

Common Interest

The Official Publication of CAI-Connecticut

Vol. XVII: Issue 2 • 2022

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NEW DISCLOSURES**
About Deferred Maintenance

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Who Is CAI?

The Connecticut Chapter is one of 63 Community Associations Institute chapters worldwide. CAI-CT serves the educational, business, and networking needs of community associations throughout Connecticut. Our members include community association volunteer leaders, professional managers, community management firms, and other professionals and companies that provide products and services to associations. The Connecticut Chapter has over 1,200 members including nearly 150 businesses, and over 450 community associations representing 50,000 homeowners.



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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 Pindelski, EBP

"Our membership and participants are the strength of our organization."

Spring is finally here! Despite a seemingly long, cold and dark winter we have emerged. When we started the new year the environment we are all operating in seemed as uncertain as the weather on any given day. This season is one of my favorites as you can simply look around and feel everything coming back to life. Just being surrounded by this, how can you not feed off the new energy?

Thank you to all of the many attendees, presenters and organizers of this year's CAI-CT Annual Conference. The event had a different feeling this year. I think Reggie Babcock found the best words to describe it: "It felt more like a reunion than a tradeshow." The words hit me as they rang true. It was a reminder that while many of us are competitors in the day-to-day world, we are all part of a larger organization working to improve not only our own companies and community associations, but the larger environment that we all operate within. Our membership and participants are the strength of our organization. Thank You to the many new participants and presenters at the annual conference!

While there is still uncertainty in the world and new challenges every day, we as a community, have the strength and experience to successfully handle them all. I encourage everyone reading this to find ways to get involved and participate. No effort is too small. Attend any one of the upcoming networking/educational sessions, volunteer to present on a topic, or simply talk to your friends, colleagues and neighboring associations about an issue you are facing and reach out to CAI-CT where you will undoubtedly find someone working through the same thing. ■

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From the Chapter Executive Director

"Those who contemplate the beauty of the earth find reserves of strength that will endure as long as life lasts. There is something infinitely healing in the repeated refrains of nature — the assurance that dawn comes after night, and spring after winter."

~ Rachel Carson, *Silent Spring*



Kim McClain

Courtesy CAI-CT

It was 60 years ago that Rachel Carson published the groundbreaking *Silent Spring* which captured the public's imagination and forged America's environmental consciousness. She reminds us that it is important to protect the things that we love and appreciate including nature. As we approach Earth Day, what is something that has occurred in your community that demonstrates respect and appreciation for the environment? Is there a new pollinator garden? Solar lighting in the parking areas? A new hiking trail? A composting project? Bike racks? Xeriscaping for lower water usage? We want to know! Share these projects with us so we can feature your association in our magazine.

Many pages of smiling faces from our Annual Conference & Expo fill this issue. It was truly invigorating to see so many people genuinely happy to be together. A big thank you to EVERYONE who was a part of this great event, from our incredible Conference Committee to our amazing volunteers, exceptional exhibitors and awesome attendees. We are grateful for your support and energy.

It's been a long time, but as we slowly emerge from our pandemic hibernation, we look forward to welcoming more and more people to our live events. Our committees are hard at work to develop events that are compelling and fun. We have plenty of programs and networking events from which to choose. Please check out our events on our website: www.caict.org and sign up for one – or more!

We hope to see you soon!

Happy Spring!

People in the News...



They're going to Orlando!

We are proud and excited to note that (l-r) Chas Ryan, Esq, EBP – *Pilicy & Ryan, P.C.*, Karl Kuegler, Jr., CMCA, AMS, PCAM – *Imagineers, LLC* and Dave Pilon, CIRMS, EBP – *Bowvier Insurance* have been selected to present an education session at the 2022 CAI National Conference & Exposition May 4-7 in Orlando, FL. Congratulations all for be chosen for this honor! ■

UPCOMING CAI-CT EVENTS

CONDO INC. - WEBINAR SERIES

Hosted on Zoom — Especially for Board Members

Wednesdays, May 11th, May 18th, May 23rd • 6:00 pm - 8:00 pm

Scheduling conflict? Register anyway, and we'll email you the recording afterward!

Industry professionals: legal, insurance, maintenance, financial and capital planning will share their expertise. Becoming a good board member is a process; but you can minimize the errors and the time it takes you to get up to speed by attending this seminar.

\$50 - CAI Members (must sign into your account)

\$75 - Non-Members

Bonus Special Pricing - 50% off admission for additional board members.



CEO CAM Council

Hosted on Zoom — Tuesday, May 17th • 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.

SPRING FLING Education & Networking PARTY - Common Concerns in Common Interest Communities: Who ya gonna call?

Thursday, May 5th • Education 3:00 pm - 5:00 pm

Networking Party 5:00 pm - 7:00 pm

Middlefield, CT



Calling all association board members and property managers! Does your community have residents who are aging in place and may have burgeoning health issues? Are unit owners using their homes as giant storage units (hoarding)? We will discuss:

- How to get the town involved.
- Are the neighbors directly affected?
- Mental/physical health concerns.
- Any family near by?
- What direct responsibilities does the manager have vs. the Town and/or social services?
- Delinquencies of the account.
- Who is responsible for cleaning services and the payment thereof?
- And more!

\$30 - CAI Members, \$55 - Non-Members

Sponsorships Available. Please visit www.caict.org for more information.

EMPOWERING WOMEN SERIES Education and Networking PARTY

Wednesday, June 8 • Education 3:00 pm - 4:00 pm

Networking Party 4:00 pm - 7:00 pm

Location TBD



Sponsorships Available. Please visit www.caict.org for more information.

PARADISE Education & Networking PARTY Pesky pets? Perturbed parents? Problem parking?

Wednesday, June 15 • Education 3:00 pm - 5:00 pm

Networking Party 5:00 pm - 7:00 pm

Shorehaven Golf Club, Norwalk



Many association boards can at times find themselves are odds with unit owners over issues that could wind up being before the Commission on Human Rights and Opportunities (CHRO). Most CHRO claims can be avoided by understanding how to better manage these issues. Our expert speakers will offer strategies for making sure rules are reasonable and manageable. Sponsorships Available. Please visit www.caict.org for more information.

