

## Legally Speaking...



Adam Cohen, Esq.

# Personal Power *Issues to Consider for Generator Policies*

By Adam J. Cohen, Esq.

As more and more unit owners consider investing in generators for backup power during outages, associations are finding themselves forced to consider what restrictions, if any, are appropriate to regulate their use. Some communities have banned generators entirely, while others have adopted rules allowing them on a case-by-case basis or under specific conditions. Generators present several issues that every board must consider carefully.

The paramount issue, of course, is safety. Most types of generators require storage of flammable fuels and emit toxic fumes, and if used or installed improperly, can overload electrical circuits and create serious fire hazards. Every year people are injured or killed from carbon monoxide poisoning, electrocution, fires, and even explosions related to home generators. Since they must be operated outdoors, another issue for the community to consider is that they are often very noisy to operate – during both actual outages and the regular testing which many models require – as well as aesthetically unattractive for the community’s outdoor areas. Finally, especially for permanently-installed generators, boards should counteract any suggestion that the equipment could be considered a common element for which the association would assume any responsibility.

Generator policies should be adopted according to the legal procedures for enacting rules, and also identified as part of the maintenance standards. This way, violations will entitle the board to both impose fines to induce compliance and also charge back the cost of resulting uninsured property damage. A sample policy might read something like this:

*Generators are prohibited throughout the community unless used and installed in strict accordance with all applicable manufacturer instructions and legal requirements, including municipal permits, and only with advance permission of the Board. The unit owner must submit detailed plans which specifically identify the generator make and model, all related equipment, its exact location, noise-control measures, and a properly-licensed professional for the installation. Generators may never be operated inside any unit, garage, or basement, or in the absence of a responsible adult, or within 10 feet of any building, window, structure, or air intake. Backfeeding*



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*(plugging a generator into a wall outlet) is prohibited. Fuel must be safely stored in UL-approved containers of 5 gallons or less. Testing is permitted for not more than 30 minutes per week and only between 11:00 a.m. and 3:00 p.m. on weekdays. Any person who keeps, installs, or operates a generator assumes complete responsibility for all maintenance as well as resulting injuries and property damage, and must indemnify the Association and any person who incurs such losses. Generators remain personal property at all times and shall not become common elements.*

As a final note, an association which bans generators completely must still consider whether exceptions should be permitted as a reasonable accommodation for residents with a bona fide medical need – for example, to power necessary medical devices inside the unit. The association’s attorney should be consulted for advice on properly balancing the interests of the community against the needs of such an individual. ■

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## 2011 Issue 8

### ***Much Ado About Generators***

*Editor's Note: In the aftermath of our recent pre-winter storm, we asked our CAI-CT members to provide us with information about their policies regarding generators. We were especially impressed by the process involved with the association in this instance. You can find information about their policy below. We greatly appreciate their willingness to share this information with us.*

The recently drafted Generator Rules and Guidelines which the Board of XYZ Association\* voted on and approved at our Annual Meeting in October 2011. This vote took place after the drafted rule was sent out to all residents for Notice and Comment.

The Board received a number of requests from our residents after Hurricane Irene to install generators. The Board quickly realized that we had no rules which governed the installation or operation of such equipment. Our community is only about 7 years old. The Board's draft of the Rules and Guidelines was sent to our attorney for review and approval after receiving, through the Notice and Comment period, a question concerning the liability clause the Board had included in the document.

In drafting our Rules and Guidelines, safety was our number one concern. During Irene there were a few residents who used portable generators (the type where extension cords were attached) mostly to keep the food in their fridge cold. We had an instance where one resident actually had the generator operating inside the garage, with the garage doors only opened a few inches from the floor. Luckily a member of our Developer's maintenance crew heard the generator but did not see it. As he approached the unit, he also could hear the CO alarm sounding. We were lucky. No one was injured.

Another safety concern of the Board was the amount of gasoline or propane that would want to be stored by residents, so we restricted in the Rules this amount.

XYZ Association is located in two different towns. In checking with both Towns, the Board realized that each town had different requirements which governed generator installations. Therefore we were sure to state that it was the responsibility of the resident to obtain all town permits before proceeding with installation.

The process all starts with a resident submitting an Architectural Modification Request (AMR) to our Property Manager which must clearly state all of the specifics including a sketch of where their contractor is recommending that the generator be placed. There are regulations as to how far an operating generator must be from windows and any air intake vents. Residents cannot proceed until an approved AMR by the Board is returned to the resident.

Most, if not all, permanently installed generators require a weekly "test" run of 10-15 minutes to keep them ready for emergency operation. The Board was concerned about these test runs happening in the middle of the night, waking other residents, so we restricted the time that these "test" runs could be scheduled.

