

Common Interest

The Official Publication of CAI-Connecticut

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ASSOCIATION FINANCES A View from 30,000 Feet

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KICKING THE CAN DOWN THE ROAD Never a Good Association Strategy

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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

"One of the efforts for this coming year is the creation of a Social Media Committee..."

The summer will soon be upon us and as we head into the season we seem to be finding our new groove and "normal" mode of operation. We've all made changes over the last two years and learned how to adapt and overcome each challenging aspect. Some methods have led to changes in the industry that benefit everyone. Others were temporary and thank goodness for that! While it certainly hasn't been painless, we've all hopefully learned along the way.

As we get ready to make the seasonal transition into summer and all of the winter planning, budgeting, and preparation becomes actionable projects, so too is CAI-CT getting ramped up. In June alone, we have Women's Empowerment — June 8; Paradise on June 15; and the Golf Tournament on June 23. Details are on the website — www.caict.org. The committees do a phenomenal job each year with every event, so come check them out!

One of the efforts for this coming year is the creation of a Social Media Committee to handle the weekly and monthly communication through alternate channels to further expand the chapter's reach. If you've been contemplating ways to get involved with the chapter, attending any of the June events or volunteering for this committee or any other committee is a great way to network and lend a hand! Again, More details about our great committees and more can be found on our website.

I can't thank everyone that has participated and lent a hand enough. As the saying goes, many hands make light of much work. The chapter would not be what it is today without the dedication of everyone who gives of themselves on a daily basis. ■



New membership payment option

Sign up for auto renewal today to ensure your membership is never interrupted. Simply log in to your CAI membership account and choose **MY MEMBERSHIPS** to sign up today!

www.caionline.org



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From the Chapter Executive Director

"The greatest danger to our future is apathy."

~ Jane Goodall



Kim McClain

Courtesy CAI-CT

Question: What is the complaint we hear most often from both association board members and unit owners? **Answer:** There's too much apathy. It sadly seems to be a common refrain that everybody seems to have a problem, but nobody wants to do something about it.

Borrowing from strategies to battle apathy in the workplace, perhaps we can employ some of the techniques in our associations:

- **Effectively define your mission, goals, and objectives.** Show unit owners the big picture while explaining how they fit into the overall upkeep and success of the community.
- **Lead by example.** If the board or manager appears to lack passion for the association, efforts to motivate unit owners will probably fail. It is important to lead by example. Show community members how excited you are about achieving the completion of projects, etc. Positive energy is a key. Upbeat behavior from the board and manager will likely inspire others.
- **Practice transparency.** Make concerted efforts to keep the community informed of actions taken by the board. An engaged and motivated community is a powerful asset. Transforming apathetic unit owners into motivated community members can change both the culture and the financial trajectory of an association.

No doubt, there are many other methods that can be used to foster more interest and involvement in community activities and decisions. Be creative!

Many of our Connecticut associations are well into middle-age. Some are showing their age much more obviously than others. When we asked attendees at our recent Conference & Expo what their biggest concern was, most stated capital improvements and lack of reserves. Yet, when queried about how those construction projects would be paid for, the answer was: reserves. It seems that there might be a bit of a disconnect since reserves are not adequate, but they will support future capital improvements. Is it due to apathy that the funds don't exist or fear of rejection of a request to significantly increase the association budget?

We will soon be coming up on the one-year anniversary of the tragic collapse in Surfside, FL. Was it because of fear or apathy that the conditions deteriorated so badly which led to great rancor about how and how much it would take to properly repair the building? Hopefully, we can learn from some of the lessons of Surfside and avoid having our communities experience such dramatic decay and destruction.

There is a great deal to unpack with respect to proper stewardship of our Connecticut common interest communities. Our education programs are a great way to learn from our experts and your peers how to get buy in, with respect to energy and money to make those big projects come to fruition. Find out what's coming up next, or view many of our great programs on demand, by visiting: www.caict.org. ■



They nailed it!

At the National CAI Conference in Orlando, May 4-7, our great team of speakers gave a very powerful presentation about the logistical as well as human side of managing a very large fire and the long term aftermath. Thanks for making us proud!

(l-r): Karl Kuegler, Jr., CMCA, AMS, PCAM - Imagineers, LLC, Chas Ryan, Esq., EBP - Pilicy & Ryan, P.C., Dave Pilon, CIRMS, EBP - Bouvier Insurance and Jennifer Zupancic, CMCA, Imagineers, LLC

UPCOMING CAI-CT EVENTS

EMPOWERING WOMEN SERIES Education and Networking PARTY



Understanding Your Audience and the Importance of Using your Own Voice

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

Networking Party 4:00 pm - 6:00 pm

Hawk Ridge Winery, Watertown

Back by popular demand! Erica Pilicy Ryan, Esq. and Kelly Freitas, Esq. will be our power team presenting another great session. They will share their valuable insights and offering strategies for conquering these important communication challenges. But wait, there's more... We will be holding this event at Hawk Ridge Winery in Watertown. The rolling hills of the vineyard are sure to put you in a good frame of mind and the post-program wine and light refreshments will be the perfect end to a busy day.