\$30 - CAI Members, \$55 - Non-Members

CAI-CT's 23rd Annual Golf Tournament Enjoy a day on the links with CAI-CT!

Thursday June 23 • 9:00 am - 2:00 pm

Lyman Orchards Golf Club, Middlefield

This event brings the membership together and provides a networking opportunity for managers and business partners. This is a must attend experience with exciting sponsorships, awards, gifts and games! Visit www.caict.org for information on golf, lunch and sponsorships.

EVENTS FOR YOU IN 2022!

JULY

Wednesday 7/13/2022

Community Conversations — 2:00-3:15 pm — ZOOM

AUGUST

Wednesday 8/3/2022

Summer Sizzler Event (IN Person Event)

Education 3:00 pm, Party 5:00 pm

Location: Amarante's Sea Cliff, East Haven



Tuesday 8/16/2022

Manager CEO Council — 1:00-2:00 pm — ZOOM

SEPTEMBER

Wednesday 9/28/2022

Fall Fun (IN Person Event)

3:00-7:00 pm — Location: Hops on the Hill, South Glastonbury



OCTOBER

October 2022

Condo Inc.

Wednesday 10/12/2022

Community Conversations — 2:00-3:15 pm — ZOOM

Tuesday 10/18/2022

Manager CEO Council — 1:00 - 2:00 pm — ZOOM

Wednesday 10/26/2022 or

Thursday 10/27/2022

Legal Symposium

1:00-6:00 pm — ZOOM/HOPIN



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

Manager Matters...



Did you know... the average tenure in the community management profession is 21 years. That speaks to the depth of experience and resilience to all those in this profession. To learn more about the profession of Community Association Manager, go to our website: www.caict.org.

Legislative Update

At the outset of this year's legislative session, we met with our lobbyists and discussed the fact that this was a "short session" and that bills should be limited to a few topics. Well, it has turned out to be quite the opposite! Members of our Legislative Action Committee Delegates have appeared at five different Zoom hearings, one of which lasted over 11 hours – past 10:00 pm on a Friday. One of our speakers was near the end and stuck it out despite being sick with COVID. It is important to know that our LAC Delegates have dedicated countless hours to ensuring that the interests and concerns of our associations are heard at the Capitol. There is little doubt that our advocacy work is one of the most important reasons to be a Member of CAI-CT.

Here is the list of bills where we have been most active:

SB 4 — AN ACT CONCERNING THE CONNECTICUT CLEAN AIR ACT. (EV Charging Stations) This bill was originally in the Environment & Technology Committee with a different number (RB 5117) and was moved into a Technology Committee bill. As a result of our strong testimony at both hearings, we were invited to work with the committee co-Chair, Sen. Will Haskell, to offer language that reflected our concerns. Most of our changes were incorporated in the latest version of the bill. As of press time, we are hopeful that we can make a few more minor adjustments before it goes for a vote.

SB 225 — AN ACT CONCERNING CERTAIN ROOFTOP SOLAR INSTALLATIONS IN COMMON INTEREST OWNERSHIP COMMUNITIES. This bill would require solar panels to be allowed regardless of any prohibitions in governing documents in non-condominium HOAs or planned unit developments. As we have argued on so many occasions, we support solar panels as long as the community is

in agreement as to how and where they can be placed and the community has full control of any rules or regulations regarding the installation, maintenance and removal. This bill was passed out of committee.

SB 303 — AN ACT CONCERNING RENTERS IN COMMON INTEREST OWNERSHIP COMMUNITIES. This bill is intended to prohibit common interest ownership communities from enacting or enforcing restrictions that limit the number of rented units to less than fifty per cent. We strongly opposed this bill in our testimony, as it is not necessary since the current statute already limits a Board of Directors' ability to restrict the leasing of Units to no more than 50%. Further, there are unintended consequences that will negatively affect the value of homes in Common Interest Communities. Among our other concerns include issues related to insurance and the effect leasing has on the condominium association's ability to obtain insurance. This bill was passed out of committee.

SB 413 — AN ACT CONCERNING COMMON INTEREST OWNERSHIP COMMUNITIES This bill authorizes the Commissioner of Housing to create a study group to examine reserve studies and reserve funding. After the tragedy of Surfside in Florida, many state legislatures are seeking tools to avoid such disasters in the future. This bill was passed out of committee.

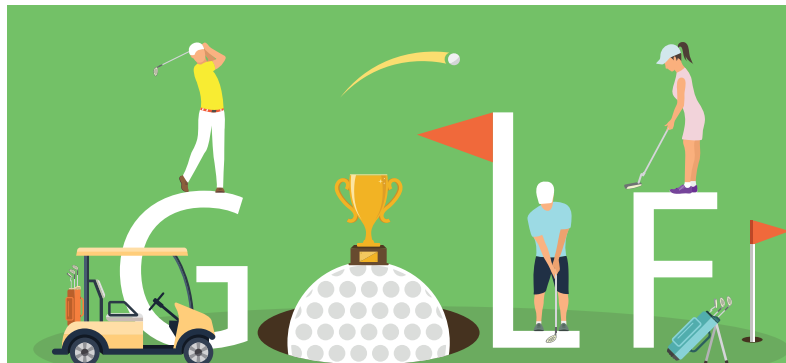
There is no more powerful voice than that of a constituent. Reach out to your elected representatives and express your concerns and opinions. To maximize our grassroots efforts, CAI launched the new Voter Voice program—a digital platform providing guidance, best practices, and recommendations for our CAI advocates. Sign up at: <https://votervoice.net/CAI/home>. ■

CAI-CT 23rd Annual GOLF TOURNAMENT

Thursday June 23, 2022
9:00 am - 2:00 pm

Lyman Orchards Golf Club, Middlefield

Visit www.caict.org
for information on golf, lunch
and sponsorships.



2 CEUS

PARADISE

Education and
Networking PartyWEDNESDAY
June 15, 2022Education 3:00 - 5:00 pm
Networking Party 5:00 - 7:00 pm
Shorehaven Golf Club, NorwalkPesky pets?
Perturbed parents?
Problem parking?

Many association boards can at times find themselves at odds with unit owners over issues that could wind up being before the Commission on Human Rights and Opportunities (CHRO). Most CHRO claims can be avoided by understanding how to better manage these issues. Our expert speakers will offer strategies for making sure rules are reasonable and manageable.



