

# Common Interest

The Official Publication of CAI-Connecticut

Vol. XVIII: Issue 5 • 2023

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**Primer on**

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**A Closer Look at the Latest Changes to**

## **CAI’s Reserve Study Standards**

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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.



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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**

*“Everyone in a community should be entitled to certain things, but also, everyone has certain responsibilities to which they owe the larger community.”*

**R**ights and Responsibilities... Many years ago, CAI developed a detailed list of principles titled “Rights Responsibilities for Better Communities” which was updated in 2021. At the time of the update, the nation was in the middle of the pandemic with a lot of discord developing over how individuals should act and how the functioning world should respond. The reality is that there never was a singular “correct” answer. There were just choices to be made with consequences for each.

The same holds true for common interest communities now in their daily operation and governance. Everyone in a community should be entitled to certain things, but also, everyone has certain responsibilities to which they owe the larger community. It applies whether you are serving on the board or a unit owner. When one side doesn’t uphold their end, the situation becomes unbalanced, and discord ensues.

If you haven’t, I would encourage you to review the document. It’s available on the national CAI website and can be found through a simple Google search of the title above. It’s not the be all and end all in creating a balanced community, but it may help identify some of the areas which may be causing discord in your community and that is something everyone could use a little less of! ■



**Have your community association board members changed since last year?**

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## From the Chapter Executive Director

**"Tell me and I forget. Teach me and I remember.  
Involve me and I learn."**

~ Benjamin Franklin



Kim McClain

Courtesy CAI-CT

Leave it to Ben Franklin to offer some wisdom regarding the importance of paying attention and rolling up your sleeves. Wouldn't it be great if those who choose to express their concerns in associations were more willing to learn about how things function and even more terrific if they saw the value in joining a committee or the board to help enhance the community?

Like many of us, our office gets inundated with a variety of publications, many of which seem to be an endless stream of advertisements. However, there are those times when patiently glancing through the pages that one comes across some true gems. Recently, the concept of the "no update-update" caught my eye. We have all observed that having people to respond to an email or a proposal is often more like listening to a field of crickets than having the satisfaction of a reply.

The "no update-update" is simply defined as getting back to someone regardless of whether there has been any real movement on their request. So, telling them that although you have nothing new to report, you at least let them know they are not being ignored. Giving them a best guess as to when you think you will have an answer offers a modicum of thoughtfulness and courtesy. Communication, even if there is nothing of substance to offer, lets the other party know you are paying attention.

As you sit at the beach, or on your deck, patio, or your favorite place to enjoy the summer, CAI-CT is already looking forward to the Fall! We have many great programs coming up. There are lots of opportunities to learn, laugh and mingle with your peers. We encourage you to open our emails from time to time and be sure to check out the resources we include as well as details about registration for your events.

Enjoy the rest of the summer! Stay cool! ■

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# UPCOMING CAI-CT EVENTS

## FALL FUN — Knowledge & Networking

Wednesday, September 27

Education 3:00 pm - 5:00 pm

Networking 5:00 pm - 7:00 pm

Hops on the Hill, South Glastonbury



Fall Fun's Fabulous lineup includes an Expert Legal & Insurance Panel with Frank Pingelski – *Tooher Ferraris Insurance Group*; Kasey Burchman, Esq. – *Feldman, Perstein & Greene, LLC*; Licia Ciotti – *United Property Restoration*; Ben Whittemore, CMCA – *Pro-Klean Cleaning & Restoration*. Our team of experts will discuss insurance coverage, various roles during the restoration process and how to handle a short fall in insurance funds. The presentation will be followed by a Q&A. Then, fall into our autumn activities: enjoy our vendor fair, local beer, axe throwing, food truck and networking party. Don't miss out!

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## Condo Inc. — (IN Person Event) — Space is limited. Register Today!

Saturday, October 7 • 8:30 am – 2:00 pm

Oronoque Village, Stratford

We have gathered together a group of industry professionals: legal, insurance, maintenance, financial and capital planning to share their expertise. In addition, this course provides the opportunity to interact with fellow board members and share your challenges and your triumphs! Speakers: Andrea Dunn, Esq., Bender, Anderson & Barba, P.C.; Carrie Mott, Bouvier Insurance; Dan Levine, CPA, Tomasetti, Kulas & Company, P.C. and Russ Fernandes, Becht Engineering, BT.

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## CEO CAM Council — Hosted on Zoom

Tuesday, October 17 • 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.

## 11th Annual Legal Symposium

Thursday, October 26 • 1:00 - 6:00 pm

On-line Webinar



Legal experts will present on a variety of current hot topics important to Connecticut Community Associations. Topics & Speakers to be announced September 1st.

*(All proceeds to benefit legislative advocacy for Connecticut Community Associations.)*

Scheduling conflict? — Register anyway, and we'll email you the recordings afterward! These webinars will be available on-demand following the live broadcast to those who register prior to October 27th!

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Saturday, March 16th



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and for updated information.**

## Legally Speaking...



Adam Cohen, Esq.

# Pay My Lawyer — *Attorney Fee Awards in Association Lawsuits*

By Adam J. Cohen, Esq.

One of the most common questions clients ask their lawyers is whether they can force their adversary in a lawsuit to reimburse their attorney's fees. The answer isn't simple.