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

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 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.

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

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

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.

CHAT & CHEW with Common Interest Author

On ZOOM

Wednesday, June 29 • Education from 12:00 - 1:00 pm

Ask Your Questions to your favorite authors!
This month's featured speaker will be Ron Barba, Esq. from Bender, Anderson & Barba, PC.

(No Continuing Education Credits for this event)

Free for CAI Members, \$25 - Non-Members



CHAT & CHEW with Common Interest Author

On ZOOM

Wednesday, July 27 • Education from 12:00 - 1:00 pm

Ask Your Questions to your favorite authors!
This month's featured speaker will be Dan Levine, CPA - Tomasetti, Kulas & Company, PC.

(No Continuing Education Credits for this event)

Free for CAI Members, \$25 - Non-Members

SUMMER SIZZLER Education & Networking PARTY

The Times (and Climate), They are a Changing...



Wednesday, August 3 • Education from 3:00 pm - 5:00 pm

Networking Party 5:00 pm - 7:00 pm

Amarante's Sea Cliff, East Haven

More microbursts, extreme flooding, rising sea levels, increased drought - how will all of this affect our communities? Will higher amounts of flood insurance be required? Do current deductibles levels provide adequate coverage? What about fire insurance and replacement costs? Can risk management mitigation offer some protection? Our experts will help us navigate steps to prepare for future weather-related disasters. We will be returning to our favorite shoreline location - Amarante's - for another great Summer Sizzler party on the deck. Don't miss it!

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

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

EVENTS FOR YOU IN 2022!

AUGUST

Tuesday 8/16/2022

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

Wednesday 8/31/2022

Chat & Chew • Time 12:00 - 1:00 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

Saturday 10/1/22

Condo Inc. • 8:30 am - 2:00 pm - Wallingford

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/Hopin

Thursday 10/27/2022

Legal Symposium

1:00-6:00 pm — ZOOM/HOPIN



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

THANK YOU NEW & RENEWING MEMBERS

Welcome New Members

Associations

Bramble Ridge Association, Inc.
Long Hill Farm Association
The Moorings II Association Inc.
Poet's Landing Association, Inc.
Southfield Green Condominium Association, Inc.

Individual Managers

Paul Barba
Michael Capasse
Daniel Drew
Katherine Mary Porter, CMCA

Business Partners

Vantaca, LLC

Sylvan Point Condominium Association
The Village at Crystal Springs Condominium Association, Inc.
Webster Hill Estates

Management Company

Axis Property Management
Connecticut Real Estate Management, LLC
Propertyworx, LLC

Individual Managers

Edward Dutka
Norman Goodman, CMCA
Melissa Cathleen Gouveia, CMCA
June LaForge, CMCA
Glenn Michael Mackno, CMCA
Dawn Mattei
Kerri Neri, CMCA
David Edward Paniccia, CMCA, AMS
Shari Romero, CMCA, AMS
Suzanne S Rourke, CMCA
William Joseph Thompson, Jr., CMCA
Richard Wechter, CMCA
Chris Weiland, CMCA

Business Partners

Bellwether Property Group
Bill's Landscaping LLC
CCA, LLC
CertaPro Painters
Digiorgi Roofing & Siding, Inc
John C. Fiderio & Sons, Inc.
Mono-Crete Step Co of Ct, LLC
Premier Building Associates
Tangible Properties, LLC
Tooher - Ferraris Insurance Group
United Property Restoration Services
Windsor Federal Savings

Thank You Renewing Members

Associations

The Atrium Of Portland
Birchwood Commons Condominium Association
Bryrewood Condominium Association, Inc.
Country Walk Association, Inc.
Fieldstone Village of Orange, Inc.
Heatherwood Condominium Association
Kensington Woods Association, Inc.
Knollbrook Condo Association
L'Hermitage Condominium Association, Inc.
The Meadows of Enfield Condominium Association, Inc.
Montgomery Village
Mountain Commons Condominium
New Concord Green
Newfield Commons Condo Association
Proprietors of Sterling Woods
Summerwood Condominium Association, Inc.
Summit Master Association



Statutory Snippet...

Can the Board of Directors meet in Closed or Executive Session? If so, for what purpose?

The board and any committees of the board may hold an executive session only during a regular or special meeting. The board or a committee authorized to act for the association may meet in executive session only to do the following:

- Consult with the association's attorney about legal matters;
- Discuss existing or potential litigation, mediation, arbitration, or administrative proceedings;
- Discuss labor or personnel matters;
- Discuss contracts, leases, and other commercial transactions to purchase or provide goods or services currently being negotiated, including the review of bids or proposals, if premature general knowledge of those matters would place the association at a disadvantage; or
- Prevent public knowledge of the matter to be discussed if the board or committee determines that public knowledge would violate the privacy of any person.