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& RENEWING MEMBERS

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Woods Edge Condominium Association of
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Clifford A. Drumm, CMCA
Nicholas Harry Granberg
Megan Matteis, CMCA
Susan Paris

Thank You Renewing Members

Associations

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Branford Business Condominium
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Chestnut Hill Homeowners Association
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Sterling Woods Master Association
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Taft Pointe Association, Inc.
Tinker Pond Homeowner Association
Tuscany Hills Condominium Association, Inc.
West Farms Condominium Association No 1, Inc.
Wheeler Estates Condominium Association, Inc.
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Beebe Landscape Services, Inc.
Blue Wave Pool Service & Supplies, Inc.
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Legally Speaking...



Adam Cohen, Esq.

Lenders Require New Disclosures About Deferred Maintenance

By Adam J. Cohen, Esq.

More than two-thirds of the HOA unit mortgages in the United States are acquired by either of the two federally-backed mortgage companies known as Fannie Mae or Freddie Mac. Private lenders therefore avoid loans that don't conform to their acquisition requirements, which are embodied in a standardized questionnaire called Form 1076. Association managers are familiar with it. The form asks about the community's expansion status, finances, insurance, owner-occupancy rates, and more. The association's answers are used by lenders to assess the risk of its investment and the eligibility of its loan for federal backing. "Non-warrantable" loans for communities which aren't eligible are harder to get and much more expensive, which can hurt resale values for the units.

Starting January 1 for Fannie Mae and February 28 for Freddie Mac, a new addendum to the questionnaire makes these standards even more rigorous by asking communities about the structural integrity of the buildings and any expected code violations. The changes were prompted by last year's collapse of the Champlain Towers South condominium in Surfside, Florida following years of deferred maintenance, which killed 98 people. The new addendum on these issues is nearly as long as the original form itself. The questions include:

- When the buildings were last professionally inspected and what was found
- Whether the association is aware of or anticipates any zoning, structural, or safety issues
- Whether the association has a recent reserve study and any savings, assessments, or financing in place to complete the work
- When all repairs were or will be completed

Obviously, these questions must be answered honestly, and the shortcomings they reveal can have severe consequences. Not only could they impact a lender's willingness to give a unit purchaser a mortgage, they could constitute easily-discoverable evidence for use

against the association by unit owners and their attorneys. Answers which are incomplete or reveal the association's ignorance about the safety of its buildings could make it much more difficult and expensive for anyone to purchase or refinance a unit. An entire condominium complex can become effectively blacklisted for most kinds of mortgages.

It's too early to know for sure what level of detail the lenders will expect in the responses or how severe the deficiencies would need to be before loans will be at risk. So far, communities in the worst shape have had the most difficulty. Nearly a thousand complexes across the country have already been deemed ineligible for acquisition by Fannie Mae or Freddie Mac, mostly due to their admitted need for multi-million-dollar structural repairs. But this list is expected to grow considerably as more and more forms are returned and as communities continue to age.

The form and addendum are available online at: <https://singlefamily.fanniemae.com/media/15656/display>. Since the questions are comprehensive and loan closings are often time-sensitive events, boards might consider compiling the information and records they'll need to answer in advance, before they are inevitably asked.

If the Surfside collapse itself was not a wake-up call for your association, the new Form 1076 must be. Deferring critical maintenance on aging buildings is simply no longer an option. If your association has been putting off major repairs, especially relating to foundations, support structures, or roofs, the time has come to start them. Boards should work with engineers, contractors, building officials, reserve specialists, and unit owners to thoroughly study and remedy any significant problems. It won't be cheap, but the cost of inaction could be far worse. ■

Adam J. Cohen is an attorney with the Law Firm of Pullman & Comley, LLC headquartered in Bridgeport, Connecticut. As the Chair of its Community Associations Section, he represents and gives seminars to condominiums, tax districts, and other communities in matters ranging from amendments of governing documents to revenue collection strategies and commercial disputes.



EDITOR'S NOTE: CAI National's Government & Public Affairs staff has been diligently working on this issue. On February 17, 2022 CAI sent a letter to the Federal Housing Finance Agency (FHFA) requesting that implementation of the temporary guidelines be suspended by at least one year.

CAI supports the intent of the new requirements and understands the need for the government-sponsored enterprises to assess and mitigate risks associated with their respective condominium unit and cooperative share mortgage portfolios. CAI respectfully recommends a delay in implementation to support this outcome by reducing uncertainty; allowing associations, their managing agents, and service providers to produce documentation materials more efficiently; and accounting for state and local government enactment of appropriate condominium and cooperative project safety and financial solvency standards. For more information and to participate in the survey go to:

<https://advocacy.caionline.org/cai-urges-suspension-of-fannie-mae-and-freddie-mac-temporary-lending-guidelines-for-condominiums-and-cooperatives/>

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FinanciallySpeaking...



Daniel Levine, CPA

Trust But Verify

By Daniel Levine, MBA, CPA

When involved in a common interest community, there is quite a bit of trust that is necessary in running it. The community trusts the board to govern and spend what's collected on what has been approved. The board trusts each member to handle their positions and responsibilities, and the board often trusts a professional management company that is hired to help manage the community efficiently and effectively. At each level there should be oversight, whether it's oversight from the community on the association's financial health or the board oversight on each other and management company. This oversight can be critical to ensuring the financial statements present accurate activity. While a full overview perhaps isn't done each month, it is helpful to analyze monthly key items that are a critical component of the community's operations.

This article will look at a few financial items that board members should be aware of and should be analyzed each month to ensure that their financial statement process doesn't have critical underlying issues.

Bank Reconciliations and Statements

Each month an association should receive an activity statement for all its cash accounts from its financial institutions. Whether it's a certificate of deposit, mutual fund, money market, or a checking account a statement should be received. Once a statement is received the association should compare the activity on the statement to that of their accounting ledgers. This bank reconciliation helps identify any outstanding activity that the bank hasn't recorded yet and allows the association to monitor if any actions need to be taken. A board member should verify that statements are received, and reconciliations are being done. These reconciliations should be traced to the cash accounts listed on the balance sheet to make sure they match. Ideally this process should happen monthly.