Connecticut follows the "American Rule" which says that, most of the time, each side pays for its own lawyer no matter who wins the case. Various rationales have been offered for this rule, such as that a "loser pays" system would discourage valid claims, especially by the poor, or add unfair punishment after a close case. The rule does, however, have limited exceptions. Where either a statute or contract entitles one side to recover its attorney's fees from the other, a court will generally enforce it. In addition, a court might decide that actions or allegations of a party during the litigation were so unjustifiable that the party should be ordered to reimburse the attorney's fees incurred by the other side as a matter of equity. The courts exercise this power in only the most outrageous cases.

The overwhelming majority of lawsuits between community associations and their residents involve collection of unpaid assessments or to otherwise enforce provisions of the declaration, bylaws, or rules. The Common Interest Ownership Act (CIOA) does contain a number of "fee shifting" clauses which authorize courts to make reimbursement of the winning party's attorney's fees part of the final judgment in these cases. The Act also does this in certain types of lawsuits brought by associations against their original developers.

The fee-shifting provisions of the Act do not, however, apply to litigation against outside vendors. Any right the association may have to recover its attorney's fees for successfully bringing or defending such a suit will depend on the language of the vendor's contract. For example, a contract that says a vendor can sue for its collection expenses including attorney's fees if the association defaults in payment generally would not allow an association to recover its own attorney's fees for defeating such a lawsuit by the vendor. Such a "one-way" fee shifting clause also would not apply to other kinds of litigation the association might bring against the vendor, such as for providing a defective product or shoddy services. Other kinds of contracts, such as most insurance policies, do not authorize attorney's fee awards in any kind of disputes between the parties. The language of the contract will control, so associations should read their vendor contracts carefully to determine whether they contain fee-shifting clauses at all, whether they are "reciprocal" or "one-way," and whether they apply to all or only certain kinds of disputes which might come up.

Other fee-shifting statutes may apply to different kinds of lawsuits. For example, various state and federal laws allow unit owners to add



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*"This past July, a Connecticut condominium became one of few litigants to successfully invoke a state law authorizing triple attorney's fees."*

their attorney's fees to any damages recovered for racial, handicap, or age discrimination and similar illegal conduct by the association. These statutes are often one-way, so the association might have to bear its own attorney's fees even if it wins. In almost any kind of case, if a court believes that a defendant's wrongdoing was deliberate or reckless, it may also award punitive damages which are typically equal to the amount of the plaintiff's own attorney's fees. This might apply in the case of a trespasser who vandalized a condominium's facilities or a board member who embezzled funds.

This past July, a Connecticut condominium became one of few litigants to successfully invoke a state law authorizing triple attorney's fees. The statute is designed to compensate defendants sued "without probable cause, and with a malicious intent unjustly to vex and trouble." The court found that a unit owner who unsuccessfully sued his association's board members and attorneys while threatening to "see you all destroyed" for foreclosing his unit was acting maliciously. The court awarded him to pay the defendants their litigation expenses including attorney's fees three times over.

Notably, even when a court is willing to order that a party's attorney's fees be reimbursed, the court will nearly always limit the award to a "reasonable" amount. The rationale is that a person and his lawyer can agree to whatever fee arrangement they wish, but the law will only hold the adversary responsible for fees which are reasonable under the circumstances. This determination will be made in light of

the complexity of the matter, the amount of time the attorney devoted to it, the extent of the attorney's expertise, prevailing rates in the community, and other factors. A special hearing may be necessary to review these considerations.

Associations which are considering bringing lawsuits, or learn they are being sued, should talk to their counsel at the earliest stages about the likelihood of getting their attorney's fees reimbursed by their adversaries. These discussions should also be considered during negotiations with outside vendors over the terms of their contracts and nearly any time the association is or might foreseeably become forced to pay for legal services in an adversarial situation. ■

*Adam J. Cohen is an attorney with the Law Firm of Pullman & Comley, LLC headquartered in Bridgeport, Connecticut. As the Chair of its Community Law Section, he represents and gives seminars to condominiums, tax districts, and other communities in matters ranging from revenue collection strategies to commercial disputes. He is also the author of regular newsletters with circulations throughout Connecticut called Special District Update and Condominium Update.*



**What should I know about condos? What are some examples of rights that may be limited or enhanced?**

When you own your own home, you are responsible for upkeep of the house and the property on which it sits. When you own a condo, you pay the condo association for upkeep of common areas and you retain responsibility for upkeep of your condo itself. Do you own or plan to own a pet? Some condos allow pets, others do not, some do not but look the other way. As a condo owner, you're subject to the rules listed in the bylaws and you are legally bound to abide by them as is everyone else in the community.

In well-managed condo complexes, unit owners receive the repair and upkeep services they require, paid from proceeds of their association dues and fees. In a home, the homeowner bears the cost and must budget and prepare for the unexpected.

*Source: CT Department of Consumer Protection – Condominium FAQs*

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## Homeowner's Column



Eric Judge

### Condo Association Leasing Restrictions

By Eric Judge

Are leasing restrictions good for Condo Association communities? That is a question that every condo community should seriously consider. While the origin of most condo communities was to have owner residents, today's reality is that many condo units are rented and occupied by tenants. This happens because condo owners find themselves becoming accidental landlords due to job changes, family care needs and other unforeseen situations in addition to real estate investors purchasing condo units with the sole intent of leasing them.