No final vote or action may be taken during an executive session (Common Interest Ownership Act, Subsection 47-250(b)(1)).

SUMMER SIZZLER Education & Networking PARTY

GOOD FOR
2 CEUs



The Times (and Climate), They are a Changing...

Wednesday, August 3rd

Education 3:00 pm - 5:00 pm • Networking Party 5:00 pm - 7:00 pm

Amarante's Sea Cliff, East Haven

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

To register visit www.caict.org.

More microbursts, extreme flooding, rising sea levels, increased drought — how will all of this affect our communities? Will higher amounts of flood insurance be required? Do current deductibles levels provide adequate coverage? What about fire insurance and replacement costs? Can risk management mitigation offer some protection? Our experts will help us navigate steps to prepare for future weather-related disasters. We will be returning to our favorite shoreline location — Amarante's — for another great Summer Sizzler party on the deck. *Don't miss it!*

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

Service Providers:

\$100 - CAI Members, \$125 - Non-Members

Legislative Update

By the time this issue goes to press, the Connecticut General Assembly will have adjourned the 2022 session. Fortunately, thanks to the incredible work of our dedicated Legislative Action Committee, we have pushed back on some bad bills and ensured that a priority bill for DEEP and the Legislature will not severely impact our common interest communities. These are the two remaining active bills:

SB 4 AN ACT CONCERNING THE CONNECTICUT CLEAN AIR ACT. (EV Charging Stations) We were invited to work with Sen. Will Haskell, on two occasions, to refine language that addressed our issues. We were especially impressed with Sen. Haskell's willingness to collaborate and listen to our concerns.

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. This bill passed in the Senate. We were invited to participate in the study process.

Stay informed and get connected. 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> ■



Have your community association board members changed since last year?

Be sure to update

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

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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.

Legally Speaking...



Adam Cohen, Esq.

An Association's Common Area Maintenance Obligations

By Adam J. Cohen, Esq.

Generally speaking, an association is responsible for maintaining, repairing, and replacing the community's common elements or "shared" areas when needed. This may be simple as a concept, but there can be significant exceptions, and the devil is in the details.

The first step is determining what the common elements are. A community's common elements are whatever its declaration says they are, and most define them as everything other than the individual units. Identifying the clubhouse, pool, and main roadways as common areas is easy. But they often also include the physical structures from a unit's undecorated interior surfaces outward – meaning that the drywall is common while the paint is not. Window glass may be common while window latches are not. A doorknob might be common on one side of the door, but part of the unit on the other side of the same door. Wires and pipes are often common only to the extent they serve multiple units or a common area, but they are part of the unit to the extent they are inside the unit or serve it exclusively. This means responsibility for a leak in a pipe can depend on pinpointing its location within one millimeter on either side of the legal boundary.

Certain common elements are also categorized as "limited" common elements, which means they are owned jointly but reserved for use by only one unit or certain units. These will be whatever the declaration says they are, with typical examples including driveways, mailboxes, and even elevators and certain portions of the yards. If the declaration is silent, the law will assume that some things like wiring, porches, and other fixtures designed to serve a single unit are also limited common elements. Some declarations list out the limited common elements, while others incorporate those the law presumes, and still others say there are none at all.

The association is generally responsible for fixing the common and limited common elements except as the declaration says otherwise. Most do to some extent, especially for limited common elements. They often require unit owners to remove snow, ice, and leaves from their own patios and porches, or to maintain and replace their own windows and garage doors. Some may require owners to water their own lawns or even to report problems in order to trigger the association's repair obligations. Assuming the association did not itself cause the damage, its repair obligations typically stop at the common element's boundary – for example, replacing the drywall but not the wallpaper. Unless an association has followed the procedures for formally opting out of "all in" property insurance coverage, it may



Kurgu128/Stock/Getty Images Plus

"The association is generally responsible for fixing the common and limited common elements except as the declaration says otherwise."

have to apply insurance proceeds to an owner's "improvements and betterments" (like a finished basement or new cabinetry) even if the association is not itself responsible for them as common elements.

There are some common elements which are exempt from this general rule. Depending on the declaration's wording, an association is not required to repair a common element which it is not required to insure – such as land, excavations, foundations, and other areas normally excluded from property insurance policies. This past February, the Connecticut Appellate Court confirmed that an association was not liable for a unit's foundation settling problems for this reason. An insured common element also need not be repaired or replaced if doing so would violate a health or safety code, or 80% of the owners vote against doing so. Some declarations may excuse the association from making repairs or replacements which would be impracticable or prohibitively expensive. A few courts have held that an association is not liable for design problems attributable to the community's original developer, or for extraordinary efforts after reasonable repair efforts have failed.