In the last few years, I've encountered associations that have not received or analyzed their statements. This has led to underreporting of interest, not discovering missing contributions, or incomplete books and records. These all result in entries or internal control deficiencies that make relying on the financial statements difficult as they may not present correctly. Monthly bank reconciliations are a great step in trying to ensure all financial transactions are recorded and verifying that the reconciliations tie to the overall statements is an important step.

Accounts Receivable and Prepaid Fees

One thing in common with associations large and small is the fact that some units fall behind on fees and some prepay their assessments.



ThinkNeo / iStock/Getty Images Plus

These receivables and prepayments represent cashflow items to an association and cash is the lifeblood in the association's day to day operations. As a result understanding accounts receivable and how it is trending is an important cash flow management tool. Ensuring that the number is accurate is therefore critical.

Each month the board should work to review its detailed accounts receivable and prepaid activity. This detail is typically provided as part of the monthly board packet. After deciding if any individual account requires action, the next step that should be done is to take this detail and match it to the overall balance sheet. Should the detail not match the overall report there is likely a reconciliation of unit owner balances that has to be done. The same should be done with prepaid fees. This is especially important when a management switch occurs as ledgers from one company must flow into another accurately or beginning balances may not reconcile.

A unit's outstanding or prepaid balance becomes important should someone move from the community (in addition to cash flow concerns) and as a result performing this check monthly will allow for any discrepancies to be tracked and resolved in a timely manner.

I have encountered communities that have not accurately tracked billings or receipts from unit owners. Depending on the size of the community the scope of any reconciliation can be a very large, time consuming, and expensive process as all charges and all payments for each owner will have to be reconciled. However, those reasons aside, not being able to provide a unit their accurate monthly history can negatively impact an association in more ways than just cash flow as it relates to compliance and fees being assessed. This simple comparison of the detail to the overall ledger will help to verify the subledger at least reconciles to the overall accounting records.

Note Payable



Many associations take on debt to fund their capital repairs. Typically, this debt is repaid over time with each portion of the debt service payments broken down between interest and principal. The principal portion of each payment is a reduction of the loan liability on the association's balance sheet. Each month an association should carefully review the loan invoice to make sure the liability on the invoice matches the balance in the association's financial statements and there hasn't been a misapplication of the loan payment. For most associations a note payable is the largest liability on their books. Having an incorrect balance can overstate how much is owed and typically also cause an error in interest expense in the association's profit and loss statements.

Conclusion

While it may be a daunting task to do a full overview of your monthly financials, an association should at the very least be checking critical areas of the association as much as possible. Quickly identifying issues and coming up with an action plan to correct will lead to better oversight and more solid financial statements to provide to the community. Timely identification of potential problems will help control the accuracy of an association's financial statements and help prevent problems from spiraling into costly corrections. ■

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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Annual Conference & Expo – *It was Good to be Back!*

Our Annual Conference & Expo was a great success! There was an incredible amount of energy and enthusiasm for being together again. Several people stated that our event felt more ‘like a reunion than a conference.’ Since it had been three years since our last in person conference, it is easy to understand why the reunion concept was apparent.

Our fabulous Conference Committee stirred up some amazing education programs. Based on the positive feedback thus far, our attendees learned a lot and found the event to be productive. Our terrific exhibitors showcased some great products and services. The Expo Hall was humming all day.

We have already booked our event for 2023 on March 18th. Save the date! Our Committee will soon begin the planning process. Let us know if you have any ideas or suggestions for what you would like to see next year.

A HUGE THANK YOU to our wonderful Conference Committee:

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Imagineers, LLC

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Pro-Klean Cleaning & Restoration Services

Gregory Zajac, EBP
Building Renewal, LLC



(above) Brendan Flanigan; Carrie Mott and Brian Kelly - Bouvier Insurance



(above) Joe Cifarelli; John Russo and Ben Whittemore, CMCA - Pro-Klean Cleaning & Restoration



(left) Angelo DAleo - GAF

(below) Jasmine Spencer & N. Lynne McCarron - Sentry Management



(left) Jessica Towles, CMCA, AMS, PCAM - President CAI. Jessica (and pup) joined us on Zoom from her home in Colorado.

(right) Maxwell LaFrance, Esq.;
Andrea Dunn, Esq. & Ronald J.
Barba, Esq. - Bender, Anderson
and Barba, P.C.



(left) Michael Feli, Rick
Daniels, Josh Lehmann -
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(right) Kevin Dzikowski;
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More photos on the next page...

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(above) David Kurtz; Karl Kuegler, Jr., CMCA, AMS, PCAM & Tracy Melendy - Imagineers, LLC



(above) Dan Curtiss - Prime Touch Services



(above) Prez Featherston & Chris Goodman - Assured Partners

(below) Ashley Curry - Cinc Systems



(above) Dana Drugo; Lauri Ann Ventrice & Mike Cecchini - Tooher - Ferraris Insurance Group



(above) Howard Himmel & Lisa Allegro - Avidia Bank

(below) David Messier; Lynn Bagge; Kevin Sullivan & Paul Gray - CertaPro Painters of Mystic-Glastonbury



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(above) Suzanne Berry; Carolyn Raming & Danielle Merritt - Imagineers, LLC



(left) Alex Czerwinski - Savy & Sons



(above) Ken Camello; Lynn Spaulding & Keith Anderson - Savol Pools



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(above) Matthew Casey & Michael Lockhart - Reserve Advisors, LLC

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More photos on the next page...



Conference photos, continued from previous page.



(above) Chas Ryan, Esq.; Jillian Judd, Esq. & Franklin Pilicy, Esq. - Pilicy & Ryan, P.C.



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DATE	FEATURING
4/27/2022	Rich Wechter, CMCA – Westford Real Estate Management
5/25/2022	William Ward, Esq. – Ackerly & Ward
6/29/2022	Ronald Barba, Esq. – Bender, Anderson & Barba, PC
7/27/2022	Dan Levine, MBA, CPA – Tomasetti, Kulas & Company, PC
8/31/2022	Adam Cohen, Esq. – Pullman & Comley, LLC

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William Ward, Esq.

Voting Records Should Be Confidential

By William Ward, Esq.