I must fully disclose that I am a real estate investor who has purchased condo units to lease to tenants in 10 different condo units. Before you quickly decide that this is going to be a one-sided pro investor debate, continue reading. You will be rewarded as my insights, position and recommendations are sure to surprise you.

I could keep you in suspense and make you read many more paragraphs before I reveal my belief on this important matter. However, it is my primary motivation for writing this article. Here goes — I believe that all condo associations should not only impose leasing restrictions, but they should be limited to 35% of all condo units.

You didn't see that one coming. Did you?

#### Why are Restrictions Needed?

That is not a randomly picked number. Of the 10 condo communities in which I have owned, only 3 of them have created leasing restriction rules. However, all 10 of them have had condo units leased. In fact, 7 of the 10 have had over 50% of the condo units leased by investor owners. What follows are my learnings from those condo communities versus the ones which were primarily resident-owner occupied.

In condo communities with majority investor-owners I have seen how difficult it is to get people to show up for meetings, difficulty in getting government required updating of bylaws passed, difficulty in getting capital improvement projects passed and the decline of the condo community aesthetics and overall pride in those communities.

Some may challenge my observations and say that there is no direct correlation. Here is my what I can emphatically state based upon my experiences, those condo communities in which I have owned and were majority resident-owners, the grounds remained cleaner, nuisance complaints to the condo board were fewer, the reserve fund balances were larger, HOA Fee delinquencies were nominal, and large capital improvement projects were implemented even if an assessment was necessary.



*"A condo community that is majority owner occupied has a vastly different look and feel than one primarily occupied with tenants."*

#### Why Limit Leased Condo Units to 35%?

I know the common threshold for leasing condo units is typically at 50% of the condo units being leased. There is a solid rationale for that threshold, and it is to be under and in compliance with the government backed mortgage sponsors such as FHA and GNMA. They generally want to provide mortgages in condo communities where the threshold is below 51%. Being above that amount will result in potential purchasers of condo units being sold having difficulty obtaining a mortgage from lenders who participate in FHA and GNMA backed mortgage loans.

I would argue that you never want your condo community to even get close to 50%. It not only puts you too close to limiting the number of future bidders on condo units for sale which will potentially lower purchase prices and subsequent condo values, but it is a huge driver in the personality of your condo community.

A condo community that is majority owner occupied has a vastly different look and feel than one primarily occupied with tenants. Before anyone thinks that I am disparaging renters, let me state that the majority of tenants I have leased to treat the property as well as an

*[Continues on page 31.]*

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## Financially Speaking...



Daniel Levine, CPA

### Expense Classification

By Daniel Levine, MBA, CPA

Many issues ago, I had written an article that dealt with classification of expenses as either operating or reserve expenses. This past month I have received a fair few questions from client associations dealing with the same issue. As a result it felt like it would be a good opportunity to once again review this article and present again for those looking to tackle this issue.

#### The Theory

Like in the earlier article, the answer to expense classifications is a grey area. Generally accepted accounting principles still don't have a specific rule or guide that lays out when an expense can be operating or reserve.

While this does make determining where an expense should be classified more difficult, it is still possible to have a framework to determine a transaction's fund classification.

The decision to charge the operating or reserve fund an expense can be based on the following factors:

- State statutes
- The association's governing documents
- How an expense is classified when the community approves its annual budget
- Review of the association's reserve study
- The details behind the expense

#### State Statutes:

- State laws are the de facto rules that must be followed. An association should start here to see if there are any provisions that prohibit an allocation of an expense to either operating or reserve. If there is, then the association will have its answer on how to account for the expense.

#### Governing Documents:

- If there are no state statutes that mandate allocation of expenses in a certain way, the next step an association should take is to review their governing documents. These documents differ from community to community but typically highlight what an association is responsible for when it comes to repairs. Some documents may include language as to the purpose of the reserve or operating fund and what expenses each fund is responsible for.

#### Approved Budget:

- If there is no guidance in the previous examples, an association can turn to its community approved budget. As this document



NicoElNino/Stock/Getty Images Plus

*“The decision to charge the operating or reserve fund an expense can be based on the following factors...”*

is approved annually by the community and has a breakdown of expenses it should be a guiding example for how to classify costs. If something is classified as a major repair and replacement expense it should be a part of that fund as this is what the community approved. This is helpful for anticipated expenses but may not provide enough guidance in the case of an unanticipated expense. When facing an unanticipated expense, the association should consult the previous two options as well as the next two.

#### Reserve Study

- When facing an unanticipated expense that isn't governed by the documents or state statutes, as well as isn't contained in the ratified budget, the association should consult its reserve study. This document is designed to show the capital components of an association and build a savings plan towards being able to conduct the repairs. If the expense that the association is looking to classify is contained in the study and of sufficient scope, there is a stronger argument that it should be classified as a reserve fund item and to use the funds that have been contributed for the repair to conduct it.
- However even if an expense isn't part of the study, it can still be determined to be a reserve fund item based on other qualifying items or based on the board's decision. In these cases where an expense isn't part of the reserve study but still deemed a reserve fund expense, the association should be wary of drawing down on funds that currently were being saved for other projects. Drawing down

*[Continues on page 12.]*



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**FINANCIALLY SPEAKING...from page 10.**

on unanticipated projects can lead to shortfalls for planned projects in the future. An association may want to consider instead an inter-fund loan to cover the expense or increasing future contributions to help keep the reserve on track to meet capital repair needs.

