need to pay their fair share for their respective portion of the roof, roads, siding, etc. today, for the replacement of these items when their useful live has been expended. And, do not keep common charges constant from one year to the next! ■

Doug Newman, CMCA is President of CPE Management.



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Rick Filloramo

TECHNICAL EXPLANATIONS:

The Fate of Condominiums — *Will Your Association Survive?*

By Rick Filloramo

MAYBE. Condominiums built in the 70's and 80's are now 45 to 55 years old. OMG. I'm sure all homeowners who live in condominiums have been told and have read many articles that Associations must maintain the property and buildings and keep substantial reserve funds for current and future projects. Therefore, I'm not going to reiterate old news or cite stories of failed decks, leaking roofs, dangerous roads and walks, mold, lawsuits, insurance increases and some Associations on the brink of failure / receivership of their condominium.

Instead, I will reiterate the predominate failure mode — MONEY RULES. You may have read this CAI article, and others, that homeowners do not want fee increases. It's remarkable though, that in the face of sure disaster, risk of injury, devaluation of property, loss of insurance and other perils, homeowners still say NO to assessments and/or loans to restore their property. If your car tires were worn smooth – would you continue to drive until they blew out and had an accident and risk injury to yourself and others? Most likely not.

However, homeowners are still fighting the fight and saying NO to FEE increases. It's too bad, because some banks provide loans to Associations which allows the Association to borrow money and spread the cost over a 10, 15 and even a 20-year period. While an assessment is another option, it usually can be thousands of dollars. In any event, many insurance companies, municipalities, and other local and state authorities are realizing the lack of maintenance or deferred maintenance of SOME condominiums is a serious issue.

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"If homeowners can't make a decision to properly maintain their property in accordance with codes and safety standards, THE STATE WILL."

THE BOTTOM LINE. If homeowners can't make a decision to properly maintain their property in accordance with codes and safety standards, THE STATE WILL. Several states have already implemented laws that require condominiums to perform reserve studies and /or maintain a minimum amount of funds in reserves. In one state, condominiums with buildings over 3-stories have to maintain funds in reserves equal to 50% of the building's value. The state of Connecticut is in the early phases of considering legislation requiring reserve studies and reserve funding guidelines. Remember, once a reserve study is performed and submitted to the Association, it should be part of the resale package to accomplish full disclosure.

Now – I don't mean to over generalize. Some Associations are doing the right thing and obtaining loans or assessments and restoring their property.

IS YOURS? Take a walk around your entire complex, not just your building or street. How does it look? *WILL YOUR ASSOCIATION SURVIVE?* ■

Rick Filloramo is President of National Consulting Group, Inc. He is a frequent speaker at CAI-CT education programs.

FINANCIALLY SPEAKING...from page 12.

When there is an unreconcilable difference it is usually flowed through equity. Since this number should only be impacted by net income annually, when we, as auditors, become involved we need to unravel these entries and correct.

In my experience, I've seen entries impacting equity that should have adjusted accounts receivable, entries that should impact income, and entries that should impact expenses. Most times it's a combination of items in an aggregate entry and therefore the complexity in reversing and correcting an entry becomes multiplied and much more costly or time consuming to correct.

Given that equity should rarely change, the success of any management transition can be determined by focusing on this number and the entries that are posted here.

Conclusion

Management transitions are a complicated affair. Contact information has to be updated, new mailing addresses given out, coordination of an association's entire operations has to be migrated. An important piece of this is the accounting information. While it can be complex, taking an approach to review key aspects of the transition can help ensure it is successful and that there are no misstatements in the transitions of information. ■

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.

ENVIRONMENTAL TIP
Eco-friendly Landscaping

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Common Interest communities often waste a great deal water and other valuable resources on landscaping alone. Whereas having trees, plants, and flowers helps keep property values high, it's still possible to have beautiful landscapes without harming the environment. This can be accomplished by adopting eco-friendly landscaping practices such as incorporating native and drought-resistant plants, grouping together plants with similar water requirements, and switching to water-efficient irrigation systems.

Apart from saving water, an eco-friendly landscape can also help your community reduce operational expenses each month. The money saved can be invested in technologies that will help you become an eco-friendly condo/HOA.

Community Associations:
Three Realities You Can't Escape

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All community associations have three things in common.

Membership is mandatory. Buying a home in a community association automatically makes you an association member—by law.

Governing documents are binding. Association governing documents can be compared to contracts. They specify the owners' obligations (following the rules, paying assessments) and the association's obligations (maintaining common areas, preserving home values).

You could lose your home if you fail to pay assessments. Associations have a legal right to place a lien on your property if you don't pay assessments.