When an association is responsible for fixing a common element, that responsibility cannot be ignored just because a unit owner caused

the damage. The 2010 overhaul of Connecticut's Common Interest Ownership Act made clear that the association must undertake the repair even if the damage was deliberate, using either the association's own funds or any available insurance coverage. Instead, the board has the right to hold a hearing to determine whether a unit owner must reimburse the uninsured portion of that expense (the deductible plus any exclusions or overages) if that owner caused it by violating a written maintenance standard. In other words, the board fixes it first, and then might get some of the cost paid back later. Reimbursal is also allowed if the owner acted willfully or with gross negligence, but those are rare and difficult to prove, so most associations have now itemized comprehensive lists of the owners' maintenance duties. Owners held to be at fault are often able to have their own insurers pay that reimbursal to the association, but they remain liable for any difference or if they are uninsured. The debt can be collected like a delinquent common charge, up to and including foreclosure of the unit.

Executive boards are in charge of deciding how they maintain and repair common elements, including design and vendor selection. An owner cannot overrule those decisions even if the common elements being worked on are related to his unit. Some boards may nevertheless consider an owner's preferences, or even give the owner control of the project and the money to do it in exchange for a release when the association may be at fault for the underlying damage. Conversely, a unit owner whose misconduct caused damage (or his insurer) might agree with the board to pay for repairs directly, to bypass the hearing procedure for reimbursing the association's repair costs.

Boards should work closely with their attorneys and managers to make sure they understand what their common elements are and are not, what their responsibilities to repair them entails, and what exceptions their declarations might provide. Preventative maintenance, the right insurance, and well-drafted maintenance standards will also help minimize headaches and expense for the association when problems do come up. ■

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

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FinanciallySpeaking...



Daniel Levine, CPA

Association Finances: *A View from 30,000 Feet*

By Daniel Levine, MBA, CPA

Most of the previous articles prepared by our office have delved specifically into a specific element of the accounting function for associations, as many association boards are comprised of individuals who may not have an accounting background. This may be a suitable time to take a step back and see the forest for the trees and highlight some general accounting rules and components for association accounting.

Financial Reports:

An association's accounting finances will often be presented through various accounting reports. The main two reports that are provided are called a Balance Sheet (sometimes called a statement of financial position) and an Income Statement (sometimes called a profit and loss).

Balance sheet

A balance sheet represents a specific moment in time. The date that the balance represents will be listed at the top of the report. The balance is comprised of Assets, Liabilities, and Equity. Accounting follows a fundamental rule where an association's assets must equal the sum of its liabilities and equity. If that accounting equation ($A = L + E$) is broken your balance sheet does not "balance."

- Assets are items that an association owns, is owed, or the association will have a future benefit from (prepaying a service for example).
- Liabilities are items that the association owes to others. These can be bills to vendors or if an association receives a prepayment that would need to be returned should someone move out of the community.
- Equity represents the accumulated profit and loss from the association's inception until the date of the balance sheet. This is typically calculated by starting with equity at the beginning of a fiscal period and adding the current profit or loss to arrive at an ending equity number.

Income Statement

Unlike the balance sheet, this report represents a range of time. It typically presents a single month's activity as well as includes a year-to-date presentation. This report reflects the income and expenses of the association for the period being presented. An income statement's activity is how an association moved from a previous period's balance sheet to its current balance sheet. For example, when looking at a balance sheet at 12/31/X1 and balance sheet at 12/31/X2, the income statement that covers from 1/1/X2 through 12/31/X2 would reflect how you got from the first balance sheet to the other. At the end of



"An association's accounting finances will often be presented through various accounting reports."

the accounting period an association closes out any net income from the income statement into its equity account and that entry is how the balance sheet remains in balance as activity is recorded and how the income statement is connected to the balance sheet.

Tax returns:

Moving on from financial reports, it is important to highlight that associations are often not considered a non-profit for tax purposes. Most commonly, an association is created as a non-stock corporation. This means the association is a corporation and is still subject to filing an annual income tax return.

An association can make an election to file under Internal Revenue Code (IRC) Section 528 which allows for a simpler filing pending if it meets certain criteria. These criteria are looked at annually and are based around revenue, expense, and how much of the community is for residential purposes. Should an association not qualify for IRC Section 528 they must file under the code section rules of IRC Section 277 which is a much more complicated filing and will result in different treatment of its income and expenses. An association's state tax obligations will also change depending under the IRC section the association files under.

Fixed Assets:

Associations are unique in how they deal with capitalization of capital improvements. Most property of an association such as buildings, roofs, roads, etc. are owned by the unit owners of the association not the association itself. The association exists to maintain these elements and handle replacement. However, this distinction results in the association not actually having title to these components' capital repairs. Since the association doesn't have title to the asset the repairs and replacement are typically not capitalized.

Unless an association has specific title and control over selling an item, most capital expenditures are expensed in an association's income statement as compared to being capitalized and depreciated. The unit owners themselves are able to claim a step up in the cost basis of their homes for purposes of the capital improvements instead of the association itself.