**Details of the Expense**

- If the above options don't provide enough guidance to decide how to classify an expense an association can use the details of the transaction to help better understand its classification.
  - Does the repair have a long useful life? For example: repairing a retaining wall vs. patching some sheet rock. The retaining wall has a much longer useful life than a sheetrock repair and as a result could be considered more of a reserve cost.
  - What is the size of the repair? When having multiple transactions of a similar expense, the scope of work can also help guide the classification of the expense. The example here is general shingle repairs vs. an entire roof replacement. Smaller scope repair work generally falls under day-to-day operating costs while a full roof repair has a better argument to be considered a reserve fund expense.

**Other Considerations**

For this iteration of the article, the other consideration I would like to focus on is the impact classification can have on an association's financial statements namely interfund receivable and payables.

Once an expense classification is decided upon, if it is a reserve expense, the association should also look to approve the use of reserve

funds. This creates an important audit trail while also effectively communicating to a management company that they should initiate a withdrawal from the reserves. The board should then analyze their financial statements carefully to ensure the transfer happens.

What I commonly run into with associations is that they classify an expense as a reserve transaction but then have it paid for with operating dollars out of the checking account. The funds from reserves are not moved and this generates an outstanding interfund payable/receivable between the operating and reserve funds.

When these are discovered during the audit process they typically come at a surprise to the board or require additional decision making and work to understand and resolve. Ensuring that these issues are tackled when the transactions are being processed can result in a much more accurate financial statement and a streamlined internal accounting process.

**Conclusion**

Association accounting can still involve some detailed decision making. Expense classification and the corresponding use of funds is important to manage. This will make certain the operating and reserve fund have the correct cash balances while also ensuring that the board is consistent with how it addresses classifying its expenditures. ■

*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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## Fantastic Golf at The Farms

The CAI-CT Annual golf Tournament on June 20 exceeded our expectations: the weather was perfect, the course was challenging but not ridiculous, the facilities were in great shape, the staff was excellent and the food was delicious. Is anything missing? We were delighted to have 132 players on the course. We heard rave reviews about the event throughout the day. We'll be back at the Farms in 2024!

Our Golf Committee was the secret sauce in making this event truly fantastic!

### Thank you to our phenomenal Committee!

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(above) Jim Torello - BELFOR Property Restoration



(above) David Grimaldi, President of Dutton Place Condominium, Carrie Mott, Kim Kurdziel - Bowvier Insurance & Steve Jacques



(above) Ellen Sias & Arthur Sias - Total Asset Management, LLC



### THANK YOU, Alan Barberino!

Once again, Alan was our go-to photographer for the golf tournament. We are very fortunate to have his great photography skills and energy on the course!



(above) Jaspur Liberman & Mark Liberman - On the Mark Management, LLC and James Whetzel & Scott Cronin - Fairfield County Bank

(left) Erich Wohler, Valerie Santerre and Alec Amatrudo - United Property Restoration Services



(above) Kevin Sullivan - CertaPro Painters of South Central Connecticut

(left) Ida Pearce & Chelsea Hamilton - BELFOR Property Restoration

(right) Bill Ward, Esq. - Pilicy Ryan & Ward, PC and Steve Palmer, Harold Gantert & Tom Neville



(below) Michael Beyer - White & Katzman, Howard Rosenberg, Esq. - Rosenberg & Rosenberg, PC, Kevin Wilson - Imagineers, LLC; Greg Roberts - Westford Real Estate Management, LLC



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Jonathan Chappell, Esq.

## Primer on “Adult Living”

By Jonathan Chappell, Esq.

Some readers may be thumbing through this magazine in the comfort of their home in their own age restricted community. Here is a discussion of an age restricted community and what to do to maintain the restriction.

### Is An Age Restricted Community Even Legal?

Yes, *if* done correctly.

#### What Must Be Done?

Normally, state, and federal law<sup>1</sup> make it illegal to discriminate when it comes to housing (i.e. the rental, purchase, or occupancy of a unit), including but not limited to families with children.<sup>2</sup>

There is an exception that allows an age restricted community. Your community must have: (1) policies and procedures that demonstrate an *intent* to operate as housing for older persons, (2) at least one *occupant* (compliance depends on who is an occupant, not ownership) in at least 80% of the units is at least 55 years old or greater (“55+”),<sup>3</sup> and (3) policies and procedures to *verify* that there is at least one occupant in at least 80% of the units is 55+.

If the exception is satisfied, your community can prohibit families with children (those under 18 years old) from living in your community.

#### How Do We Demonstrate Intent To Be 55+?

Check your documents. If you are an existing community the age restriction is likely already contained in your declaration, and for a new or community looking to become 55+, CIOA requires this use restriction be in your declaration. The restriction must require that at least 80% of the units to be occupied by at least one person who is 55+.

The declaration might contain a restriction *greater* than 80% of units, but it cannot have a lower percentage. If you are a 55+ community, your declaration can require 100% of the units be 55+. The declaration may provide for other, related issues, for example, what happens when the qualifying occupant (55+) dies or moves away leaving a spouse or other occupant(s) younger than 55. The age restricted status is maintained *if* at least 80% of the units are still occupied by at least one person who is 55+.