This author's opinion, and according to societal norms, the objective of a ballot vote is to protect the confidentiality of one's vote. Otherwise, voting would be conducted in public. Confirming the accuracy of an association's vote does not require exposing an owner's vote to other owners. Providing owners, the opportunity to inspect unredacted ballots, proxies, and tally sheet (hereinafter "voting records" identifying how each owner voted destroys the sanctity of ballot voting and serves no legitimate purpose.

CAI attorneys disagree as to whether originals of all voting records are subject to inspection by unit owners. The Common Interest Ownership Act (hereinafter "CIOA") mandates that the Association maintain: "Ballots, proxies and other records related to voting by unit owners for one year after the election, action or vote to which they relate."¹ Robert's Rules of Order Newly Revised, Edition 12 (hereinafter "RONR") provides: "Voting by ballot (also known as secret ballot) is used when the secrecy of the owners' votes is desired."² RONR provides multiple provisions confirming that a vote by ballot is intended to protect the secrecy of a owners' vote³ and ensure the integrity of the vote.⁴ Voting by ballot also forestalls attempts to influence the voter by intimidation, blackmailing, and potential vote-buying.⁵ By the mid-20th century the secret ballot was accepted as integral to the political rights to democratic participation and enunciated in, for example, the Universal Declaration of Human Rights in 1948 and the International Covenant on Civil and Political Rights in 1966.⁶

The issue arises when a defeated candidate for the Board of Directors, or the disappointed owner in a significant vote, requests to inspect the voting records allegedly to verify the accuracy of the vote. In my experience, nothing can be farther from the truth. The reality is that the requester seeks to determine who voted for or against them or failed to vote in support of their issue. The disclosure of an owner's vote will only create disharmony and tensions within the association. Whether the vote tally is accurate is independent of how individual owners voted. The accuracy and integrity of the vote can be verified without violating the confidentiality of the vote in one, or more, of the following ways:

First, as stated above, voting by ballot historically presumes the vote is confidential. As a society, we've been ingrained with the knowledge that when we exercise our right to cast a ballot, whether in a ballot box, voting machine, etc., our vote will be confidential. Otherwise, there would be no need for ballots. Owners could raise their hands (in person or virtually) and state their vote before the persons attending, vote by a show of hands, or vote by chat to everyone in a virtual meeting. The owners attending the meeting, however, can make a motion to determine how the vote will occur and whether it will be public or



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"The disclosure of an owner's vote will only create disharmony and tensions within the association."

not. Without a motion for public voting, the owners have dictated that the vote will be confidential.

Second, before casting votes the inspector(s) of the election, or voting, are approved by the voting association owners. The inspector(s) are sworn to secrecy and charged with maintaining the confidentiality, integrity, and accuracy of the vote. If ballot votes were not intended to be confidential, there would be no need to appoint inspector(s) of election or voting. Rather, each owner's vote would be announced at the meeting during the tabulation. Moreover, if the accuracy of the tally is in doubt, the inspector(s) can perform a recount. They, however, cannot disclose how any owner voted. I recommend during contested elections or a highly contentious vote (i.e., a large special assessment, substantive amendment to the declaration, etc.) that two inspectors of election, one representing each of the competing interests, be chosen to tally the vote. That removes any doubt that either side was prejudiced by the tally since a representative of their opposing interests reviewed, counted, and tallied the vote and removes the need for a post-vote inspection of the voting records by an individual owner.

Third, the disappointed owner can hire an attorney or accountant, who signs a confidentiality agreement and is supervised while reviewing the original voting records. The confidentiality agreement prohibits the attorney or accountant from disclosing how an individual owner voted while simultaneously allowing him to verify the accuracy of the vote. This procedure has been sanctioned by a court in another state.⁷

[Continues on page 20.]

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VOTING RECORDS...from page 18.



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Fourth, provide redacted copies of the proxies and ballots to conceal the name and unit address, as well as the unredacted attendance sheet. Since the tally sheet is a compilation of the ballots/proxies, it is unnecessary to retain it. The redacted voting records, minus the tally sheet, allow the requester to confirm a) the accuracy of the vote tally, b) the number of ballots cast did not exceed the number of attendees, c) a ballot cast by a proxy holder of a directed proxy matched the directives, and d) the tally was conducted by the voting method required by the Bylaws (percentage interest or one vote per unit).

Fifth, obtain a court order for a judicially mandated inspection by an independent third party or an in-camera inspection by the court to perform the recount.

I recommend that associations maintain the original ballots and proxies in each owner's file. Unit owner files are exempt from inspection by other owners under C.G.S. 47-260(d)(6). If a request is made to inspect the voting records, one of the options above would be utilized to verify the vote without breaching the confidentiality of the vote. The general CIOA recordkeeping provision⁸ has only been in effect since 2010. Community association voting cases are rarely litigated due to the cost and time required to resolve. To date, Connecticut courts have not opined on this issue. If this matter is litigated, this author's opinion is that when balancing the privacy rights of owners versus general recordkeeping statutory rights, the privacy rights of owners should prevail.

All associations are charged with performing their duties in good faith under C.G.S. 47-211. By maintaining the confidentiality of the voting records an association is acting in good faith by adhering to the long-standing belief, and legal authorities cited herein, that casting a ballot ensures that the vote is confidential. An association can never reattach confidentiality after allowing another owner to review unredacted ballots and voting records. Therefore, until this issue is decided to the contrary by the Connecticut courts, my opinion is that associations should keep all voting records confidential. ■

William Ward, Esq. is the Owner of the Law Firm Ackerly & Ward. Bill is a frequent speaker at CAI-CT education programs. Bill served on the CAI-CT Board of Directors and is currently a member of our Legislative Advocacy Committee and Golf Committee.

END NOTES:

- 1 C.G.S. 47-260(a)(11)
- 2 RONR 12th Ed 45:18
- 3 RONR 12th Ed. 23:6, 25:7, 37:10, 45:8, 45:19
- 4 RONR 12th Ed. 12:103 – "the ballot has an advantage in more truly revealing the will of the voting body..."
- 5 See Wikipedia for a general discussion of the history of the secret ballot.
- 6 "Should Secret Voting Be Mandatory" by James Johnson and Susan Orr
- 7 See *Chantiles v. Lake Forest II Master Homeowners Assn.*, 45 Cal.Rptr.2d1, 37 Cal. App.4th 914 (Cal. App. 1995) (Court ordered owner's attorney to review and tally the ballots but not disclose the name of any individual voter or how he or she voted.)
- 8 See C.G.S. 47-260



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Manager's Column...