Fund accounting:

Associations follow certain rules to be compliant with general accepted accounting principles. One of these rules is that an association follows fund accounting. What fund accounting means is that an association breaks down its total activity into distinct categories. Most associations use two major categories called the operating and long-term capital repair fund (sometimes called reserve fund), but there can be many diverse types of funds tracking items from special assessments and loans to litigation proceeds.

An operating fund typically contains only the day-to-day activity of an association while a reserve fund will usually contain the capital

[Continues on page 12.]

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ENVIRONMENTAL TIP

Spring Cleaning: Time to donate, sell or give away items not being used any longer

All those items taking up closet space – the one you haven't worn or even looked at in eons can find a new home. Got a slow cooker that stopped cooking years ago? A bread maker that could earn you some dough if you sell it? Now is the time to donate clothes, appliances, tools and other gently used items to a local charity or thrift store. You may have friends or family that could have a need for the items you no longer use. Your unused stuff can find a new home! And... when you have removed those items from your home, resist the urge to fill that now empty space with more stuff.



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FINANCIALLY SPEAKING...from page 11.

repairs that an association undertakes. Each fund has a self-contained set of financial statements meaning that they have their own balance sheet and profit and loss.

Funds can have transactions that occur between them and can borrow from each other in case there is a cash flow crunch. Interfund activity should be tracked and resolved. It is quite common for an association to have outstanding interfund activity that is not understood or not easily discernable in the financial reports. Diligence from the board is required to ensure the activity of each fund is accurate and correctly allocated to allow for accurate fund reporting.

Conclusion

Association accounting can become very complicated very quickly. Having a basic understanding of the general concepts can provide a solid foundation from which to continue to grow and learn from as well as fall back on to better understand complicated transactions when they occur. As stated at the onset of this article, many association boards have members that may not have an accounting background and if there is a more complicated issue a board should not hesitate to reach out to the many professionals that can help keep the association compliant. ■

Dan Levine, MBA, CPA is a Certified Public Accountant at Tomasetti, Kulas, And Company P.C. Dan has extensive experience with tax and attestation services to condominium associations from all around Connecticut. Dan is an active participant in CAI-CT related programs and can be found presenting accounting best practices at these events throughout the year. Dan is also a member of our At Large Legislative Advocacy Committee and serves on the CAI-CT Board of Directors.

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Jonathan Chappell, Esq.

Removal: “Why Can’t We All Get Along?”

By Jonathan Chappell, Esq.

This may come as a surprise to some of you living in a utopian community. Sometimes, for whatever the reason or even without a reason, peace is disrupted. What might begin with a small spark may spread like wildfire. This could result in attempts to remove and replace the leadership, board members and/or officers.

To be clear, the intent of this article is not to start a fire, but to create an understanding of the removal process. This process is essentially controlled by the Common Interest Ownership Act (CIOA), no matter when your community was established.

“Who Removes Who?”

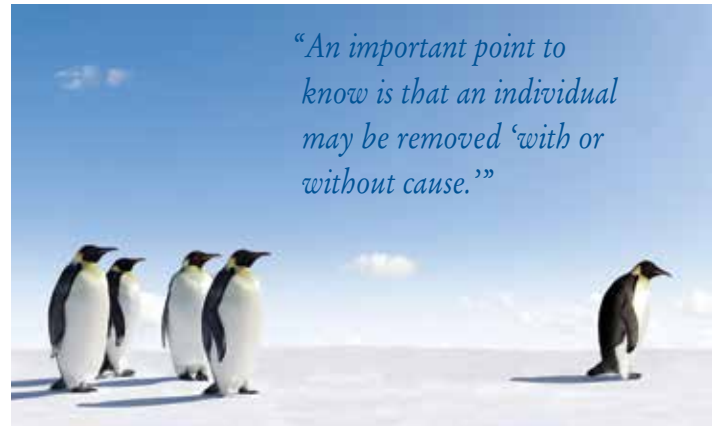
Determining who has removal power really depends on who is being considered and from what position they may be removed from. Are they trying to remove someone entirely from the board as a director, or just remove as an officer, who would remain an “at large” board member? This distinction depends on your documents. In most communities, the owners elect and remove members of the board (directors), and the board members elect and may remove from its members the board officers. Only those with the power to do so can validly remove someone.

Every Community Must Follow CIOA § 47-261d

The removal process must comply with CIOA § 47-261d. Perhaps a contributing reason those in favor or against removal may be so at odds is they may not even agree on the procedure used if the documents say one thing and CIOA says another.

Frequently, especially in a “pre-1984” association, one created before January 1, 1984, the procedure for removal in its documents differs from CIOA. Section 47-261d of CIOA begins “[n]otwithstanding any provision of the declaration or bylaws to the contrary;” this can be translated to “no matter what your documents may say, you must follow this Section of CIOA.” Section 47-261d applies to all common interest communities, whether created before or after January 1, 1984.¹ My free advice is to follow the procedure in § 47-261d.