Intent to be 55+ must also be expressed in all other governing documents, policies, and procedures, including but not limited to:

1. Requiring unit owners and real estate agents that are selling units to describe the community to prospective purchasers as 55+;
2. Advertising the community as 55+;
3. Signage within the common elements;
4. Enforcement of your age restriction in your documents;
5. All resale certificates should state your 55+ status; and



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*“Your community must at all times have at least 80% of the units occupied by at least one 55+ individual to comply with the FHAA.”*

6. Mandating all leases include the 55+ status and require tenants to acknowledge the age restriction.

#### What is the “80/20 Rule”?

Your community must at all times have at least 80% of the units occupied by at least one 55+ individual to comply with the FHAA. If so, FHAA permits the balance of units (up to the other 20%) to be occupied by anyone, regardless of their age.

However, remember your governing documents, or other law (e.g. state statute, ordinance, zoning), may still require more than 80% of units be occupied by someone 55+.

#### Are There Risks of Non-Compliance?

Yes. Most simply, non-compliance could result in the loss of the FHAA exception and its protection. This may result in a community being unable to restrict/enforce its 55+ restriction. Also, families with children could sue the association or file a complaint with Connecticut Commission on Human Rights and Opportunities (or similar agency) for discriminating against families with children. This would potentially lead to monetary damages and/or an award of attorneys’ fees.

It is best to comply.

#### How Do We Verify Occupants are 55+?

Your community must verify that at least 80% of the units are occupied by at least one person who is 55+. The FHAA requires a record to be kept that includes the total number of units in the community,

how many of these units have one or more occupants who are 55 years of age or older, and the total percentage of 55+ units, which must be 80% or greater.

Many communities, 55+ or not, may already seek certain resident information upon sale or lease of a unit, including proof of age. A 55+ community must collect a survey every two years to verify age for FHAA compliance.

Unfortunately, not everyone will voluntarily provide this information. An association may rely on certain records for age verification, such as government records (e.g. driver's license, voting records, census), other forms or applications with age or date of birth, or a statement/affidavit from an individual who has personal knowledge of the age of the occupant.

Since it is a community's obligation to prove compliance, if your community cannot establish an occupant's age, it must then assume that an occupant is not 55+ and be not included towards the 80%.

If you have additional questions about your community, you should discuss with your association attorney. ■

*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 The federal law, The Fair Housing Amendments Act of 1988 is referred to in this article as "FHAA."
- 2 This article will discuss applicable laws, state and federal together. A more specific analysis should be had before applying such laws to your community.
- 3 This article discusses the most used age restriction, 55 years old.

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## Manager's Column...



Rich Wechter, CMCA

### Being Practical, Part LXXXVI Lower the Tension

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 discuss an important tool in the toolbox of community association managers: a device that lowers the tension that develops in disputes, confrontations and negotiations between the various players that are associated with community associations (community association managers, support staff, board members, unit owners, tenants, guests, contractors, consultants, real estate brokers and governmental employees). All of these players have contact with each other from time to time and in an increasing frequency, and seem to deal with each other with greater tension than ever before. This condition mirrors, once again, the world outside of community associations.

#### A. Setting the Table on this Topic

Fred Rogers once stated, "In times of stress, the best thing we can do for each other is to listen with our ears and our hearts." Conflict is impossible to avoid in its entirety. However, it is what we do in handling conflict and the tension it causes that allows us to lower the tension and operate in a constructive manner. Yotan Ottolenghi once declared, "Conflict is very much a state of mind. If you're not in that state of mind, it doesn't bother you." Accordingly, the key to lowering the tension in the world of community associations is to listen and stay above the fray and to never allow yourself to become so intertwined with the matter at hand that you lose sight of what your mission is as a community association manager: to resolve conflicts, to develop solutions, and to achieve positive results for the communities you manage. To aid in this effort, I now offer some examples of settings where tension is likely to rise and approaches to lower that tension.

#### B. Settings Where Tension is Likely to Rise

I offer a few examples of settings where tension in the world of community associations is likely to rise:

1. Unit owner/resident complaints/demands upon the Association. This includes, among other matters, unit modification requests, account arrears/disputes, and issues involving Association contractors.
2. Unit owner/resident complaints against Board members. This includes, among other matters, personal issues against a Board member or members. This usually results from a phone call, e-mail or visit by a Board member to the unit owner/resident.
3. Unit owner/resident complaints against the community association manager and/or management company. This includes, among other matters, issues regarding communications from management

*"...the key to lowering the tension in the world of community associations is to listen and stay above the fray..."*



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on account issues, rules non-compliance, and issues involving another member of the community association.

4. Board member(s) complaints against and from the community association manager or management company. This includes a whole host of issues, including responsiveness by both sides, the documents and information provided by the management company, the level of attention paid to association business by the Board, and the ability or lack thereof of both sides to work as a team.
5. Association complaints against and from association vendors. This includes, among other matters, the level of service, billing issues and contact with the overall community association.
6. Association complaints/difficulties with governmental authorities. I could and may write a future article on this subject. For now, however, this includes lack of responsiveness from local and state authorities on association project matters.
7. Unit owner/resident complaints against other unit owners/residents. This includes, among other matters, claimed rules violations for vehicles, noise, dog clean up and exterior unit items.
8. Contractor complaints against and from project consultants. This is another topic worthy of a stand-alone article. This includes disputes regarding the project plans and specifications drawn, and the manner in which the work is being performed by the contractor.