Rich Wechter, CMCA

Being Practical, Part LXXVI Association Secretary

By Rich Wechter, CMCA

In this column, we tackle various topics of interest with the intent of imparting practical advice. In this issue's column, we address the role of the Secretary in Associations and the need to provide purpose and direction in the utilization of this position for the benefit of Boards and Associations. The role of Association Secretary is a critical one for Associations. The Secretary takes the minutes of all Board and Unit Owner meetings. While approval of Board meeting minutes is obtained from Board members and approval of Unit Owner meetings is obtained from Unit Owners, the drafting of these minutes by the Association Secretary is a critical responsibility, the failure of which can have detrimental consequences to an Association. This article is designed to provide helpful pointers on obtaining the most out of the position of Association Secretary.

A. Setting the Table on this Topic

Anthony J. D'Angelo wrote "Always be nice to Secretaries. They are the real gatekeepers in the world." In the world of Community Associations, the Secretary is the true gatekeeper between the Board and the Community. They offer the prose that reflects the actions of the Board and comments of residents during Board and Unit Owner meetings. They set the tone on how Boards communicate to residents in Board and Unit Owner meeting minutes. Their ability to write precise and accurate minutes is the most important aspect of this valuable position.

B. How to be the Most Effective Association Secretary

We offer some helpful pointers on how an Association Secretary can be most effective to their Board and their Association:

1. Prepare for the taking of the Board or Unit Owner meeting minutes by having a word version of the agenda for the particular meeting. This can be arranged with your Community Association Manager.
 2. Utilize a good template for the Board and Unit Owner meeting minutes and stick to that format for all such meetings.
 3. Review the board package or unit owners meeting package prior to the meeting to become familiar with the matters to be addressed at the meeting.
 4. Come to the meeting refreshed and alert. This is no job for someone who comes to the meeting exhausted and unable to focus. Board and Unit owner meetings have a lot of moving parts and an Association Secretary must be able to keep up with the events and
5. Always, always, always remember that you are not writing War and Peace. Minutes reflect actions by Boards at Board meetings and actions of Unit Owners at Unit Owner meetings. Do not even think about writing down every word that is said.
 6. While you are responsible to take the minutes, you are neither precluded or discouraged to speak up at a Board or, to a lesser extent, a Unit Owners meeting. You are a Board member entitled to make motions and discuss matters that come up before the Board at a Board meeting. You are not a potted plant. You have an equal voice and equal vote to your fellow Board members. Never forget that.
 7. Do not hesitate to have anyone at a Board or Unit Owner meeting repeat what they have said as there is no harm in confirming the accuracy of something that you have heard stated at a meeting.
 8. Utilize technology when taking the minutes rather than relying on your ability to read your own handwriting. The older we get, the worse our handwriting is. Trust me on this point.



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*"In the world of Community Associations,
the Secretary is the true gatekeeper
between the Board and the Community."*

comments made from a variety of individuals during such meetings. This is also a call to Boards to keep their meetings short and concise.

9. Rely on advice from the professionals on what should and should not be in the minutes of a Board or Unit Owner Meeting.
10. Confirm that all matters on the agenda for a Board or Unit owner meeting have been raised and addressed during the meeting.
11. Be aware of when the meeting commences and ends as well as the time that the Board moves from Regular Session to Executive Session and back to Regular Session.
12. Be available for the execution of other Association documents from time to time.

C. Conclusion

An effective Association Secretary is one of the most important attributes of a Community Association. There is nothing more important to the running of a Community Association than the completion of concise and accurate minutes by an Association Secretary. Boards, Unit Owners, Tenants, and Community Association Managers can be proud of the work performed by effective and dedicated Association Secretaries who provide this most valuable service to their communities. They are vastly underappreciated and deserve a shout-out for the incredible job they perform. We hope that this article will both achieve that level of appreciation for Association Secretaries and encourage Unit Owners to take on this challenging but most rewarding role at their Associations. ■

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

ENVIRONMENTAL TIP: WHY CHOOSING NATIVE PLANTS MATTERS

Many big box stores and local nurseries still sell non-native invasive plants. Unfortunately, these plants can do much more harm than good in your community. It is important to avoid the spread of invasive species, as a large number of species on the endangered species list are there at least in part due to invasive plants. These plants limit diversity, compete with native species, increase erosion, and decrease the overall quality of the land. They spread wide and far once they become established. For more information about the best types of plants to grow and a list of which ones to steer clear of: https://cipwg.uconn.edu/invasive_plant_list/



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Michael Lockhart

TECHNICAL EXPLANATIONS

Aging Infrastructure – *Knowing What's at Stake*

By Michael Lockhart

Aging infrastructure, if it has not been properly maintained, can cause large-scale issues for Boards and their communities. Too often with aging buildings, maintaining aesthetic elements becomes more important than maintaining building integrity. Understanding your aging infrastructure's ins and outs, board liability, insurance, and practical steps for your board or association to take are all part of the world of building and community management. This becomes an increasingly heightened necessity in aging communities. What ties all of these elements of responsibility together in a simplified package? Reserve studies.

Reserve studies are non-destructive, non-invasive reviews of the condition of your property. Including an analysis of each community component such as roofing, retaining walls, siding, parking garages, and common areas, reserve studies help boards and associations plan for sound financial futures. From a funding analysis to the disclosure of structural issues, these studies assess a property's condition, provide an opinion of the remaining useful life of property components, and lay out a monetary repair/replacement plan spanning 30 years.

If your building is older, there may be a higher chance that structural deficiencies will be found in the discovery phase. This is especially true if the building has been deteriorating due to a lack of action. If structural issues are noted during the study, you'll want to get a second opinion from an expert specific to that component, where destructive testing may be needed to determine the exact cause and scope of the damage.

What should your community do to plan for the future? Make any necessary repairs or replacements, and utilize the study's financial plan to assist in paying for these projects as they come due.