Why this confusion? For one, pre-1984 communities were, by statute, given the power or mandate to establish a removal procedure in their documents. Both The Unit Ownership Act and Connecticut Condominium Act of 1976, § 47-80(c), required “[t]he bylaws shall provide for . . . (1) . . . the method of removal from [the] board.”² In 2009, CIOA § 47-261d was first adopted in Section 36 of Public Act 09-225. A community created before 2009 may not have the proper removal procedure in its bylaws. Valid removal must still comply with CIOA § 47-261d.



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Removal Procedure:

The rest of this article discusses the removal of a board member by owners.³ Pursuant to CIOA § 47-250(a)(3)⁴ and § 47-261d(a)(3), removal must be by vote at a special owners’ meeting or an owners’ vote by ballot without a meeting.⁵

An important point to know is that an individual may be removed “with or without cause.” CIOA § 47-261d(a) does not require any reason. This may be another item that your documents might differ from CIOA. This author would suggest that those seeking removal should have some meritorious justification with some significance before attempting to force a change in the community governance, but CIOA does not require any such justification.

Under CIOA 47-250(a)(2), a special owners’ meeting or vote without a meeting may be called for by (1) the board president, (2) a board majority, or (3) an owners’ petition⁶ supported by at least 20% of the association’s total voting power (or a lesser percentage in your documents). If called by the president or board majority, within 15 days of the receipt of an owners’ petition, the notice of meeting or notice of an owners’ vote by ballot without a meeting must be sent to all owners. If the president/board majority do not timely call the meeting or vote, then the petitioners may do so. No matter who calls this special owners’ meeting or ballot vote, the meeting or vote must be at least 10 and not more than 60 days from sending the notice.

The individual being considered for removal must be given a “reasonable opportunity” to respond before the vote. If at a meeting, before the vote the individual being considered must be allowed the chance to speak. If the vote is by ballot without a meeting, the individual must be allowed “to deliver information to the unit owners.”⁷

[Continues on page 16.]

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REMOVAL...from page 14.

The decision on removal, whether at a special owners' meeting or an owners' vote by ballot without a meeting is decided in accordance with CIOA § 47-261d(a). First, there must be a quorum of owners present or participating in the meeting, or a quorum of the number of votes returned if the vote is completed by ballot without a meeting.

If there is a quorum of owners established, then a simple majority determines whether removal succeeds – whether “votes cast in favor of removal exceeds the number of votes cast in opposition to removal.” Majority rules. Keep in mind the potentially limited number who may vote, especially if your community, like many, could have a quorum requirement as low as one vote.

Replacing Those Removed

If the owners remove a board member, this member should be replaced. If removed, the owners must elect a replacement; the remaining board members cannot fill a vacancy created by a removal vote. Rather than the added cost and delay of calling for another special owners' meeting or waiting for the annual election, it may be best for the community to have the required vote right after the removal vote to replace those removed, to maintain board membership and to operate the community.

Sometimes “stuff happens” or is at least perceived to happen, and a section of your community may seek change. If so, everyone should be at least operating with the same procedure. ■

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 See, CIOA 47-216(a).
- 2 Sub section 47-80(c)(3) similarly stated that the bylaws “may” provide a method to remove officers.
- 3 Very likely, the board by a majority may vote to remove an officer's title. If only removed as an officer, he/she remains on the board.
- 4 CIOA 47-250 also applies to every community. See CIOA 47-216(a).
- 5 Also, beyond the scope of this article is a discussion of the procedure for an owners' vote by ballot without a meeting. This is contained within CIOA § 47-252(d), which also applies to communities established before 1984/CIOA.
- 6 The author is aware of certain challenges of the validity of an owners' petition for a meeting. This discussion is beyond the scope of this article.
- 7 See CIOA §47-252(d).

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Too Many Homeowner Phone Calls Preventing HOA BOD Presidency

D.M. from Hartford County, Connecticut writes:

Dear Mister Condo,

Our small association of less than 30 homes has enough board members to comply with requirements but none of the board members want to be President and handle responsibilities including taking calls from residents as we have no management company. Can a board legally operate without a President?

Mister Condo replies:

D.M., I am sorry that in your small homeowners' association fielding phone calls for a few dozen homeowners would preclude someone from wanting to serve as President. I am not sure what issues exist in your community but phone calls from residents should not be a common occurrence other than for emergencies. Could you not simply create an HOA-specific email address and instruct owners to email their concerns to that address? There is no need to allow 24/7 access to any Board member via phone. I do not offer legal advice in this column so I cannot answer as the legality of the operation of the Board without a President but I will say it is uncommon. The President is typically the officer of record for signing contracts and other documents that require executive authorization. Your governing documents likely detail the roles of the offices for the Board. You might also consider a hybrid management model with some sort of outsourcing for phone calls. Even an answering service could handle the task. All the best!