### C. Approaches to Lower Tension

I offer a few suggestions on how to lower the tension for the settings noted above:

1. Listen, listen and listen. Talk is cheap. Listening is more difficult but way more effective in lowering the tension of all parties to a dispute.
2. Understand the positions of all sides to a dispute/complaint. Knowledge is power which is needed to reduce tension.
3. Reduce the back and forth of texts and e-mails. It just hardens the position of both sides of a dispute and ramps up the tension.
4. Where and when possible, have the parties to a dispute meet in-person, or at the very least, by Zoom.
5. Seek common ground among the parties to a dispute. This will break down the layers of tension to some extent and be a roadmap to further peeling off of the tension in play.
6. If you hit a wall, walk away, and get away from the dispute. Do anything else in your life except deal with the dispute/complaint in question. I cannot overstate this suggestion.
7. Seek guidance from the wise men and women that you rely upon for sage advice. You are never alone in your efforts to reduce tension.
8. When necessary, suggest a mediation of the dispute/complaint. This does not have to be a formal process. It can be as casual and informal as circumstances dictate.

*[Continues on page 31.]*

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## Knowledge & Networking Fairfield Style

We changed a lot about our annual event in Fairfield County — the name is now Fairfield County Knowledge & Networking and we moved to a different venue — Zody's 19th Hole in Stamford. Our presenters gave us a very good overview about understanding the importance of having reserves and planning for capital improvements. We also covered some of the funding options for paying for major construction projects. We saw many heads nodding in agreement when our speakers touched on important points. Our speakers, Lew Finkel — *Spring Hill Terrace*, Michelle Baldrey — *Reserve Advisors* and Robert Pacelli, Esq. — *Zeldes, Needles & Cooper, P.C.* offered their experience and perspectives along with some great resources and handouts.

Although we had to dodge some heavy rain here and there, the night turned out to be quite pleasant. Lots of great conversations and delectable food.

The Committee has begun planning for our 2024 event. If you have suggestions about topics and issues that will draw out more board members, please let us know.

### **Our committee worked hard to provide great content for our education program. We appreciate all of your energy!**

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(left) Michelle Baldry, Reserve Advisors, LLC

(below) Lewis Finkel, Springhill Terrace Condominium Association



(above) Bill Jackson, United Property Restoration Services and Lynn Jackson, Felner Corporation



## Lake Fountains are Pretty, But Did You Know They Also Help Promote Clean Water?

One of a community association's biggest priorities is aesthetic appeal. Aesthetically pleasing elements around a community can help retain homeowners and make it more desirable to potential residents, boost property values, strengthen its reputation, and inspire confidence in property managers. But it can be challenging to sustain superior aesthetics without nonstop maintenance.

Floating fountains are an excellent, cost-effective tool that can provide long lasting aesthetic benefits without the burden of constant maintenance. Better yet, fountains have many functional advantages to steadily support the health and beauty of aquatic ecosystems.

Like a star on a Christmas tree or a vase of flowers on a table, fountains are often used as a finishing touch on lakes and ponds. Property managers can choose from dozens of options to fit the unique aesthetic needs of their communities — from large, magnificent systems that propel intricate water patterns into the air, to delicate fountains with graceful silhouettes. They can stand alone as a spectacular focal point or be grouped together for eye-catching shape and movement. Fountains can also be outfitted with captivating lighting elements to reflect brand colors, holidays, and themed events, or simply for continued enjoyment after the sun has set.

But many property managers don't know that their benefits are twofold. Floating fountains are not only capable of transforming the beauty of a waterbody, they also help reinforce healthy, balanced water quality conditions.

This is accomplished in two ways. First, fountains increase dissolved oxygen (DO) levels in the waterbody. The turbulence of water falling across the lake or pond increases the transfer of oxygen at the surface. Second, fountains help circulate the water, spreading vital DO throughout the water column.

DO is an important indicator of a healthy waterbody, and one of the first components aquatic experts measure during lake and pond evaluations. Fish, native plants, and beneficial bacteria and organisms that serve as the base of the food chain all require DO to survive. Balanced DO levels help support healthy, flourishing ecosystems that, in turn, enhance the surrounding community.

DO is also essential for the natural "digestion" of bottom muck, animal waste, and other organic matter containing high concentrations of nutrients. When nutrient levels pass a desirable threshold, aquatic weeds, algae, and toxic cyanobacteria (also known as blue-green algae) are more likely to develop — leading to frustrated residents and ongoing complaints to property managers. Once weeds and algae become established in a waterbody, they may trigger other problems like dangerous shoreline erosion, fish kills, storm-water damage, and flooding.

Fountains are incredible tools, but sometimes communities are more interested in the functional benefits than aesthetics. In these cases, professionals may recommend a surface aerator. Like a traditional fountain, surface aerators float on the waterbody, but are designed to churn water at a higher flow, injecting up to 3 lbs of oxygen per horsepower per hour into the water.



Trong Nguyen/iStock/Getty Images Plus

*“Fountains provide unparalleled benefits, both aesthetic and functional...”*

It's important to note that fountains and surface aerators are most effective in waterbodies less than 6 feet deep. That's why professionals recommend pairing lake fountains with a submersed aerator, which pumps surface air through a diffuser placed on the bottom of the waterbody. As the bubbles rise, they further oxygenate and circulate the water column.