Courtesy CAI-Connecticut

"If your building is older, there may be a higher chance that structural deficiencies will be found in the discovery phase."

With old and new buildings alike, the board serves as a fiduciary to their association and may be liable if nothing is done about structural problems. Liability generally arises from one of four things:

- Willful failure to deal fairly with the association
- Violation of criminal law
- Derivation of an improper personal benefit
- Willful misconduct

When it comes to aging buildings, it's best to get a reserve study done. Being safe is better than being sorry! If the study identifies structural issues, hire the appropriate engineers or other experts. Follow your reserve study's budgeting recommendations to ensure your reserves are adequately funded, and follow up on your reserve study periodically. Catastrophic failure is the most dangerous result of ignoring aging infrastructure, along with increased costs that could have been avoided had the issue been fixed when it was first noticed. After all, you can't say you relied on expert advice if you don't address a problem the study brings to light. ■

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

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Steven Fielding

Water Heater Leaks — Common, Costly and Concerning for Condominium Associations

By Steven Fielding

The governing boards of condominium associations worry about many things. Reserves, rules enforcement, insurance costs, maintenance, pets, parking and COVID are on a long list of things that keep trustees and association managers up at night. Water heaters probably are not always on that list — but they should be. Here are a few hard — or soggy — facts:

- Water damage is one of the two leading property damage risks faced by homeowners, representing nearly one-third of all homeowner claims filed annually, exceeded only by wind and hail damage.
- One in every 50 insured homeowners files a water damage claim every year; the average claim cost is about \$7,000, adding up to more than \$2.5 billion in insured losses annually, according to the Insurance Information Institute.
- There are no statistics on how many of those claims are attributable to water heaters but 75 percent of all water heaters will fail — usually without warning — within 12 years of their purchase. So it is probably safe to assume that a sizable percentage of those water damage claims result from water heaters that leak or fail entirely.

It is also safe to assume that if a water heater leaks in a condominium building with attached units, the damage won't be confined to the unit in which the offending heater is located; the water and the damage will spread to adjacent units and common areas.

So multiply that average \$7,000 claim by 10 or 20 units; add the potential damage to common areas; consider the risk of mold (a byproduct of water damage), the cost of remediating it, and the potential legal liability for the association if mold sickens some residents. Insurance industry analysts report that water damage claims in excess of \$500,000 have doubled since 2015; claims exceeding \$1 million have tripled in that time period.

Also consider that associations dealing with common area damage will be paying a large deductible and may be filing an insurance claim, which could increase the association's premium costs. And now, perhaps, you begin to understand why water heaters should be on that list of association concerns.

Preventing Damage

Why do water heaters fail? Age is the primary culprit. Water heaters have an average useful life of about 12 years. But the operative word here is "average." Some water heaters fail well before that 12-year mark; others perform like champs for much longer. The problem is — you can't predict when any given water heater is going to



Courtesy CAI-Connecticut

"The problem is — you can't predict when any given water heater is going to fail."

fail. There is no equivalent of a car's 'check engine' light to alert you to an issue you must address; you don't usually know a water heater is failing until it has dumped 80 gallons of water in your basement or your garage or your kitchen. As early warning systems go, this isn't terribly effective. Fortunately, there are some alternatives.

- **Automatic shut-off valves.** These units typically consist of a high-quality valve installed directly into the plumbing line, and moisture sensors that send a 'shut-off' signal to an electric control box. There is a valve that our company uses which works on the same general principle, but it isn't powered by electricity. It uses a spring mechanism wrapped with a water-soluble sensor element that is placed in a drip pan under the heater. When water hits the sensor, it weakens, releasing the high-pressure spring and shutting the heater off after no more than one inch of water has accumulated in the pan.
- **Water leak alarms.** These units also use sensors that sound an alarm when water is detected, but owners must remember to turn the alarm on (they don't always) and someone has to be around to hear the alarm and able to act quickly, by turning off the water supply. A lot of water can leak and cause a lot of damage in a very short period of time.

Effective Maintenance

Shut-off valves and alarms can prevent damage — or reduce it — if a water heater leaks. Maintaining the heaters can go a long way toward preventing those leaks. Plumbers suggest that owners have their water heaters inspected — and drained — annually. Drainage will eliminate sediment that can build up inside a heater, reducing its effectiveness and possibly making the interior of the tank rust.

Regular inspections can also assess the condition of the temperature and pressure valve and monitor the condition of the anode rods (some units have one, others have two) that protect the tank from hard water

[Continues on page 35.]



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Beyond the Water: *Effectively Managing Lake and Pond Shorelines*

By Trent Nelson

Imagine taking an evening walk as the sun sets across the beautiful lake or pond in your community. The sky is pink and orange, crickets are chirping, and a warm breeze blows across the water. Now, imagine looking down at the steep shoreline in front of you, finding that it's bare, crumbling, and so unstable that you're weary to venture to the edge. Not only is this an unsightly and even dangerous distraction, it can make residents question the management priorities of their association and deter new homeowners from settling down in the community.

Even the most well cared for lakes and ponds are incomplete without regular shoreline maintenance. Preventative management is necessary to support the health and longevity of the overall ecosystem, and management efforts can vary for each part of the shoreline. However, before jumping into implementing proactive and ongoing strategies, existing erosion issues must be addressed.

The most effective solution for severe erosion is installing a bioengineered living shoreline. This is a specialized soil containment system composed of a knitted mesh material that reshapes and anchors the shore in place. This solution has two-fold benefits; in addition to enhancing the aesthetics of any property, professionals can also restore pond volume by repurposing bottom muck during the installation process.

Once erosion is corrected, community managers can turn their attention to proactive management strategies that support multiple areas: the littoral zone, the buffer zone, and the landscaped zones that surround it. They all have a significant impact on the overall health of a lake or pond, but each is unique and benefits from tailored management approaches.

Littoral Zone

The littoral zone is the sloped "shelf" that connects water to land. Sunlight penetrates through the entire water column in this shallow area. When healthy, the littoral zone can resemble a miniature wetland consisting of native plants that increase dissolved oxygen and create vital habitat for beneficial fish and organisms. Typically, the littoral zone reflects the health of the entire aquatic ecosystem.