The Board is forwarding our Rules and Guidelines to you with the understanding that it will not be printed in its entirety but only be used as a "reference" to establish , in your article, some of the considerations every Board should be sure to address.

*\*The majority of the units at XYZ Association are single standing; however, there are about 20% of the total of 173 units attached. The attached units are basically two single standing units attached. All attached units do not exceed two dwellings.*

**Happy Valley Homeowner's Association  
Generator Rules and Guidelines  
October 2011**

**Power generators are potentially hazardous and can cause serious bodily injury as well as major damage to buildings and electrical systems. Therefore, no generator may be kept or operated within the community at any time unless all of the following safety rules and maintenance standards are followed.**

**Town Permits:** It is the Unit owner's responsibility to check with their town to determine what permits are required.

**Seymour Residents:** Electrical permit is required for permanently installed generators. Electrical permit is also required if using a portable generator that utilizes a transfer switch. If using natural gas as a fuel, the connection must be made by a licensed plumber.

**Oxford Residents:** Electrical permit and a plumbing permit are required for a permanently installed generator. Electrical permit is required if using a portable generator that utilizes a transfer switch.

**Liability:** By keeping, installing, or operating any generator, the unit owner or resident assumes complete responsibility for all resulting injuries to any person and damage to any property (including common elements, limited common elements, Units, personal possessions, electrical networks, and off-site property) and must indemnify Happy Valley Homeowner's Association and any other person who incurs losses or liability as a result except as prohibited by law. Generators remain personal property at all times and shall not become common elements.

**Types of Generators:** There are three (3) types of generators that will be allowed at Happy Valley.

- 1) A permanently installed natural gas generator.
- 2) A gasoline or propane operated portable generator that is plugged into a hard wired transfer switch.
- 3) A portable gasoline or propane operated generator that uses extension cords for a limited number of appliances/lights.

An Architectural Modification Request(AMR) form must be submitted to the Property Manager and approved before a type generator in 1 or 2 above is installed.

**Permanently Installed Natural Gas Generator**

- Only natural gas generators will be allowed in this category
- Contact Yankee Gas prior to installation. Gas meter size may need to be increased.
- Obtain all necessary town permits
- Installation must be done by a licensed installer, electrician, and plumber
- AMR must show the permanent location being proposed
- Preferred location is near the air conditioning condensor; however, extreme care must be taken to ensure that the generator is located a safe distance away from any air intake mechanisms or windows. Contractor must be requested to consider these precautions.
- Since most of these type generators require weekly "test" runs, you must program these "test" runs to occur only between the hours of 10:00a.m. and 3:00p.m. Monday through Friday.

**Happy Valley Homeowner's Association**  
**Generator Rules and Guidelines**  
**October 2011**

Gasoline or Propane Operated Generator Plugged into Transfer Switch

- Obtain all necessary town permits
- Installation of transfer switch must be done by a licensed electrician
- Portable generator must be kept inside for storage. (garage or basement)
- Limit the amount of gasoline being stored in the garage to 5 gallons total in approved containers.
- Limit of two (2) 20 LB propane tanks to be stored outside in an inconspicuous location
- Generator must be operated outside the Unit
- Do not operate anywhere inside Unit, garage, or basement
- Generator must be operated a safe distance away from air intakes and windows
- Do not operate generator in rain, snow or wet conditions
- Do not operate when no one is home or while sleeping
- Store generator in a dry, clean area that is easy to get to
- Locate exhaust apparatus pointing away from the Unit
- Attach a ground wire to the generator to assure proper grounding
- Never add gasoline while generator is running. Let engine cool before refilling
- Generator may only be operated between the hours of 6:00a.m. through 10:00p.m.

Gasoline or Propane Operated Generator that uses Extension Cords

- Check with Town to see if allowed
- Portable generator must be kept inside for storage. (garage or basement)
- Generator must be operated outside the Unit
- Limit the amount of gasoline being stored in the garage to 5 gallons total in approved containers..
- Limit of two (2) 20 LB propane tanks to be stored outside in an inconspicuous location.
- Do not operate anywhere inside Unit, garage, or basement
- Must be a safe distance away from all air intake mechanisms and windows
- Do not operate when no one is home or while sleeping
- Use only heavy duty outdoor rated extension cords that are approved for this use with no frays or exposed wires
- Do not operate generator in rain or wet conditions
- Store generator in a dry, clean area that is easy to get to
- Locate exhaust apparatus pointing away from the Unit
- Attach a ground wire to the generator to assure proper grounding
- Never add gasoline while generator is running. Let engine cool before refilling
- Never try to power the house wiring by plugging the generator into a wall outlet, a practice known as backfeeding. This is extremely dangerous and may cause damage to the wiring, cause a fire, or potentially cause deadly consequences.
- Generator may only be operated between the hours of 6:00a.m. through 10:00p.m.