Though fountains and aerators are considered low-maintenance, annual upkeep will help prolong equipment performance for as long as possible. As part of an annual management program, aquatic experts make the process easy. Approximately once a month, your professional will check the system, removing any debris that may have accumulated and closely examining for any signs of wear.

1-2 times per year, your professional may remove the fountain to perform a more comprehensive inspection of the motor and wiring. If freezing is particularly severe in the region, they may also prepare it for winterization. This involves draining the equipment, removing accessories like lights and nozzles, disconnecting wiring, and wrapping it in a protective cover for winter storage. Every 3-4 years, your professional will also perform an oils and seals change, which involves replacing components that help the system run smoothly and prevent water from leaking into the power unit.

Fountains provide unparalleled benefits, both aesthetic and functional, but they are just one piece of a comprehensive annual management program. Aquatic experts tailor these programs to the unique environmental demands of your waterbody, incorporating many tools and solutions as needed. These include water quality testing, nutrient mitigation, shoreline restoration, buffer management, weeds and algae treatments, mechanical hydro-raking, and other impactful services.

Maintaining an aesthetically pleasing community is more challenging than it looks. Property managers know that premium aesthetics often require significant upkeep, time, and expenses. Floating fountains can make a big splash in any community while working overtime to support the health of the aquatic ecosystem and the well-being of residents. ■

*SOLitude Lake Management is an environmental firm specializing in the sustainable management of lakes, stormwater ponds, wetlands, and fisheries. Learn more about this topic at [www.solitudelakemanagement.com/knowledge](http://www.solitudelakemanagement.com/knowledge).*



Melissa Yocum

## TECHNICAL EXPLANATIONS:

# A Closer Look at the Latest Changes to CAI’s Reserve Study Standards

By Melissa Yocum

In March of 2022, a task force of fourteen community association industry experts gathered to begin the process of revising Community Association Institute’s (CAI) Reserve Study (RS) Standards. Originally published in 1998, the RS Standards provide a consistent framework under which reserve study providers and common interest communities should operate in tandem — a necessary blueprint for the then-new industry. Since then, both the community association and reserve study industries have rapidly grown, and the RS Standards have been revised to reflect the current climate.

Following the Surfside tragedy, CAI compiled working groups to discuss public policy solutions aimed at keeping communities and their buildings safe. After the development of public policy initiatives, CAI assembled the task force to modify the RS Standards, accounting for the critical nature of building safety.

The comprehensive task force, including Reserve Advisors’ very own Michelle Baldry, other reserve specialists, association managers, board members involved in legislative committees, an attorney, and an accountant, revised the Standards to strengthen the blueprint that allows reserve study providers to best serve associations.

Because reserve studies are instrumental to the success and safety of your community, the provider you choose is equally important as the choice to commission a study. Reserve studies should always be conducted by a qualified professional, with CAI most highly recommending designated Reserve Specialists. CAI grants Reserve Specialist designations to individuals who have prepared at least 30 studies in the last three years, possess adequate education and experience, and have committed to the highest ethical and professional standards.

It is incredibly important that a framework for reserve study services exists to ensure that associations of all types and sizes are receiving a consistent base level of service, regardless of the study type

or provider they choose. There are four primary reserve study types or levels, and five central tasks that providers perform based on the level of reserve study service being conducted. Learn more about each level of reserve study below.

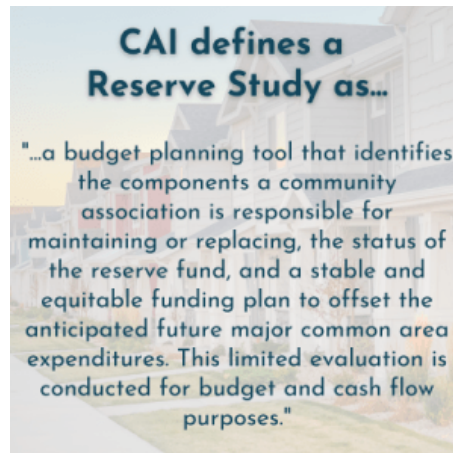
When it comes to the component inventory, it is best practice to disclose all association-maintained long-lived components. Long-lived assets such as foundations and electrical systems may not need funding or maintenance within the 30-year scope of the reserve study, but

they should be disclosed to your provider and included in the report. Your provider should prepare useful life and cost information for these items, even if they don’t currently require funding, so that you’re knowledgeable about the true cost of ownership of your association.

Because your community is ever-changing in its unique physical and financial needs, it is best practice to regularly update your study to maintain an accurate understanding of your community, especially if you’ve started or completed any capital-intensive projects since your last study. Because wear and tear are often unpredictable, a Level II Update With a Site

Visit is recommended every three years to ensure that the remaining useful life of each component and their respective funding plans are still accurate, leaving minimal room for surprise expenses that could force deferred maintenance or compromise the safety of your residents. In some cases, communities can go longer than three years without an update. Discuss the merits of updating your study versus delaying the service with your reserve specialist.

[Continues on page 26.]