But, take heart! Associations also have three realities they can't escape. Associations have an obligation to provide three broad categories of service to residents.

- Community services. For example, these can include maintaining a community website, orienting new owners or organizing social activities.
- Governance services. For example, establishing and maintaining design review standards, enforcing rules and recruiting new volunteer leaders.
- Business services. For example, competitively bidding maintenance work, investing reserve funds responsibly, developing long-range plans and collecting assessments.

By delivering these services fairly and effectively, community associations not only protect and enhance the value of individual homes, but they provide owners an opportunity to participate in decisions affecting their community and quality of life. And those are realities we can live with. ■

Source: CAI National

The Benefits of Membership

Community Managers | Management Company Executives | Homeowner Leaders | Business Partners

As a CAI member, you'll unlock access to exclusive benefits—resources and services designed to help you and your communities thrive. You'll also be able to enroll in career-enhancing CAI education and connect with nearby CAI members through your local chapter, where you can network and learn with peers and meet potential new clients.

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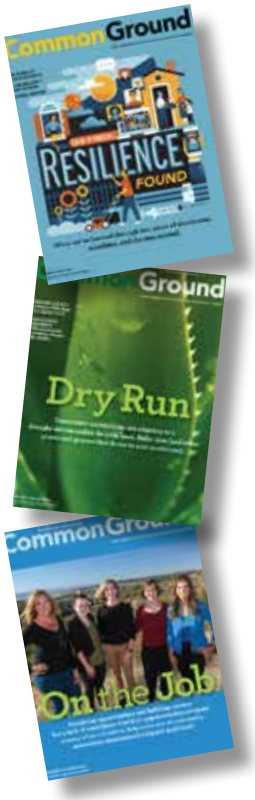

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Ask Mister Condo!

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.

Condo Board Member Evades "No Pet" Rule

R.M. from Hartford County, Connecticut writes:

Dear Mister Condo,

Our association has a longstanding no-pet rule. It recently came up a member noted that someone who recently moved in has a cat and was wondering if it is now OK to have cats. One of the board members admitted they have a cat, and defended it by saying their real estate agent had told them pets were OK, i.e., that they should have an exception. So, the board member is assuming that is good reason to keep their cat, while the person who recently moved in must get rid of their cat. At open forum, a member asked if perspective purchasers receive the resale package that includes the no-pet rule, and they do. So, there is no excuse for a board member to keep their cat, especially while causing others to get rid of theirs, who are getting a violation letter, and hearing and a fine if they don't, a running fine, a lien, etc. But… seeing a board member is openly declaring a right to have a pet, should we be able to just do the same and have a pet? I realize the right way would be to do a survey, to see if most people want a rule change to allow pets and the conditions, and then a notice and comment could be sent out and then change the pet rule. But seeing the other board members are happy to have no pets, and shrug off the board director who does, can the board prevail on sticking it to the person now being told to get rid of theirs, if it is challenged by a lawsuit? ..or if another member gets a pet now, and refuses to get rid of it, since the board is demonstrating by their behavior that pets are allowed? There are some who would like a pet, especially seniors who are pretty much shunted, so typically not vocal. Selective enforcement is really weird when the person openly violating a rule is a board member who is cracking the whip at others.

Mister Condo replies:

R.M., I am sorry that your condo association finds itself in this uncomfortable position. The Board Member who is flagrantly violating the rules about not having pets doesn't have a leg to stand on by citing the fact that a realtor told him he could keep his cat. Also, shame on the realtor for putting "making the sale" ahead of the buyer's need to keep their cat. All that being said, the community, has a few options. The simplest would be to keep the "no pets" rule and enforce the rule, including having the Board Member going through the same process as any other member would. Cite them for the violation, hold a hearing and determine the outcome. Selective enforcement of any rule is bad policy and opens the door for other association members to get their own pets without consequence. The second option is to remove or modify the rule. Many associations allow one pet per unit. While you shouldn't say whether that pet is a cat or a dog or a bird or whatever, you can and should have rules about noise and where the pet can relieve itself on association grounds. You will have members in favor and against such a change. My guess is that some owners purchased into the "no pet" condo because they prefer to live without pets around them. This is not an easy fix and my advice is to keep the rule in place and enforce it. 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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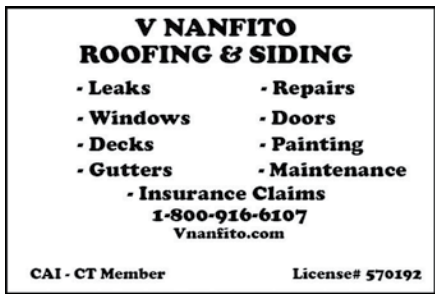

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