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Manager's Column...



Rich Wechter, CMCA

Being Practical, Part LXXVII

Kicking the Can Down the Road — Never a Good Association Strategy

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 serious consequences of association actions in delaying critical work, the proverbial "kicking the can down the road." The decision to delay addressing critical work at an association can have devastating consequences, as appears to be the case in last year's tragic building collapse in Florida. While not every delay in proceeding with work at an Association will reach that level of consequence, actions, or, more significantly the failure to act, can cause harm to associations. This article is designed to provide helpful pointers on what causes associations to kick the can down the road and how to avoid such delay in taking action.

A. Setting the Table on this Topic

Craig D. Lounsborough noted that "Kicking the proverbial can down the road only increases the size of the can." It cannot be denied that associations through their respective Boards are faced with constant maintenance and capital project matters that require decisions, most of which have significant financial impact upon unit owners. Service on association boards is not an easy task and is not for the faint of heart. However, if one is to serve on an association board, they must be prepared to make hard decisions that may not win them a popularity contest. Kicking the can down the road is in the opinion of this author, a poor choice for associations.

B. What Causes an Association to Kick the Can Down the Road

Any of the following items individually or in combination can explain why associations kick the can down the road:

1. The association does not have the current funds necessary to embark on dealing with an extensive maintenance or capital project matter.
2. The association is unwilling to secure the finances necessary to deal with an extensive maintenance or capital project matter. This point includes some associations who are simply unwilling to take out a loan and some associations where the demographics tend toward those with fixed or modest incomes.
3. Prices are escalating at a rate that causes the association to freeze any thought of proceeding with an extensive maintenance or capital project matter.
4. The association has not developed an appropriate course of conduct to deal with a particular extensive maintenance or capital project matter.
5. The board is unwilling to propose a financial solution to deal with a particular extensive maintenance or capital project matter.
6. The board refuses to deal with a particular extensive maintenance or capital project matter.
7. The board is unable to secure the right vendor(s) for a particular extensive maintenance or capital project matter.
8. The board has not secured the assistance of consultants necessary to deal with a particular extensive maintenance or capital project.
9. The board does not have the community association education necessary to deal with a particular extensive maintenance or capital project.
10. The association lacks the type of vision that should be supplied by their management company.



MHJ/DigitalVision Vectors/Getty Images Plus



*"Kicking the can down the road
is in the opinion of this author, a
poor choice for associations."*

C. How to Avoid Kicking the Can Down the Road

1. Prepare a comprehensive plan to deal with the particular extensive maintenance or capital project matter. This includes all possible ways to address the particular extensive maintenance or capital project matter. There are usually alternatives to any issue.
2. Develop funding alternatives to pay for the particular extensive maintenance or capital project matter. All options need to be placed on the table. These options include common charge increases, special assessments and securing an association loan.
3. Conduct frank discussions during board meetings with all board members, especially those board members who are reluctant to approve the financing necessary to pay for the particular extensive maintenance or capital project matter.
4. Secure a property management company with experience in dealing with extensive maintenance or capital project matters.
5. Provide unit owners with transparency with the furnishing of documents and information on the particular extensive maintenance or capital project matter that the association needs to address.
6. Have the board seek help from the community with respect to extensive maintenance or capital project matters. Boards should not be so proud to ignore help from fellow community members, regardless of the fact that they are not on the board. It is never too

[Continues on page 26.]

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Rick Hahn

TECHNICAL EXPLANATIONS

Want to Install a Washing Machine? It Might Not Be So Easy.

By Rick Hahn

The installation of in-unit washing machines and dryers is a popular renovation request that has become very desirable in recent years particularly due to social distancing concerns with common laundry facilities. The added convenience of no longer having to carry load after load of laundry to the basement or an off-site laundromat is also huge time saver, but not every building will have the capabilities to allow for this amenity.

While limitations of the existing plumbing systems are a key factor in determining feasibility, more often the existing electrical service will be the primary obstacle. Most older buildings were not designed to account for an increase in electrical capacity at the apartment panels and/or the main electrical service. Added electrical load from new laundry equipment can exceed available electrical capacity supplied to the units or the building as a whole. Additionally, apartment panels may not have spaces to install the additional circuits required. An electrical load study will be required to determine the feasibility of adding these appliances.

The overall electrical requirements of the laundry equipment could be reduced if a natural gas dryer can be installed, but that adds another set of hurdles. Even if there is existing natural gas riser that supplies gas to kitchen stoves or an in-unit furnace, new gas dryers could double the load on the gas riser. It's unlikely the piping was sized to allow for this additional gas load, and without proper planning it could damage or render other connected appliances inoperable. A gas service inquiry with the utility company may be required to determine if adequate supply is available.