When managing the littoral zone, aquatic experts focus on several priorities. Cultivating a healthy littoral ecosystem means nurturing beneficial species while managing undesirable weeds and algae.

- Regular water quality testing can identify imbalances in the ecosystem and help inform management practices that support healthy littoral areas.
- Nutrient remediation products can help remove the excess phosphorus and pollutants to improve water quality and reduce cloudiness and odors.
- Beneficial microorganisms and bacteria can be introduced to help maintain ecological balance and sustain aquatic life—like probiotics for your pond.



Trong Nguyen/Stock/Getty Images Plus

“Even the most well cared for lakes and ponds are incomplete without regular shoreline maintenance.”

- Sometimes, the littoral zone can become stagnant and oxygen deprived under the hot sun. A floating fountain can help circulate and oxygenate this shallow area while creating beauty and movement on the surface.

Vegetative Buffer Zone

The buffer zone refers to the area directly on the shoreline above the littoral shelf, extending several feet in elevation. A healthy buffer zone contains native grasses and flowering plants with complex root systems that hold soil in place. These beneficial buffer plants not only prevent erosion, they help filter out the debris and pollutants contained in stormwater runoff.

Professionals utilize many strategies to help enhance the buffer zone and maintain a healthy living shoreline.

- An ideal buffer should extend 3-5 ft. from the shoreline and grow at least 18 in. tall. Limit mowing in this area to prevent stunted growth and shoreline instability.
- Vegetative buffers are susceptible to the growth of invasive weeds. EPA-registered herbicides are sometimes necessary to target this growth. Professional drones have made monitoring and applications safer and more efficient.
- Establish designated paths and docks for residents to enjoy the water without trampling the buffer zone.

[Continues on page 35.]



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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>.

Condominium Cornhole Creates Insurance Liability

O.N. from Middlesex County, Connecticut writes:

Dear Mister Condo,

Is cornhole considered an insurance liability? Several homeowners and their guests have been told that they cannot play cornhole on association property including the parking area.

Mister Condo replies:

O.N., while cornhole is certainly one of the safer outdoor recreational activities I can think of, only the association’s insurer can offer

an opinion as to the insurance liability to the association if someone were to file a claim against the association. In general, governing documents describe how owners may enjoy use of common areas, such as grounds and the parking lot. The parking lot in particular would likely not be an allowed place for recreation of any activity because there are moving vehicles involved. You wouldn’t want to encourage children playing in the parking lot. The common grounds may be a more likely place to allow cornhole although, if someone were to trip or a unit owner not playing the game might object to the area alongside their home having foot traffic that might damage grass or disturb their own peaceful use of their home, the association would now have some additional problems that are easily avoided by not allowing the common areas to be used for anything other than as prescribed in the governing documents. As I stated earlier, it is best to check with the association’s insurer as what liability is involved for the condominium. All the best!

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WATER HEATER LEAKS...from page 26.

minerals. As these rods erode over time, the protection diminishes, reducing the water heater's life and increasing the risk that it will fail prematurely. Replacing the rods when necessary can extend a water heater's life.

What HOAs Can Do

Condominium boards should deal with hot water heaters the same way they deal with other risks affecting the health and safety of residents or the community's property values and finances: By providing information that encourages responsible behavior by owners and adopting association policies that require it. A few specific suggestions:

1. Educate homeowners. Explain the damage leaking water heaters can cause to individual units and common areas.
2. Encourage owners to have their water heaters inspected at least annually by a qualified plumber.
3. Consider making annual inspections mandatory, for the same reason that many associations require annual inspections of fireplaces – because poor maintenance of the equipment poses a potential risk to other residents and the entire community.
4. Encourage – or require – owners to install automatic shut-off valves or water sensor alarms on their water heaters.
5. Require owners to replace water heaters older than 11 years, with an exception for those who install automatic shut-off valves. Units with these devices can operate safely until they fail.
6. Consider making the purchase and/or installation of shut-off valves an association expense. Leaks pose risks to other units and common areas – risks that owners have a shared interest in mitigating.
7. Consult your insurance agent. Some insurance companies require leak prevention devices on water heaters or strongly encourage them. Ask if your association's insurer is one of them. Installing shut-off valves community-wide may not reduce the association's insurance premium, although it would give your agent a strong argument for requesting a discount. But proactive risk management policies like this will improve the association's overall risk profile, which may help you secure a favorable premium rate. Preventing water heater leaks will also avoid the costly damage claims that can increase your premium and may make it more difficult to obtain the coverage the association needs. ■

About the Author: Steven Fielding is president of AQUAGUARD, LLC, which manufactures the WAGS Valve – a product he discovered as a consumer and liked so much, he bought the company that produces it. He is now on his third water heater with a WAGS valve. When the previous two heaters (operated long past their estimated useful life) failed, the valves worked perfectly, protecting his finished basement from water damage.

BEYOND THE WATER...from page 28.**Landscaped Zone**

This is the area that is generally mowed and landscaped in the vicinity of a lake or pond. This does not simply refer to the immediate property around the waterbody – it can encompass many acres of land depending on surrounding topography, nearby pollution, and urban development. Many factors in the surrounding area can influence a waterbody.

It is crucial to adopt responsible land management practices across a community to maintain ecological balance.

- Eliminate the use of fertilizers or switch to organic products.
- Make sure plants used in gardens and landscaping are native to the area.
- Maintain lawn mowers, cars, and landscaping equipment to prevent oil leaks.
- Bag and dispose of leaves, lawn clippings, and organic debris while landscaping.
- Maintain stormwater equipment to ensure water flows properly during rainstorms.
- Introduce trash receptacles and dog waste stations throughout the community.
- Educate residents about why and how they can support these proactive efforts.

Lakes and ponds are dynamic, ever-changing environments that are impacted by countless environmental and human influences. Properly caring for your waterbody starts with bioengineering a more stable and long-lasting living shoreline. Then, proactive ongoing shoreline maintenance will help ensure your waterbody stays healthy and enjoyable—from the outside in. ■

Trent Nelson is an Aquatic Specialist at SOLitude Lake Management, an environmental firm specializing in sustainable lake, stormwater pond, wetland, and fisheries management. Learn more about this topic at www.solitudelakemanagement.com/knowledge.

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