	Level I Full Reserve Study	Level II Update with Site Visit	Level III Update without Site Visit	Level IV Preliminary Community Not Yet Constructed
Component Inventory	Established	Re-Assessed	Reflects Prior Study	From Site Plans
Onsite Visual Condition Assessment	✓	✓		
Life & Valuation Estimates	Established for each component	Re-Evaluated for each component	Re-Evaluated for each component	Established for each component
Fund Status	✓	✓	✓	✓
Funding Plan	Established	Re-Evaluated & Extended	Re-Evaluated & Extended	Established

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**TECHNICAL EXPLANATIONS...from page 24.**

In addition to the four study types are Preventive Maintenance Manuals and Periodic Structural Inspections. These supplemental reports work to both minimize the life-cycle costs of your community and improve the safety of structural systems.

Preventative Maintenance Manuals are a recommended inclusion for all reserve studies, as they disclose if a preventative maintenance schedule is being followed and if components, long-lived or otherwise, are not being regularly maintained. If a component is not regularly maintained, it is unlikely to obtain its full useful life. Your provider will determine the appropriate estimated remaining useful life and create a funding plan that prepares for its replacement, which is especially important when the useful life has been shortened as a result of deferred or reactive maintenance.

Primarily applicable to mid and high-rise buildings, Periodic Structural Inspections are initial and recurring inspections of your buildings and major structural elements. By monitoring these elements on a continuous basis, you can rest assured that

your community is structurally sound and your residents are safe. The frequency and cost of these inspections vary and should be included in your reserve study as a reserve expenditure if deemed appropriate by your provider to ensure adequate reserves are available to conduct them as needed. If the inspection finds that maintenance is necessary

for any element, the timing and cost for this should also be included as an expenditure in your study. In some cases, additional inspections such as facade inspections and inspections regulated by local jurisdictions may be necessary.

We understand that running an association isn't easy, and there are many moving parts. The Reserve Study Standards not only simplify the reserve study process by providing a solid framework for the service, but they also empower you with the knowledge you need to understand the reserve study process and your community as a whole. Be certain to ensure your community has what it needs to keep your property safe today and prevent costly and avoidable repairs tomorrow.

If you have questions about the Standards or reserve studies in general, please do not hesitate to reach out! ■

*Melissa Yocum is a Senior Account Manager with Reserve Advisors.*

**CAI defines adequate reserves as...**

"A replacement reserve fund and stable and equitable multiyear funding plan that together provide for the reliable and timely execution of the association's major repair and replacement projects as defined herein without reliance on additional supplemental funding."

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**Y**ou 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>.

### Do 20-Year-Old Condo/HOA Rules Have to be Updated?

#### L.H. from Litchfield County, Connecticut writes:

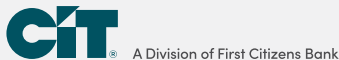
Dear Mister Condo,  
Are condo HOA rules that are over 20 years old valid? Do they have to be updated?

#### Mister Condo replies:

L.H., when a condo or HOA is established, the governing documents spell out the rules and regulations that owners and residents will abide by. Over time, they can be modified and amendments can be added. As state or federal laws change, it is a good idea to update the rules of the associa-

tion when the documents are not in compliance with state law. However, many associations choose not to spend the money or effort to update their documents and there is no requirement that they do so. However, state and federal laws trump association documents when it comes to enforcement so an association is well advised to keep their documents current so that a Board doesn’t find itself enforcing association rules that are not supported by state or federal law. Many community association attorneys offer a “document overlay” solution where they review the association’s current document and make suggestion on how to apply the latest laws on top of the documents (hence the overlay). This is a great solution for many communities. 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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*RENTAL RESTRICTIONS...from page 8.*

owner. The problem as I see it is that not all landlords know how to screen tenants who will care and not all landlord/real estate investors purchase condo units with the goal of getting future price appreciation on their condo unit property values. They are solely focused on their monthly net rental income. That focus leads them to make many poor short-term decisions or to not be fully engaged in the governance of their condo communities.

At 35%, the majority of the condo community will be resident owners and subsequently, the condo community will look nicer, have less nuisance issues brought to the condo association board and those owners will be interested in doing the things required to keep their condo unit values increasing throughout their ownership period.

**Why Would a Condo Unit Owner Who is an Investor be in Favor of Restrictions?**

I am not only an investor-owner, but a current condo association board member in two communities. My philosophy has always been and remains, that I want the condo communities in which I have invested my hard-earned money to thrive. Thriving condo communities not only allow me to get the best tenants and higher net rental income but will ensure that my hard-earned invested equity continues to grow. That philosophy and goal keeps me in sync with the philosophy and goals of resident-owners. ■

*Eric R. Judge, real estate investor and condo association board member.*

*MANAGER'S COLUMN...from page 21.*

9. Attempt to use a social occasion to reduce tension. Wine and other beverages as well as food can go a long way to reducing tension.
10. Finally, understand what a proper resolution is of a dispute/complaint that results in the lowering or elimination of tension. You don't want to miss a good result from all of your good work in reducing tension by not seeing it, in fact, happen.

**D. Conclusion**

Tension is with us every day and perhaps every minute of the day. I am not so foolish to think that tension will disappear in the community association setting simply by following any or all of my suggestions. However, after over thirty years involved in community associations as a resident, unit owner, board member, attorney (out of state) and a community association manager, I firmly believe that these approaches to reducing tension in our corner of the world can and will work. I hope that this article has been helpful in this regard. ■

*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.*

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