Regardless of the dryer's heat source, most will require venting. Due to the high moisture content and lint accumulation in dryer exhaust, they must vent independently of all other gas appliances. This will require new exterior penetrations in addition to 3-4" vent piping routed through the unit, from the dryer to the building exterior. Building codes have strict requirements for limits to the length of vents, and space may not be available to maintain the necessary clearances from building openings like windows and terrace doors. Under no circumstances can these vents be connected to existing ventilation systems that serve common bathroom or kitchen groups. If the plumbing and electrical hurdles can be overcome, it may be likely that the only type of dryer that will be allowed is an electric condensing type dryer which would not require the vent connection to be brought to the outdoors.



Jodi Jacobson/Stock/Getty Images Plus

“Most older buildings were not designed to account for an increase in electrical capacity at the apartment panels and/or the main electrical service.”

After the power supply and venting are confirmed, the hot/cold water supply and sanitary drainage need to be considered. Washing machines require as much water as adding an additional shower. Supply piping may not be sized to accommodate this additional flow, which could lead to unintended water supply issues elsewhere in the building. Washing machines also have code specific drainage requirements to prevent the backup of suds into the plumbing systems of other dwelling units sharing drain lines. Reconfiguration of these concealed pipes may be required in order to prevent these types of backups from occurring, before installation can be approved.

All of these components should be considered when evaluating an alteration request or considering a change to bylaws to allow individual installations. A feasibility assessment should be performed to get an assessment regarding the overall impact to common building systems, and identify any additional work in the building that might be required to allow an installation to move forward. ■

Rick Hahn is a Project Manager the MEP Team with The Falcon Group. He specializes in MEP design for retrofits for existing buildings, as well as the design of fire protection systems and full building energy audits.

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Patrick Mefferd

How Consistent Lake Management Helps Create Happier, Healthier Communities

By Patrick Mefferd

Lakes, rivers, beaches, and even swimming pools have beneficial effects on the well-being of visitors that are hard to define. Water is not only essential for our survival, it has a profoundly relaxing and refreshing impact on people's mental health and happiness. Human beings will always be inextricably connected to water physically, mentally, and spiritually. This helps explain why communities near large water systems are common vacation destinations and highly desirable places for residential communities. It also underscores the importance of preserving our precious aquatic resources.

The Effects of Poor Water Quality

Maintaining balanced aquatic ecosystems is more important than ever as water scarcity, eutrophication, drought, and increasing demand continue to cause depletion and degradation of water quality worldwide. Water pollution can lead to Harmful Algal Blooms, toxicity, nuisance and invasive aquatic weed growth, bad odors, and taste issues in drinking water reservoirs – among many other issues. These types of water quality challenges can lead to diminished property values and will undoubtedly have a negative effect on swimming, boating, fishing, wildlife watching, and overall enjoyment of nature.



Understanding the Cause of Water Quality Issues

In many areas, it's common for water quality problems to shut down lakes and beaches throughout the summer, but few people are cognizant of why these problems occur and how significantly they can threaten our innate connection with the water. Assessing and addressing issues with



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“Preserving and enhancing water quality calls for successful proactive management with long-term results in mind.”

water quality requires the experience and knowledge of experts who focus on optimizing all the benefits that balanced water can provide.

Preserving and enhancing water quality calls for successful proactive management with long-term results in mind. Lake and pond management is a science and taking all variables into account is the only way to address water quality issues at their root causes. Aquatic biologists pay close attention to detail and consider the entire aquatic ecosystem when collecting sound physical, chemical, and biological data. ■

Patrick Mefferd is an Aquatic Specialist with SOLitude Lake Management.

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MANAGER'S COLUMN...from page 19.

early to seek consensus on such matters. The needs of the many must outweigh the needs of the one without ignoring the needs of the one.

7. Engage consultants that are the right fit for the association to help plan for and obtain the approval of the board and community for the particular extensive maintenance or capital project matter.
8. Establish priorities for what the association needs to address. Avoid overreaching while ensuring that all necessary matters are addressed.
9. Establish what the cost would be to delay proceeding with the particular extensive maintenance or capital project matter. As interest rates are rising currently to address the inflation surge, the cost to do anything is rising almost every day at the same time the cost to borrow funds needed for these matters is on an upward spiral. The can is getting larger every day.
10. Recognize when a board and/or a community is, in fact, kicking the can down the road on a particular extensive maintenance or capital project matter.

D. Conclusion

We do not suggest that dealing with extensive maintenance and capital project matters is an easy task. It is truly the most important role of a board member, with significant consequences for the well being of all community residents from both a safety perspective as well as from a financial perspective. It is important that board members recognize this before serving on their respective boards and prospective purchasers recognize what an association is facing by way of maintenance and capital project matters before becoming members of a community association. Community association living requires both leadership and consensus and cannot allow a scenario where associations cannot and will not take steps to deal with extensive maintenance or capital project matters. The consequences for such failure can be dire and long lasting. We hope that this article will help all in the community association world to be inspired to meet these challenges with determination and thought. ■

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.

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